2026

TEXAS PROBATE SYSTEM

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2026 Edition

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Austin 2026

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The language in this manual attempts to accommodate a wide range of entities and individuals, both in hypothetical situations in the practice notes and in form language for parties that are as-of-yet unknown. Use of the masculine gender (the pronouns *he* and *him*) is still present in some instances. This should be understood to include any gender and, when necessary, changed to fit the situation at hand.

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Worksheets

Flowcharts, tables, and itemized lists that help guide you through proper decisions, make calculations, and maintain single summary records of multiple related transactions

Master Information List (MIL)

A systematic guide for obtaining and recording required information concerning a decedent, the decedent's family, assets, taxes, debts, probate proceedings, and other affairs

Checkplan

A comprehensive checklist of common routines and problems to consider and actions to take in handling a decedent's estate

Special Instructions

Additional detailed information and guidance concerning particular probate procedures

Significant Date List (SDL)

A list for calculating and recording critical dates and deadlines for all proceedings for a decedent's estate

Furnished Forms

Reference copies of forms furnished by governmental agencies or other outside sources

Forms

Documents for court proceedings and instructions for their preparation

Letters

Letters of a standard, routine, and repetitive nature and instructions for their preparation

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Introduction

§ 1 How to Use This System

Every trade, business, and profession has its own specialized tools and procedures. Over the years, more and more lawyers have been exposed to the advantages and benefits of organization and standardization.

Probate practice lends itself to systemization because there is a beginning (a death) and an end (closing the estate and distributing assets). Many of the documents and procedures must follow statutory requirements. These factors, coupled with careful analysis and standardization, can provide guidance for the inexperienced and serve as reminders to the seasoned lawyer.

Systems were developed primarily for use by, and for the development and training of, secretaries and other members of the lawyer's staff to permit them to handle the nonprofessional activities associated with administration and probate activities. Over the years the coverage has been greatly expanded to include more of what a lawyer should do. Systems are also valuable tools for training new lawyers, and they have enormous advantages for the busy practitioner. In brief, these are multipurpose tools.

However, no system can perform properly if the lawyer will not perform the professional tasks that are part of the system. When properly used, this System will materially reduce the time required by the lawyer without significantly increasing the time required by staff in the administration of the usual estate.

This System does not cover all situations but is designed to cover a typical estate that does not have unusual tax consequences or unusual administrative problems. We estimate that 90 percent of all estates in Texas fall into the category for which this System was designed. However, parts of this System will work in every estate.

As systems were developed, the major objective was to separate those matters that required the attention of the lawyer from those matters that were factual or sufficiently repetitive and could be performed by a well-trained and -supervised staff member. Each element in the probate process was analyzed and broken down into its component parts. As a result of this process, we have developed materials for assembling necessary information and determining significant dates, as well as checkplans of standard procedures and forms and letters to implement the various decisions that are constantly being made. To increase their usefulness and acceptance, these materials have been organized into sections and are written in plain English rather than in legalese.

Although the Special Instructions deal with substantive law issues, our goal has been to design an efficient administrative process, not to provide complete coverage of technical or substantive law questions.

We have not attempted to cover contested probate matters, insolvent estates, priorities of creditors, conflicts between the personal representative and the surviving spouse, guardianships, or ancillary proceedings.

§ 2 Worksheets

Worksheets are designed to guide you through proper decisions, to make calculations, or to maintain a single summary record of multiple related transactions (such as the status of transfers of different securities).

§ 3 Master Information List (MIL)

The Master Information List (MIL) is the heart of the System. A separate MIL is used for each estate and is kept in the file for that estate. In some offices the MIL is kept in a notebook for that estate. The MIL is an interview guide that

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contains a list of questions to ask to obtain required factual information and provides a systematic means for recording that information. It also contains numbered and lettered spaces for the systematic recording of information concerning a decedent, the decedent's family, assets, taxes, debts, probate proceedings, and other affairs. Each fact has its unique number, and these numbers appear throughout this System.

By using the MIL, you will be able to record all information in one place. Its use will ensure that no essential information will be overlooked or be recorded in a haphazard fashion. Since most of this information is factual in nature, much of it can be obtained and recorded by a legal assistant or secretary.

For the System to function at its maximum potential, most of the MIL should be considered and, when applicable, completed before any documents are prepared. When the administration is concluded, the MIL should be preserved in the client's file as a record of the facts that were considered to form the basis for the decisions that were made.

§ 4 Checkplan

There is a single Checkplan containing a comprehensive checklist of all activities to be considered and, if applicable, to be performed in handling a decedent's estate. Through its proper use and coordination with the other parts of the System, the gathering of information, the transfer of assets, and the preparation of forms and letters can be virtually self-administering. The Checkplan is precisely coordinated with the numbering system of the MIL, with the Significant Date List, and with the Letters, Forms, Furnished Forms, and Special Instructions. The Checkplan is a reminder of the common problems to be considered and tells you the routine action to take in most of these situations.

You will be well advised to carefully review the entire Checkplan before beginning action. If an item does not apply to that estate, mark the "NA" column and move on to the next item. If the next item applies to that estate, determine whether it will be performed by you or by a member of your staff and so indicate in the appropriate blank by entering the initials of the person to perform the task. When you follow this procedure, the Checkplan becomes a planning tool. As an activity has been considered and the proper action has been taken, the person taking that action should initial the proper blank and indicate the date that the action was taken. This Checkplan should be maintained in the client's file. When the administration is concluded, the Checkplan should be preserved in the client's file as a record of the activities considered, the actions taken, the dates they were taken, and the identities of the persons who performed the services.

§ 5 Special Instructions

The Special Instructions provide detailed information concerning particular probate procedures. Essentially, these are footnotes. As you proceed in the administration of an estate, you will be referred to these Special Instructions for additional information or guidance. Since this System is grounded on the establishment of an efficient administrative process, many substantive and technical questions are not covered in detail, and you are cautioned to refer to other appropriate sources for the answers to your questions.

§ 6 Significant Date List (SDL)

To assist you in calculating and recording important dates for all proceedings, there is a Significant Date List (SDL) that is used for each estate. While this SDL reminds you of the critical dates and deadlines, you must dovetail the calculated dates into your regular office reminder system. You should never put your file away until you have entered the next activity in your office calendar, reminder, or tickler system. This is particularly important for those

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dates marked with an asterisk (*). The SDL for the estate is also kept in the file for that estate.

In addition to the SDL and your office reminder system, the Probate Chart (Worksheet 15) can be used to provide a compact summary of all probate matters handled by your office. As you calculate dates for an estate on the SDL and post those dates to your reminder system, you should also post them to this chart. No attempt has been made for overall chronological arrangement, since this is intended to be only a status chart. It should be posted in a conspicuous place in your office (but not where it is readily seen by clients).

§ 7 Forms and Letters

The *Texas Probate System* includes forms and letters prepared by members of the System committee as well as forms furnished by governmental agencies or other outside sources (furnished forms). The purpose of each form or letter is printed at its top.

To prepare a furnished form, you should obtain the form from the appropriate agency or other source. In some instances, there is an online version of the furnished form that can be completed and printed.

The forms and letters prepared by members of the System committee represent the committee's best thinking. Perfection, however, is hard to achieve, and attorneys using these materials must depend on their own expertise and knowledge of the law.

The alternative situations that occur most often are covered in the forms and letters. There is, however, no substitute in a particular transaction for the legal mind, and there is no end to the variations of legal problems. Thus, care should be taken to ensure that any form or letter used fits the situation and treats the problems of that transaction.

1. Optional content

Within major sections of the text of forms and letters, optional paragraphs or items are usually identified by boxed instructions. Because the System can cover only relatively common situations confronted in the probate process, language needed to address an atypical issue for a particular estate may not appear in the form or letter. The user must take care to ensure both that language appearing in the form or letter that is not appropriate for the particular estate is eliminated and that any language needed for the particular estate that does not appear in the form or letter is added.

2. Typeface conventions

Two typefaces are used in the forms and letters. Material in Times Roman (like most of this page) is appropriate for inclusion in a finished form or letter. In contrast, Arial type is used for instructions. When Arial type is used within the form or letter itself (rather than in an instruction box), it appears in **boldface** for emphasis. Boldfaced Arial type is also used to indicate numbers that are cross-referenced to the numbers in the MIL where the necessary data is to be recorded. If that portion of the MIL has been completed, the form or letter can be prepared.

3. Bracketed material

Several types of bracketed material appear in the forms and letters.

Choice of terms. In a bracketed statement such as "[executor/administrator]," the user must choose between the terms or phrases within the brackets that are separated by slash marks. Alternative letters or phrases may also be indicated by the use of brackets. A frequent example that appears in the forms is "executor[s]," indicating a choice between the singular and plural forms of the word.

Optional words. In a phrase such as "[independent] executor," the user must determine whether to include the word "independent."

Substitution of terms. In a bracketed statement such as "[**name of heir**]," the user is to substitute

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the name of the heir rather than include the bracketed material verbatim.

Instructions for use. Material such as "[**include if applicable:** . . .]" provides instructions for completing the finished form or letter and should not be included verbatim in the document.

Captions. Bracketed statements at the beginning of most forms refer the user to Special Instruction 87 for instructions about composing the caption of the form.

4. Blank lines

Signature lines appear as blank lines. Spaces for dates, times, and amounts that would be filled in *after* the document is prepared also appear as blank lines. If an actual date, time, or amount should be inserted in the form or letter when it is prepared, "[**date**]," "[**time**]," or "[**amount**]" appears instead. Additional signature lines may be necessary in a given form or letter and should be added by the user.

5. Language in boxes

Language in boxes is not to be included in the finished document but constitutes instructions, usually either telling the user whether to use the text following the box, describing what information should be included at that point in the finished document or attached to it, or providing cautionary reminders about the use of certain language.

§ 8 Digital Versions

The *Texas Probate System* is available in two digital versions: online and downloadable. The online version, available by subscription, is accessible on a variety of platforms including PC, mobile phones, and tablets. The downloadable version contains the entire text of the System as a single Adobe Acrobat PDF file.

Features of both versions include downloadable State Bar of Texas–copyrighted forms and letters from the System as editable Word files and the Worksheets, MIL, Checkplan, and SDL combined in a single Excel file with internal cross-references and automated calculations. The Worksheets, MIL, Checkplan, and SDL are also included as stand-alone PDF files for printing out and working on paper instead.

In both the online version and the main PDF file of the downloadable version, applicable Texas and federal case and statute citations in the general text and instructions in the forms and letters are linked to case reports and main code sections cited via Fastcase online. Both are searchable and hyperlinked to allow for easy, rapid navigation to topics of interest.

Caveat: Note that the Word files of forms and letters included in the digital versions contain instructional language as hidden text. Be aware that this language will be included in your completed forms and letters unless you specifically delete it.

For more information about the online and downloadable versions including usage notes, visit the Texas Bar Practice Help Center at **https://knowledgebase.texasbarpractice.com/help-center**.

§ 9 How to Begin

To access the proper materials through the use of the systems approach, begin with the Checkplan. The early steps direct you to the appropriate materials for gathering necessary information and determining the proper probate procedure.

Our MIL, numbering system, Checkplan, Forms, and Letters are precisely and delicately coordinated, but none of the content is sacred or to be regarded as Holy Writ. You should feel free to write your own letters and forms or to change ours to adapt to your own practice. If you do so, you must be careful not to destroy the numbering of your blanks, and you must remember to coordinate your blanks with the MIL.

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Throughout this System we have tried to guide you to the procedure requiring the least amount of activity to conclude the administration process. This effort on our part is not to be taken as criticism of any of the procedures provided by the Estates Code but is specifically designed to permit you to close the estate and get the assets to the family as rapidly and as inexpensively as possible. Regardless of the particular procedure you follow, you should make every effort to conclude the process as soon as is practicable.

§ 10 Corrections and Updates

In drafting the System, the members of the committee devoted a great deal of effort to making it error-free, but it undoubtedly contains some errors. We would appreciate your pointing out to us any errors you find in the System, as well as any revisions you believe are advisable. Please email any corrections or suggestions to **books@texasbar.com**.

Periodic updating of the System is planned to reflect changes in the law. It is also expected that, over time, additional topics will be covered and the scope of coverage of existing topics will be expanded. We welcome your suggestions about new topics that you would find helpful. Please email your suggestions to **books@texasbar.com**.

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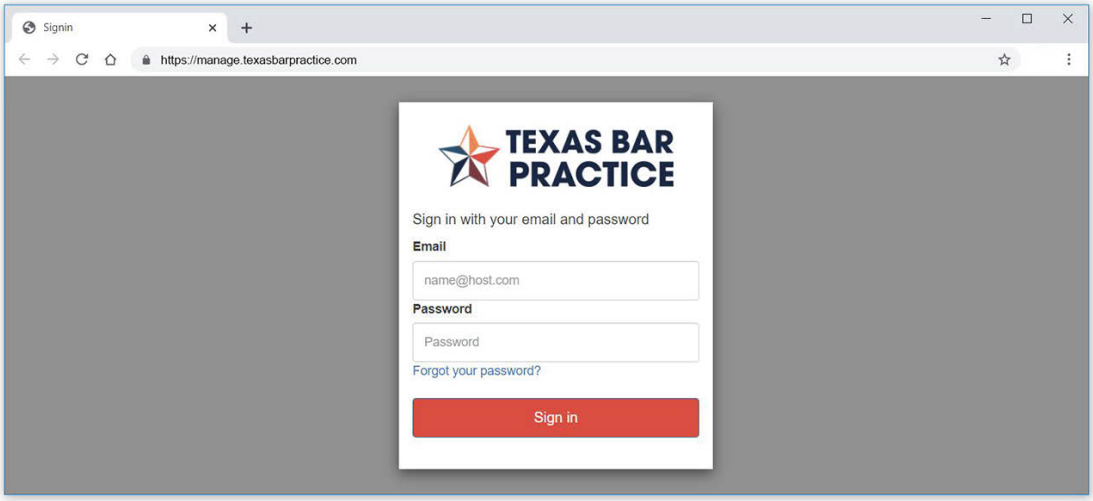
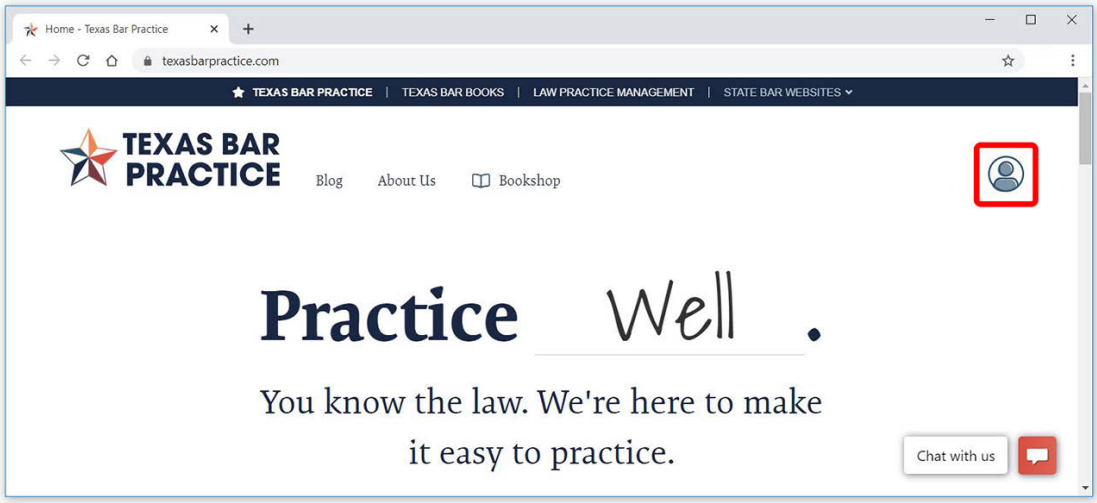


   Once logged in, you should see the user icon in the upper right-hand corner of the page.



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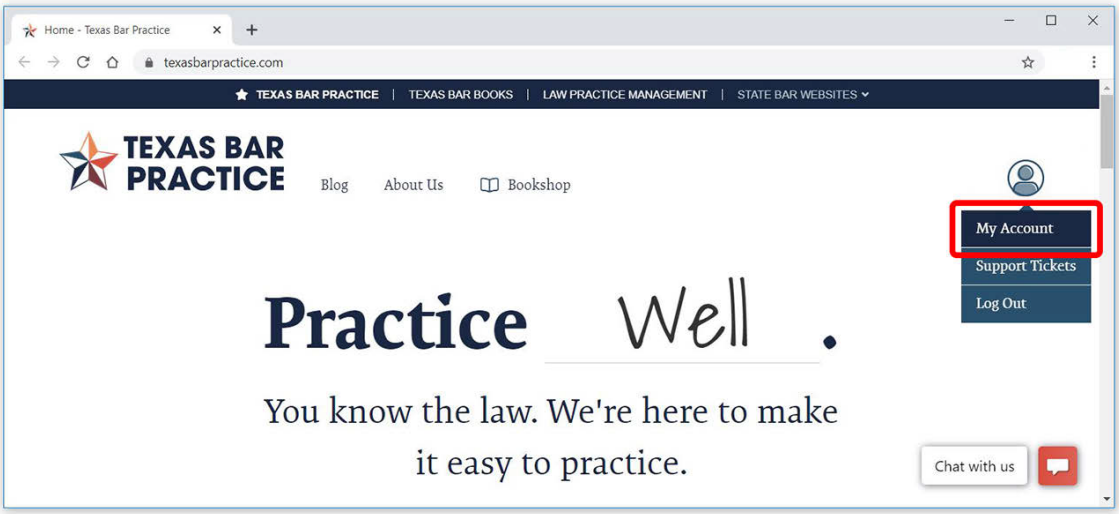
2. Go to your account:



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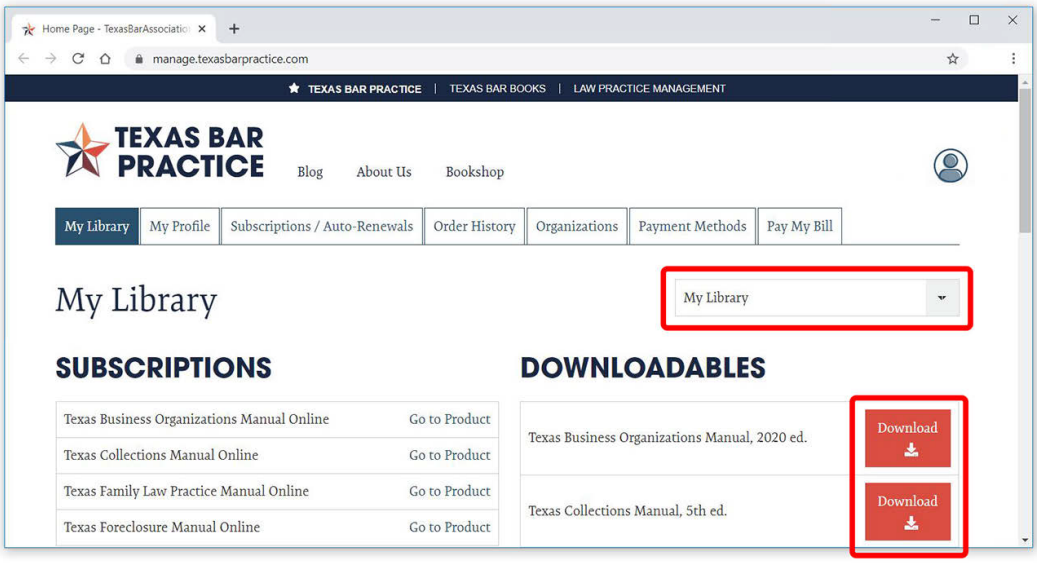

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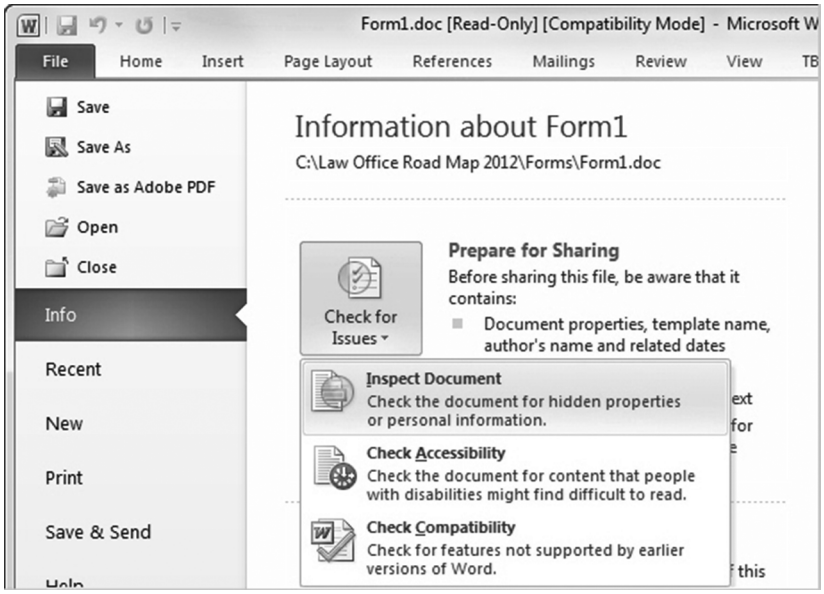
Preparing Word Forms for E-Filing (Windows)

Notes for Other Software

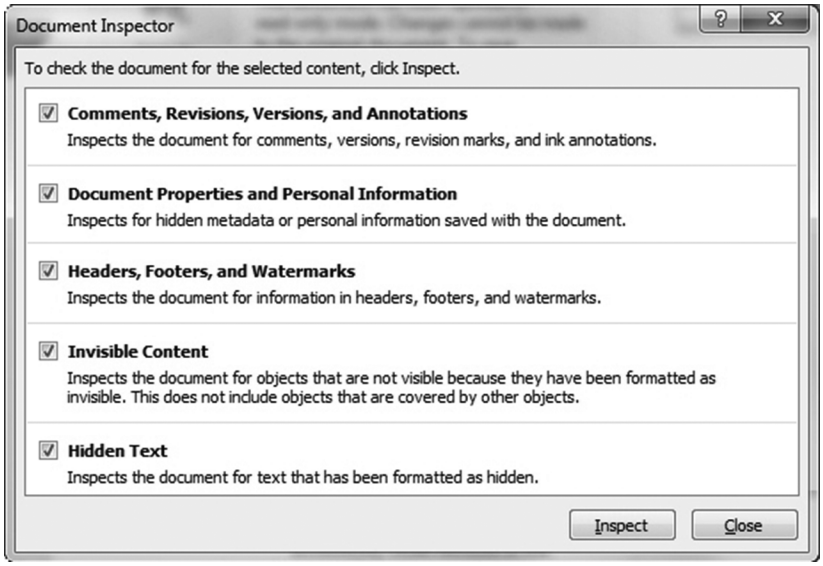
- *Word for Macintosh:* See the section titled "Remove Metadata" in the document named "Macintosh--How to Use the Word Forms" included with the digital download.
- *WordPerfect:* To remove metadata from forms saved as WordPerfect files (version X3 or later), launch the "Save Without Metadata" tool (File > Save Without Metadata, or Alt + F + M).

Using Word version 2007 or later, to remove personal information, hidden text, and other metadata before filing or sharing a document electronically, launch the "Inspect Document" tool.

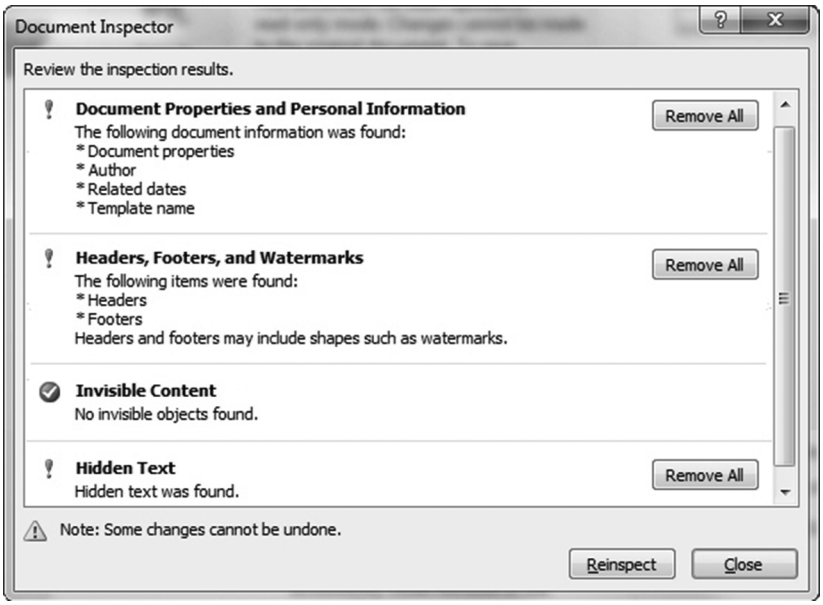
1. Go to File > Info > Check for Issues > Inspect Document (Alt + F + I + I + I).



2. In the "Document Inspector" window that opens, select the categories desired by checking the appropriate boxes (be certain to check the "Hidden Text" box to ensure that any remaining red, hidden instructional text in the document will be also be detected) and click the "Inspect" button.



3. In the second "Document Inspector" window that opens, review and remove any metadata found as desired.



CAVEAT: Although the above steps should remove basic metadata and the form instructions from the Word forms, electronic files contain all manner of metadata. It's wise to familiarize yourself with the types of data stored by any software you use in the types of files you plan to share and reasonable measures available to remove that data before sharing.

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WORKSHEET 1—PROPER PROBATE PROCEDURE (PROBATE PATHFINDER)

Estate of _____

Mark the correct answer to the following questions. The instructions under each question will direct you to materials concerning a specific type of administration that may apply to this estate.

1. Is there a will that has been probated in another state or a foreign country?

   If the answer is **YES** see Special Instruction 91—Ancillary Probate (AP) or Recording (RW) of Wills Previously Probated Elsewhere.

   If the answer is **NO** or if original probate in Texas is desired (see Special Instruction 15—Jurisdiction and Venue) go on to the next question.

2. Is there an URGENT AND IMMEDIATE need for a personal representative of the estate?

   If the answer is **YES** go immediately to Special Instruction 57—Temporary Dependent Administration (TDA).

   If the answer is **NO** go on to the next question.

3. Is there a will?

   If the answer is **NO** go to Question 8.

   If the answer is **YES** go on to the next question.

4. Is there a need for administration? (There may be no need for administration if there are no debts that are not secured by real estate or for some other reason.)

   If the answer is **NO** see Special Instruction 73—Muniment of Title (MT).

   If the answer is **YES** go on to the next question.

5. Is there an independent executor named in the will, or an independent administrator designated pursuant to the will, who is alive, willing, and qualified?

   If the answer is **YES** see Special Instruction 68—Independent Administration (IA).

   If the answer is **NO** go on to the next question.

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6. Will there be a testate independent administration by agreement?

   If the answer is **YES** see Special Instruction 88—Independent Administration by Agreement Where Decedent Left a Will (TBA).

   If the answer is **NO** see Special Instruction 17—Testate and Intestate Dependent Administration and then go on to the next question.

7. Is there an executor named in the will who is alive, willing, and qualified but who is not designated in the will as an independent executor?

   If the answer is **YES** see Special Instruction 65—Administration with Dependent Executor (ADE).

   If the answer is **NO** see Special Instruction 67—Administration with Will Annexed (AWA).

8. Will there be an intestate independent administration by agreement?

   If the answer is **YES** see Special Instruction 89—Independent Administration by Agreement Where There Is No Will (IBA).

   If the answer is **NO** go on to the next question.

9. Are you familiar with proceedings in lieu of administration?

   If the answer is **YES** go on to the next question.

   If the answer is **NO** see Special Instruction 29—Procedures in Lieu of Administration and then go on to the next question.

10. Do the estate assets, excluding eligible homestead and exempt property, exceed $75,000?

    If the answer is **NO** go on to the next question.

    If the answer is **YES** go to Question 12.

11. Do the known liabilities of the estate, excluding those secured by eligible homestead and exempt property, exceed the estate assets, excluding eligible homestead and exempt property?

    If the answer is **NO** see Special Instruction 63—Small Estates (SE).

    If the answer is **YES** go on to the next question.

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12. Is there a need for administration?

    If the answer is **NO** see Special Instruction 60—Proceedings to Declare Heirship (PDH).

    If the answer is **YES** see Special Instruction 69—Regular Dependent Administration (RDA).

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WORKSHEET 2—INSURANCE ON D'S LIFE

Estate of _____

Name and Address of Company	Policy No.	Collect or Transfer	Forms Done	Policy Sent	Rec'd	Proceeds to Beneficiary	Comments

Forms Done = Insurance company claim form completed. Policy Sent = Policy and claim forms sent to company. Rec'd = Proceeds and IRS Form 712 received from insurance company.

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WORKSHEET 3—CHECKING AND SAVINGS ACCOUNTS AND CERTIFICATES OF DEPOSIT

Estate of _____

Name of Institution	Type, Account No., Style	Stmt Rec'd	Letter Sent	Info Rec'd	Acct Rcld	§ 11.0	Close or Trans	Change Tp No.	Comments

Letter Sent = Letter 28 or 29 sent. Info Rec'd = Full response received from bank. Acct Rcld = Account reconciled to date-of-death balance. § 11.0 = All of Section 11.0 of MIL completed for this account. Close or Trans = When account closed or transferred and which. Change Tp No. = D's SSN no longer used by bank.

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WORKSHEET 4—RECONCILE D'S CHECKING ACCOUNT TO BALANCE FURNISHED BY BANK

Estate of (6.02) _____

Date of death (1.07) _____

Name of bank (11.20) _____

Style of account (11.26) _____

Checking account number (11.25) _____

Determining D's Adjusted Cash Balance

1. Balance in account on date of D's death according to bank statement (11.27) $ _____
2. Checks dated before D's death and outstanding according to D's check register on date of D's death:

Check Number	Amount

3. Total of checks outstanding (11.28) $ _____
4. Net adjusted balance (subtract Line 3 from Line 1) (11.29) $ _____
5. Deposits dated before D's death but not posted to D's account until after D's death:

Amount

6. Total of deposits outstanding $ _____
7. Adjusted account balance (add Line 6 to Line 4) $ _____

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WORKSHEET 5—SECURITIES TRANSFER RECORD

Estate of _____

	When all are checked, security is ready for sale or transfer											
Name of Company & Description of Security to Be Transferred	**Death Cert.**	**W-9**	**Letters**	**Prob. Doc.**	**Aff.**	**Cert.**	**Power**	**Sig. G'td**	**Old Cert. Sent**	**New Cert. Rec'd**	**New Cert. Del'd**	**New Acc't**

Death Cert. = Certified copy of death certificate. W-9 = IRS Form W-9. Letters = Letters testamentary or letters of administration. Prob. Doc. = Certified copy of required probate documents. Aff. = Affidavit of Domicile (Form 26). Power = Stock Power (Form 24) or Bond Power (Form 25). Sig. G'td = Signature guaranteed. Old Cert. Sent = Certificates sent for transfer. New Cert. Rec'd = Receipt of securities properly transferred. New Cert. Del'd = Securities delivered to transferee. New Acc't = D's account transferred to beneficiary.

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WORKSHEET 6—REQUIREMENTS FOR FILING FEDERAL ESTATE (AND GENERATION-SKIPPING TRANSFER) TAX RETURN (IRS FORM 706)

Estate of _____

1. Enter the gross value of all of D's assets including proceeds of life insurance owned by D, IRAs, and employee benefits as of the date of D's death. $ _____

2. Amount of applicable exclusion (Item 26.21 of MIL) $ _____*

   If the amount on Line 1 exceeds the amount on Line 2, the return *must be filed* regardless of other factors.

3. Even though no return may be required under Item 2, there are unusual situations for which a return will be required. Items 4 through 18 of this worksheet deal with those situations.

4. Applicable exclusion amount (Item 26.21 of MIL) $ _____*

5. Enter the amount of the adjusted taxable gifts (Section 2001(b) of IRC) made by D on or after January 1, 1977 (Item 20.04 of MIL). $ _____

6. Enter the amount allowed as a specific exemption (Section 2521 of IRC in effect before December 31, 1976) with respect to gifts made by D between September 9, 1976, and December 31, 1976, both dates inclusive (Item 20.06 of MIL). $ _____

7. Enter the amount of gift taxes paid by D or by D's estate for gifts made by D or D's spouse within three years before D's death (Item 20.08 of MIL). $ _____

8. Enter the amount of death benefits from life insurance policies given away by D within three years of D's death (Item 13.24 of MIL). $ _____

9. Enter the total of Lines 5, 6, 7, and 8. $ _____

10. Subtract Line 9 from Line 4 and enter the amount here. $ _____

11. Enter the gross value of all of D's assets including proceeds of life insurance owned by D, IRAs, and employee benefits as of the date of D's death. DO NOT SUBTRACT DEBTS OR EXPENSES. This should be the same amount as shown on Line 1. $ _____

12. If the amount on Line 11 is greater than the amount on Line 10, the return *must be filed*.

13. If the amount on Line 10 is greater than the amount on Line 11, answer all of the following questions:

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a. Within three years before D's date of death, did D transfer any life insurance policy? □ Yes □ No If yes, enter the amount of death benefits from all such policies. (Item 20.40 of MIL) $ _____

b. Within three years before D's date of death, did D make any transfer in which D retained a life estate? □ Yes □ No If yes, enter the fair market value of these assets as of the date of D's death. (Item 20.29 of MIL) $ _____

c. Within three years before D's date of death, did D make any transfer in which, on the date of D's death, D retained a reversionary interest valued at more than 5% of the fair market value of the property? □ Yes □ No If yes, enter the full fair market value of all such assets as of the date of D's death. (Item 20.18 of MIL) $ _____

d. Within three years before D's date of death, did D have a power to alter, amend, revoke, or terminate the enjoyment by a beneficiary of any interest in a trust or any other property, whether or not D created such interest? □ Yes □ No If yes, enter the full fair market value of all assets in such trust or of such other property as of the date of D's death. (Items 20.26, 20.27, and 20.36 of MIL) $ _____

e. Within three years before D's date of death, did D release any power to alter, amend, revoke, or terminate the right of enjoyment by any beneficiary in any property? □ Yes □ No If yes, enter the full fair market value of all such property as of the date of D's death. (Item 20.28 of MIL) $ _____

f. After June 22, 1976, did D transfer ownership of but retain voting rights in stock in a corporation in which D had the right to vote at least 20% of the total combined voting power of all classes of stock? □ Yes □ No If yes, enter the full fair market value as of the date of D's death of all shares of stock so transferred. (Item 20.44 of MIL) $ _____

g. At any time, did D make transfers where possession or enjoyment did not take effect until D's death? □ Yes □ No If yes, enter the full fair market value of all such assets as of the date of D's death. (Item 20.47 of MIL) $ _____

h. At any time, did D make a transfer where D retained possession or enjoyment of or income from the transferred property? □ Yes □ No If yes, enter the full fair market value of all such assets as of the date of D's death. (Item 20.19 of MIL) $ _____

i. At any time, did D convey title to real estate that D continued to occupy until D's death? □ Yes □ No If yes, enter the full fair market value of all such assets as of the date of D's death. (Item 20.20 of MIL) $ _____

14. If the answer to *EVERY* question in Item 13 is NO, a return is *not* necessary.

15. Enter the total of Lines 13a through 13i. $ _____

16. Enter the total of Lines 10 and 15. $ _____

17. If the amount on Line 16 exceeds the amount on Line 2, the return *must be filed*.

18. If the amount on Line 16 is less than the amount on Line 2, a return is *not* necessary.

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19. If a return is *not* necessary, was D married on the date of death? ☐ Yes ☐ No

20. If the answer to Item 19 is NO, a return may not be filed to make a portability election. If the answer to Item 19 is YES, an IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return may be filed in accordance with applicable instructions. See Special Instruction 80—Federal Estate Tax for additional information.

If the values are close or if there is *any* doubt whether a return should be filed, we recommend that you *do* file IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

**Note:* Enter applicable exclusion amount. The applicable exclusion amount is $11,580,000 for deaths in 2020 and $11,700,000 for deaths in 2021. In future years, the amount is to be adjusted for inflation. Since those provisions can be changed or postponed, it is imperative to verify the applicable exclusion amount for the year of D's death. See Special Instruction 80—Federal Estate Tax.

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WORKSHEET 7—VALUING PRODUCING MINERAL AND ROYALTY INTERESTS

Estate of _____

Royalty payor (7.97) _____

Division order number (7.100) _____

Field (7.101) _____

Unit name and description (7.102) _____

Determining D's Average Monthly Royalty

Royalty Received	Amount
During month of D's death	
One month before D's death	
Two months before D's death	
Three months before D's death	
Four months before D's death	
Five months before D's death	
Six months before D's death	
Seven months before D's death	
Eight months before D's death	
Nine months before D's death	
Ten months before D's death	
Eleven months before D's death	
Total (complete Item 7.104 of MIL)	
Monthly average (**total** divided by 12)	

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Determining Preliminary Value

An appraisal by a petroleum engineer is probably the best evidence of value. For smaller interests, the fair market value determined by the county appraisal district is frequently used.

The estimated value also may be determined by capitalizing earnings. A "thirty-six month or three-year payout" (monthly average multiplied by 36) is the rule of thumb for a capitalization rate. If production is declining, there has been trouble with the well(s), or there are other adverse factors, the capitalization rate can be reduced. You must determine the proper capitalization rate for each property and multiply the monthly average by the number of months of your capitalization rate.

Number of months in capitalization rate	
Multiply monthly average by number of months in capitalization rate and enter here (this is the capitalized value)	

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WORKSHEET 8—ELIGIBILITY FOR SPECIAL USE VALUATION UNDER IRC, SECTION 2032A

Estate of _____

Answer *all* of the following questions:	**YES**	**NO**
1. At the date of death, was D either a citizen or resident of the United States?	_____	_____
2. Is the real property located in the United States?	_____	_____
3. Was the real property owned by D (or member of D's family) during a total of five of the last eight years preceding D's death?	_____	_____
4. Did D (or member of D's family) materially participate in the operation of the farm or business during five of the last eight years preceding the earliest of (a) date of D's death, (b) date D became disabled, or (c) date D first received Social Security retirement benefits?	_____	_____
5. Did the real property pass from D to a qualified heir?	_____	_____
6. Was the property used as a farm or in a trade or business on the date of D's death?	_____	_____

***Note*: If the answer to one or more of these first six questions is no, stop here as the property is not eligible. If *all* of the answers are yes, continue as follows.**

7. Enter value of gross estate for federal estate tax purposes (see Line 1, Page 1, IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return) $ _____

8. Enter aggregate amount of personal obligations of D secured by liens on property included in D's gross estate (see bottom half of Schedule K, IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return) $ _____

***Note*: All further references to line numbers are to this worksheet.**

9. Subtract Line 8 from Line 7 and enter (this is the adjusted value of the gross estate) $ _____

10. Enter aggregate value of all of D's real property that was used at death for farming purposes or in a trade or business $ _____

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11. Enter aggregate value of such property that was *not* acquired by a qualified heir $ _____

12. Subtract Line 11 from Line 10 and enter $ _____

13. Enter aggregate amount of all of D's personal obligations secured by a lien on any real property referred to in Line 12 $ _____

14. Subtract Line 13 from Line 12 and enter (this is the adjusted value of qualified real property) $ _____

15. Enter aggregate value of all of D's personal property that was used at death on a farm for farming purposes or in a trade or business $ _____

16. Enter aggregate value of such property that was *not* acquired by a qualified heir $ _____

17. Subtract Line 16 from Line 15 and enter $ _____

18. Enter aggregate amount of all personal obligations of D secured by liens on any personal property referred to in Line 17 $ _____

19. Subtract amount shown on Line 18 from amount shown on Line 17 and enter. This is the adjusted value of all qualified personal property $ _____

20. Add amounts shown on Lines 14 and 19 and enter $ _____

21. Enter 50% of Line 9 $ _____

22. Enter 25% of Line 9 $ _____

If (1) the amount on Line 21 is less than or equal to the amount on Line 20 *and* (2) the amount on Line 22 is less than or equal to the amount on Line 14, *then* the estate qualifies for valuation under IRC, Section 2032A. To make the election, complete Schedule A-1 of IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

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WORKSHEET 9—NOTICE TO BENEFICIARIES

Estate of _____ Date of Order _____ 60 days _____ 90 days _____

Name and Address of Beneficiary	A Y/N	W Y/N	GR Y/N	G $2,000 Y/N	Date Notice Mailed or Delivered by QDM	Date Notice Received	Proof of Delivery Returned	Problems or Comments

A = Appearance W = Waiver of Notice GR = Gifts Received G $2,000 = Aggregate Gifts $2,000 or Less QDM = Qualified Delivery Method

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WORKSHEET 10—CASH REQUIREMENTS AND CASH AVAILABLE

Estate of _____

Cash Requirements

Description	*Amounts*	*Due Date*
1. Funeral expenses	$_____	_____
2. Federal estate tax	$_____	_____
3. State death taxes	$_____	_____
4. Federal income tax	$_____	_____
5. Federal gift tax	$_____	_____
6. Other taxes	$_____	_____
7. Family requirements	$_____	_____
8. Debts, mortgages, and claims	$_____	_____
9. Cash legacies	$_____	_____
10. Administration expenses	$_____	_____
11. Other	$_____	_____
	$_____	_____
12. Total cash needs	$_____	

Cash Available to Estate

13. Checking accounts	$_____	_____
14. Savings accounts	$_____	_____
15. Certificates of deposit	$_____	_____
16. Money market funds	$_____	_____
17. Insurance payable to estate, executor, or administrator	$_____	_____
18. Other	$_____	_____
19. Anticipated receipts	$_____	_____
Interest	$_____	_____
Dividends	$_____	_____
Rents	$_____	_____
Royalties	$_____	_____
Note payments	$_____	_____
Other	$_____	_____

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20. Total cash available to estate $_____

Summary:

Total cash needs (Line 12)	$_____
Total cash available (Line 20)	$_____
Net cash needs (Line 12 minus Line 20)	$_____

Worksheets 11 and 12 are reserved.

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WORKSHEET 13—CLAIMS AGAINST ESTATE

Estate of _____

Name and Address of Creditor and/or Attorney	S/US	Amount	PDL/MS	$	NTC	NRC	Permissive 120 Days	Presentment	A/R 30 Days	A/R/O by PR & Date	Date Memo Filed	A/D by Ct & Date	S/L Date	Class

See Special Instruction 54—Claims of Creditors.

S/US = Secured claim/unsecured claim
PDL/MS = Secured debt's status as either "preferred debt and lien" or "matured secured" ("N/A" if unsecured)
$ = Claim for money; "No" if not
NTC = Date notice given to creditor
NRC = Date notice received by creditor
Permissive 120 Days after NRC = Last day for unsecured creditor given permissive notice to present claim
Presentment = Actual date creditor accomplished presentment to personal representative ("PR") or deposit with clerk of court
A/R 30 Days = Last day for PR in a dependent administration to allow or reject a claim ("N/A" if independent)
A/R/O by PR = Allowed, rejected, or objected to by PR
A/D by Ct = Approved or disapproved by court ("N/A" if independent)
S/L Date = Deadline for filing suit on rejected claim (sooner of (i) statute of limitations and (ii) 90th day after rejection of claim for money in a dependent administration)
Class = Classification as to priority; "FA" for family allowance and "AL" for allowance in lieu of exempt property

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WORKSHEET 14—MARITAL DEDUCTION UNDER TRANSITIONAL RULE

Estate of _____

Determining D's "Adjusted Gross Estate"
Where D and D's Surviving Spouse
Owned Community Property

1. Amount of D's gross estate from Line 1, Page 1, of IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return (2006) $_____

2. Add the following:

   a. Total amount of D's gross estate that was D's interest in community property $_____

   b. Total value of gifts by D of community property that was included in D's gross estate $_____

   c. Total amount of proceeds from insurance on D's life to extent purchased with community property $_____

3. Total of Lines 2a, 2b, and 2c $_____

4. Subtract Line 3 from Line 1 of this form $_____

5. Divide amount on Line 4 by amount on Line 1 of this form. Carry to six decimal places and enter here _____

6. Add (a) amount of D's deductions allowed under Schedules J and K as shown on Line 17, Page 3; (b) the net losses during administration as shown on Line 18, Page 3; and (c) expenses incurred in administering property not subject to claims as shown on Line 19, Page 3, of IRS Form 706 $_____

7. Multiply amount shown on Line 6 of this form by amount shown on Line 5 of this form and enter here $_____

8. Add amounts shown on Lines 3 and 7 of this form and enter here $_____

9. Subtract Line 8 from Line 1 of this form. This is the amount of D's "adjusted gross estate" $_____

10. Divide amount on Line 9 of this form by 2. This is the amount that is 1/2 of D's adjusted gross estate $_____

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Determining the Amount of the Marital Deduction for D's Estate

11. Subtract Line 7 from Line 6 of this form $_____

12. Subtract Line 11 from Line 3 of this form $_____

13. Subtract Line 12 of this form from $250,000.00 $_____

14. Compare Lines 10 and 13 of this form and enter *larger* amount here and as Item 20 of the Recapitulation on Page 3 of IRS Form 706 and add the words "computation attached" to Item 20. $_____

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WORKSHEET 15—PROBATE CHART FOR ALL ACTIVE ESTATES REPRESENTED BY THIS FIRM

Name of Decedent Docket Number & Court Employer Identification Number	Type (1)	L/S (2)	DOD (3)	Hearing (4)	Qual. (5)	Notice (6)	Aff./Cert. of Notice (7)	Inv. or Aff. (8)	BF (9)	CSA (10)	Pending Items

(1) IA = Independent Administration; MT = Muniment of Title; ADE = Administration with Dependent Executor; AWA = Administration with Will Annexed; PDH = Proceeding to Determine Heirship; SE = Small Estate; RDA = Regular Dependent Administration; TDA = Temporary Dependent Administration; TBA = Testate IA by Agreement; IBA = Intestate IA by Agreement; AP = Ancillary Probate; RW = Recording of Will. **(2)** Initials of responsible lawyer and staff members. **(3)** DOD = Date of death. **(4)** Hearing = Date of hearing or, if no hearing, date judge signs order. **(5)** Qual. = Qualification date for executor or administrator. **(6)** Notice = Notice to testamentary beneficiaries—60 days after will probated. **(7)** Aff./Cert. of Notice = Affidavit or certificate of notice—90 days after will probated. **(8)** Inv. or Aff. = Due date for inventory or affidavit in lieu of inventory—90 days after qualification (after will probated, if muniment of title). **(9)** BF = Beneficiary finalization date for individual retirement arrangement—September 30 of year following participant's death. **(10)** CSA = Deadline for creating separate IRA accounts—December 31 of year following participant's death.

Pending Items: Note here other deadlines (or that lawyer and staff are not responsible for these items)—FYE = Fiscal year end of estate. AVD = Alternate valuation date—6 months after death. Est. Tax = Federal estate tax return—9 months after death or as extended. D's Tax = D's income tax return—April 15 of applicable year(s) or as extended. Fid. Tax = Fiduciary income tax return—15th day of 4th month following fiscal year end (April 15 if fiscal year is calendar year) or as extended. Dis. = Disclaimer—9 months after date of death.

Master Information List

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TEXAS PROBATE SYSTEM
MASTER INFORMATION LIST (MIL)

CLIENT _____
ESTATE OF _____
DATE OF DEATH _____
COURT DOCKET NUMBER _____
_____ **COURT OF** _____ **COUNTY**

TYPE OF PROCEEDINGS:

☐ **Testate**

- ☐ **Independent Administration**
- ☐ **Independent Administration by Agreement**
- ☐ **Muniment of Title**
- ☐ **Administration with Will Annexed**
- ☐ **Administration with Dependent Executor**
- ☐ **Ancillary Probate**
- ☐ **Recording Will Probated Elsewhere**

☐ **Intestate**

- ☐ **Small Estate**
- ☐ **Proceedings to Declare Heirship**
- ☐ **Temporary Dependent Administration**
- ☐ **Regular Dependent Administration**
- ☐ **Independent Administration by Agreement**

PERSONS TO RECEIVE COPIES OF DOCUMENTS:

(1) Name _____
Address _____
City, state, zip _____
Email _____
Phone no. _____
Fax no. _____

(2) Name _____
Address _____
City, state, zip _____
Email _____
Phone no. _____
Fax no. _____

(3) Name _____
Address _____
City, state, zip _____
Email _____
Phone no. _____
Fax no. _____

Check box when section is completed. Cross through those that do not apply.

☐ **Decedent (D)** 1.0
☐ **D's Will, Estate, and Personal Representatives** 2.0
☐ **D's Family and Devisees** 3.0
☐ **Safe Deposit Box** 4.0
☐ **D's Professional Advisors** 5.0
☐ **Court Proceedings** 6.0
☐ **Real Estate** 7.0
☐ **U.S. Government Savings Bonds** 8.0
☐ **Marketable Securities** 9.0
☐ **Closely Held Corporations** 10.0
☐ **Cash** 11.0
☐ **Judgments, Notes, Accounts Receivable, and Sales under Contract for Deed** 12.0
☐ **Insurance on D's Life** 13.0
☐ **Insurance on Life of Others** 14.0
☐ **Other Insurance** 15.0
☐ **Unincorporated Business Interests** 16.0
☐ **Transportation Equipment** 17.0
☐ **Personal, Household, and Miscellaneous Assets** 18.0
☐ **Employee and Government Benefits and Annuities** 19.0
☐ **Taxable but Unusual Items** 20.0
☐ **Debts and Claims** 21.0
☐ **Funeral Expenses** 22.0
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This Master Information List (MIL) has spaces to record all information necessary to prepare all documents to be filed in court, various tax forms, and a simple federal estate tax return; to transfer assets to ultimate beneficiaries; and to prepare related correspondence.

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1.0 DECEDENT (D)

1.01 D's name as shown on will _____

1.02 D's full name _____

1.03 D's maiden name _____

1.04 Other names by which known _____

1.05 Date of D's birth _____

1.06 Place of D's birth:

City _____ County _____ State _____

Country if other than U. S. _____

1.07 Date of D's death _____

1.08 Time of day of D's death _____

1.09 Place of D's death:

Address _____

City_____ County_____ State _____

1.10 D's age at death in whole years _____

1.11 D's domicile at death (see Item 6.08):

Street _____

City_____ County_____ State_____ Zip _____

Country if other than U.S. _____

1.12 Date on which above domicile was established _____

1.13 Number of years D resided at address shown in Item 1.11 _____

1.14 Date on which current Texas domicile was established _____

1.15 Cause of D's death _____

1.16 - 1.18 (Reserved)

1.19 D's Social Security number _____

1.20 D's employer identification number _____

1.21 Branch of D's military service:
☐ None ☐ Army ☐ Navy ☐ Air Force ☐ Coast Guard ☐ Marine Corps

1.22 Dates of D's service, or N/A _____

1.23 D's military ID number _____

1.24 D's VA number _____

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1.25 D's sex: ☐ Male ☐ Female

1.26 D's citizenship or nationality at death if not U.S. _____

1.26A Country of D's habitual residence if not U.S. _____

1.26B Country issuing D's passport if not U.S. _____

1.27 County in which D's principal property is located _____

1.28 D's occupation or business _____

_____

1.29 D's employment status: ☐ Self ☐ Retired ☐ Employee ☐ Unemployed

1.30 If self-employed, D's business name, address, and type of business _____

_____

_____

1.31 If retired, D's former occupation _____

_____

1.32 If employed, name and address of D's employer and nature of D's occupation _____

_____

_____

_____

_____

1.33 Name, address, and phone number of person to contact concerning D's current employment, pay, W-2 forms, and benefits _____

_____

_____

_____

1.34 Name, address, and phone number of person to contact concerning D's prior employment, pay, W-2 forms, and benefits _____

_____

_____

_____

_____

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1.35 Will D's spouse, estate, or any other person receive a bonus or award as a result of D's employment or death? ☐ Yes ☐ No If yes, complete Items 19.44 through 19.56 and summarize here _____

_____

_____

_____

1.36 Did D have options to acquire stock of current or prior employer? ☐ Yes ☐ No If yes, complete Items 19.48 and 9.195 through 9.229 if stock is publicly traded and give details here (in format to be used on probate documents or estate tax return) _____

_____

_____

_____

1.37 Name of issuing authority and number of D's death certificate _____

_____

_____

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2.0 D'S WILL, CODICIL, ESTATE, AND PERSONAL REPRESENTATIVES

2.01 Did D leave a will? ☐ Yes ☐ No If no, complete Items 2.43 through 2.44A concerning anyone who will waive and renounce the right to letters, complete Item 6.11A, and skip to Item 2.73.

2.02 Date of D's will _____

2.02A Was will **probated** or otherwise established in a foreign jurisdiction, that is, **another state or a foreign country**? ☐ Yes ☐ No If yes, complete Items 6.48 through 6.67 for each other personal representative and attorney in a foreign jurisdiction.

2.02B Was D domiciled in Texas at death (see Item 1.11)? ☐ Yes ☐ No If yes, skip to Item 2.04.

2.02C Date will admitted to probate in foreign jurisdiction _____

2.02D Date of qualification of executor in foreign proceeding _____

2.02E Style of proceedings in foreign court _____

2.02F Name of foreign court _____

2.02G Name of clerk of foreign court _____

2.02H Address _____

2.02I City, state or province, zip or postal code, and country _____

2.02J Foreign jurisdiction, for example, "Louisiana" or "Province of Quebec, Canada" _____

2.02K Will recording of a will previously probated elsewhere be sought? ☐ Yes ☐ No If yes, skip the remainder of this Section 2.0.

2.02L Will ancillary probate in Texas of a foreign will be sought? ☐ Yes ☐ No If yes, complete Items 2.45 through 2.64C and Item 2.85 and then skip to Item 2.130.

2.03 Is will **self-proved**? ☐ Yes ☐ No If yes, skip to Item 2.10. Complete Item 6.12 regardless of answer.

2.04 Is will **holographic**? ☐ Yes ☐ No If no, skip to Item 2.10. If yes, complete Item 6.11B and, if will is not attested, complete Items 2.05 through 2.08C for *two* people who can testify as to D's handwriting and signature. If proof is to be by testimony in open court, indicate by the letters "T/C"; if proof is to be by written deposition, indicate by the letters "T/D."

		(A)	(B)
2.05	Name	_____	_____
2.05A	Dear	_____	_____
2.06	Address	_____	_____
2.07	City, state, zip	_____	_____
2.08	Phone number	_____	_____
2.08A	SMS (text) number	_____	_____
2.08B	Fax number	_____	_____
2.08C	Email	_____	_____

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2.09 (Reserved)

2.10 Is will **attested by witnesses**? ☐ Yes ☐ No If yes, complete Item 6.11C and complete Items 2.11 through 2.15C for all **attesting witnesses**. If will is not self-proved, will attesting witness(es) be available to prove the will? ☐ Yes ☐ No If yes, indicate by the letter "T" the witness(es) who will prove the will. If proof is to be by testimony in open court, indicate by the letter "C"; if proof is to be by written deposition, indicate by the letter "D" (e.g., T/C or T/D). If no, complete Items 2.05 through 2.08C for two witnesses who can testify as to D's handwriting and signature **and/or** Items 2.160 through 2.167 for two witnesses who can testify as to the handwriting and signature of an attesting witness **or** for at least one witness in each category, indicating by the letters "T/C" if proof is to be by testimony in open court and by the letters "T/D" if proof is to be by written deposition.

		(A)	(B)	(C)
2.11	Name	_____	_____	_____
2.12	Dear	_____	_____	_____
2.13	Address	_____	_____	_____
2.14	City, state, zip	_____	_____	_____
2.15	Phone number	_____	_____	_____
2.15A	SMS (text) number	_____	_____	_____
2.15B	Fax number	_____	_____	_____
2.15C	Email	_____	_____	_____

2.16 Did D leave a **codicil**? ☐ Yes ☐ No If no, skip to Item 2.27. If yes, complete Items 2.17 through 2.25C.

2.17 Date of D's codicil _____

2.18 Is codicil self-proved? ☐ Yes ☐ No If yes, skip to Item 2.20.

2.19 Is codicil holographic? ☐ Yes ☐ No If yes, and if codicil is not attested, complete Items 2.05 through 2.08C for two people who can testify as to D's handwriting and signature. If proof is to be by testimony in open court, indicate by the letters "T/C"; if proof is to be by written deposition, indicate by the letters "T/D."

2.20 Is codicil attested by witnesses? ☐ Yes ☐ No If yes, complete Items 2.21 through 2.25C for all **attesting witnesses**. If codicil is not self-proved, will attesting witness(es) be available to prove the codicil? ☐ Yes ☐ No If yes, indicate by the letter "T" the witness(es) who will prove the codicil. If proof is to be by testimony in open court, indicate by the letter "C"; if proof is to be by written deposition, indicate by the letter "D" (e.g., T/C or T/D). If no, complete Items 2.05 through 2.08C for two witnesses who can testify as to D's handwriting and signature **and/or** Items 2.170 through 2.177 for two witnesses who can testify as to the handwriting and signature of an attesting witness **or** for at least one witness in each category, indicating by the letters "T/C" if proof is to be by testimony in open court and by the letters "T/D" if proof is to be by written deposition.

		(A)	(B)	(C)
2.21	Name	_____	_____	_____
2.22	Dear	_____	_____	_____

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2.23	Address	_____	_____	_____
2.24	City, state, zip	_____	_____	_____
2.25	Phone number	_____	_____	_____
2.25A	SMS (text) number	_____	_____	_____
2.25B	Fax number	_____	_____	_____
2.25C	Email	_____	_____	_____

2.26 (Reserved)

2.27 Is there a need for administration of the estate? (There may be no need for administration (1) if D did not owe (or at the time of filing application, D's estate will not owe) any debts that are not secured by liens on real estate or (2) for some other reason.) ☐ Yes ☐ No If yes, muniment of title proceeding is not available. Skip Items 2.28 through 2.40C. If no, muniment of title proceeding is available, and one of the following alternatives should be indicated here and at Item 6.15:

A. No debts at all.

B. No debts except those secured by liens on real estate.

C. Other reason there is no necessity for administration: _____

2.28 Is D's will to be filed as a **muniment of title** only? ☐ Yes ☐ No If no, skip to Item 2.41. If yes, complete Items 2.29 through 2.40C plus Item 2.140 concerning the person who will be the applicant, and skip Items 2.41 through 2.64C.

2.29 Name _____

2.30 Dear _____

2.31 Address _____

2.32 City, state, zip _____

2.33 County of domicile _____

2.34 Phone number _____

2.34A SMS (text) number _____

2.34B Fax number _____

2.34C Email _____

2.34D Driver's license number _____

2.34E Social Security number _____

2.35 Can the applicant named in Item 2.29 also testify as to lack of debts or other reason administration is not necessary? ☐ Yes ☐ No If no, complete Items 2.36 through 2.40C for the person who can. Is this the same person described in Item 3.83? ☐ Yes ☐ No

2.36 Name _____

2.37 Dear _____

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2.38 Address _____

2.39 City, state, zip _____

2.40 Phone number _____

2.40A SMS (text) number _____

2.40B Fax number _____

2.40C Email _____

2.41 If will is not to be filed as a muniment of title, does D's will name an executor? ☐ Yes ☐ No If yes, complete Items 2.42 through 2.44A for each executor named. If no, skip to Item 2.44B.

2.42 Is any executor named in the will deceased; unable, unwilling, or unqualified to act as such; or waiving and renouncing the right to letters? ☐ Yes ☐ No

2.43 Name _____

2.44 Relationship to D _____

2.44A Deceased? ☐ Yes ☐ No Able to serve? ☐ Yes ☐ No Willing to serve? ☐ Yes ☐ No Qualified to serve? ☐ Yes ☐ No Waiving and renouncing rights to letters? ☐ Yes ☐ No Filing affidavit of inability or unwillingness to serve? ☐ Yes ☐ No

2.44B Does D's will grant someone **authority to designate** an administrator? ☐ Yes ☐ No If yes, complete Items 2.44C through 2.44L for the person granted authority and Items 2.44M through 2.44O for the designation.

2.44C Name _____

2.44D Dear _____

2.44E Address _____

2.44F City, state, zip _____

2.44G Phone number _____

2.44H SMS (text) number _____

2.44I Fax number _____

2.44J Email _____

2.44K Name, office, and/or function by which identified in the will: _____

2.44L Deceased? ☐ Yes ☐ No Willing and able to designate? ☐ Yes ☐ No

2.44M Designation of administrator ☐ Has been made ☐ Will be made ☐ Will not be made

2.44N Name of designated administrator _____

2.44O Deceased? ☐ Yes ☐ No Disqualified? ☐ Yes ☐ No Refuses to serve? ☐ Yes ☐ No

If an executor named in the will or a designated administrator will serve, complete Items 2.45 through 2.60 for the person(s) or corporate fiduciary who will serve as primary executor(s) or administrator(s), listing individuals first and corporate fiduciaries second.

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		(A)	(B)
2.45	Name	_____	_____
2.46	Dear	_____	_____
2.47	Address	_____	_____
2.48	City, state, zip	_____	_____
2.49	Phone number	_____	_____
2.49A	SMS (text) number	_____	_____
2.50	Relationship to D	_____	_____
2.51	Social Security or employer ID number	_____	_____
2.51A	Driver's license number	_____	_____
2.52	County of domicile	_____	_____
2.53	Fax number	_____	_____
2.53A	Email	_____	_____
2.54	If a corporate fiduciary, check type of entity	☐ Bank ☐ Trust Company	☐ Bank ☐ Trust Company
2.55	Independent executor or administrator?	☐ Yes ☐ No	☐ Yes ☐ No
2.56	Qualified?	☐ Yes ☐ No	☐ Yes ☐ No
2.57	Bond required?	☐ Yes ☐ No	☐ Yes ☐ No
2.58	Where will oath be signed?	☐ Court ☐ Notary	☐ Court ☐ Notary

2.59 (Reserved)

2.60 Was a corporate fiduciary named or designated as the primary executor or administrator? ☐ Yes ☐ No
If no, skip to Item 2.65. If yes, complete Items 2.61 through 2.64C.

2.61 Name of responsible officer _____

2.62 Dear _____

2.63 Title _____

2.64 Direct phone number _____

2.64A SMS (text) number _____

2.64B Direct fax number _____

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2.64C Email _____

2.65 Does D's will provide for alternate executors or administrators or for trustees or for guardians? ☐ Yes ☐ No If no, skip to Item 2.85. If yes, complete Items 2.66 through 2.72.

		1st Alternate Executor/ Administrator (A)	**Primary Trustee** (B)	**Primary Guardian** (C)
2.66	Name	_____	_____	_____
2.67	Address	_____	_____	_____
2.68	City, state, zip	_____	_____	_____
2.69	Phone number	_____	_____	_____
2.69A	SMS (text) number	_____	_____	_____
2.69B	Fax number	_____	_____	_____
2.69C	Email	_____	_____	_____
2.70	Relationship to D	_____	_____	_____
2.71	Social Security or employer ID number	_____	_____	_____
2.71A	Driver's license number	_____	_____	_____
2.72	County of domicile	_____	_____	_____

2.73 Is a **temporary dependent administration** necessary? ☐ Yes ☐ No If no, continue to Item 2.74. If yes, complete Items 2.76 through 2.85.

2.74 If D died **without a will**, is an **administration necessary**? ☐ Yes ☐ No If no, skip to Item 2.85. If yes, answer Item 2.75.

2.75 Will there be an **independent administration by agreement**? ☐ Yes ☐ No If no, complete Items 2.76 through 2.85. If yes, complete Items 2.45 through 2.60 above for the person(s) or corporate fiduciary who will serve as independent administrator(s), listing individuals first and corporate fiduciaries second, and complete Item 2.85.

2.76 Name of applicant _____

2.77 Dear _____

2.78 Address _____

2.79 City, state, zip _____

2.80 Phone number _____

2.80A SMS (text) number _____

2.81 County of residence _____

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2.82 Relationship to D _____

2.83 Social Security number _____

2.83A Driver's license number _____

2.84 Fax number _____

2.84A Email _____

2.85 Which of the following is the title of D's personal representative?

☐ A. None ☐ B. Independent Executor ☐ C. Administrator ☐ D. Executor ☐ E. Administrator with Will Annexed ☐ F. Temporary Administrator ☐ G. Independent Administrator ☐ H. Independent Administrator with Will Annexed ☐ I. Other _____

2.86 After appointment by the court, has the personal representative ☐ died ☐ resigned ☐ failed to qualify ☐ been removed?

2.87 If yes to any of the above, what is the date of death, resignation, failure to qualify, or removal?

2.88 Has the inventory or affidavit in lieu of inventory been filed?

2.89 If D had a will, is this to be an **administration with will annexed (AWA)** or an **independent administration with will annexed by agreement (TBA)**? ☐ Yes ☐ No If no, skip to Item 2.100. If yes, complete Items 2.45 through 2.60 above for the person(s) or corporate fiduciary who will serve as (independent) administrator(s) with will annexed, listing individuals first and corporate fiduciaries second, and complete Item 2.85.

2.90 - 2.99 (Reserved)

2.100 Is this to be a **proceeding to declare heirship**? ☐ Yes ☐ No If no, skip to Item 2.115. If yes, complete Items 2.101 through 2.109.

2.101 Name of applicant _____

2.102 Dear _____

2.103 Address _____

2.104 City, state, zip _____

2.105 Phone number _____

2.105A SMS (text) number _____

2.105B Fax number _____

2.105C Email _____

2.106 Relationship to D _____

2.107 Social Security number _____

2.107A Driver's license number _____

2.108 County of residence _____

2.109 Share of D's estate _____

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2.110 - 2.114 (Reserved)

2.115 Is this to be a **small estate proceeding**? ☐ Yes ☐ No If no, skip to Item 2.125. If yes, complete Items 2.116 through 2.124.

2.116 Name of applicant _____

2.117 Dear _____

2.118 Address _____

2.119 City, state, zip _____

2.120 Phone number _____

2.120A SMS (text) number _____

2.120B Fax number _____

2.120C Email _____

2.121 Relationship to D _____

2.122 Social Security number _____

2.122A Driver's license number _____

2.123 County of residence _____

2.124 Share of D's estate _____

2.125 Is this to be an **affidavit of heirship**? ☐ Yes ☐ No If no, go back to the Probate Pathfinder (Worksheet 1) and start over. If yes, complete Items 2.126 through 2.126I and Items 2.180 through 2.188.

2.126 Name of affiant _____

2.126A Dear _____

2.126B Address _____

2.126C City, state, zip _____

2.126D Phone number _____

2.126E SMS (text) number _____

2.126F Fax number _____

2.126G Email _____

2.126H Relationship to D _____

2.126I Knew D how many years? _____

2.127 - 2.129 (Reserved)

2.130 Does D's will or codicil provide for a gift to D's surviving spouse of "qualified terminable interest property (**Q-TIP**)"? ☐ Yes ☐ No If yes, complete Items 2.131 and 2.132.

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2.131 Description and value of those assets _____

_____

_____

_____

2.132 Will D's executor or administrator make the irrevocable election to deduct the value of this gift? ☐ Yes ☐ No

2.133 If D's will or codicil is dated prior to September 13, 1981, and provides for a "maximum marital deduction" gift under the "transitional rule" of the Economic Recovery Tax Act of 1981, give details _____

_____

_____

_____

_____

2.134 Will D's surviving spouse receive other benefits that qualify for a marital deduction (either outright or in trust)? ☐ Yes ☐ No If yes, give details, including description and value _____

_____

_____

2.135 Is there anyone whose life expectancy may affect the value of the residuary interest passing to D's surviving spouse? ☐ Yes ☐ No If yes, give details, including name, date of birth, and sex of each person

_____

_____

_____

2.136 Does D's will create a charitable remainder trust? ☐ Yes ☐ No If yes, give details, including whether or not trust will be treated as a nondeductible terminable interest _____

_____

_____

2.137 Will there be an "election out" of Q-TIP treatment for any joint and survivor annuities? ☐ Yes ☐ No If yes, give details _____

_____

_____

2.138 Approximate value of all items qualifying for the marital deduction _____

2.139 (Reserved)

2.140 Name and Social Security number of person who will sign federal estate tax return in a muniment of title proceeding _____

_____

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2.141 Name of lawyer designated to handle D's trust, escrow, or IOLTA account _____

2.142 Address _____

2.143 City, state, zip _____

2.144 Phone number _____

2.144A SMS (text) number _____

2.145 Fax number _____

2.146 Email _____

2.147 State Bar card number _____

2.148 - 2.159 (Reserved)

See Item 2.10. If appropriate, complete Items 2.160 through 2.167 for witness(es) who can testify as to the handwriting and signature of an attesting witness to will. If proof is to be by testimony in open court, indicate by the letter "C"; if proof is to be by written deposition, indicate by the letter "D" (e.g., T/C or T/D).

		(A)	(B)
2.160	Name	_____	_____
2.161	Dear	_____	_____
2.162	Address	_____	_____
2.163	City, state, zip	_____	_____
2.164	Phone number	_____	_____
2.164A	SMS (text) number	_____	_____
2.165	Fax number	_____	_____
2.166	Email	_____	_____
2.167	Name of attesting witness	_____	_____

2.168 - 2.169 (Reserved)

See Item 2.20. If appropriate, complete Items 2.170 through 2.177 for witness(es) who can testify as to the handwriting and signature of an attesting witness to codicil. If proof is to be by testimony in open court, indicate by the letter "C"; if proof is to be by written deposition, indicate by the letter "D" (e.g., T/C or T/D).

		(A)	(B)
2.170	Name	_____	_____
2.171	Dear	_____	_____
2.172	Address	_____	_____
2.173	City, state, zip	_____	_____

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2.174	Phone number	_____	_____
2.174A	SMS (text) number	_____	_____
2.175	Fax number	_____	_____
2.176	Email	_____	_____
2.177	Name of attesting witness	_____	_____

2.178 - 2.179 (Reserved)

See Item 2.125. If appropriate, complete Items 2.180 through 2.188 for two witnesses who can swear to the family history and facts of heirship of D. It is preferable to have one witness who knew D for at least fifteen years and another witness who knew D for at least twenty-five years.

		(A)	(B)
2.180	Name	_____	_____
2.181	Dear	_____	_____
2.182	Address	_____	_____
2.183	City, state, zip	_____	_____
2.184	Phone number	_____	_____
2.184A	SMS (text) number	_____	_____
2.185	Fax number	_____	_____
2.186	Email	_____	_____
2.187	Relationship to D	_____	_____
2.188	Knew D how many years?	_____	_____

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3.0 D'S FAMILY AND DEVISEES

3.01 D's marital status at death:

☐ Never married ☐ Married ☐ Divorced or marriage otherwise dissolved ☐ Legally separated ☐ Pending dissolution ☐ Widow ☐ Widower

3.01A Total times D was married _____

If D was never married, skip to Item 3.35.

3.02 If D was not married at death, skip to Item 3.20. If D was married at death, complete Items 3.03 through 3.19 for D's surviving spouse (including spouse from whom legally separated or involved in pending divorce or other dissolution).

3.03 Name _____

3.04 Address _____

3.05 City, state, zip _____

3.06 Phone number _____

3.06A Fax number _____

3.06B Email _____

3.06C Dear _____

3.07 Social Security number _____

3.07A Driver's license number _____

3.08 Highest income tax bracket _____

3.09 Date of birth _____

3.09A Place of birth _____

3.10 Date of this marriage _____

3.11 Place of this marriage _____

3.12 D's domicile at time of this marriage _____

3.13 Date of establishing Texas domicile for D _____; for D's spouse _____

If not Texas residents throughout marriage, give details, including dates and places of other residences

_____

_____

3.13A Was spouse a U.S. citizen? ☐ Yes ☐ No If no, of what country is spouse a citizen? _____

3.13B Was spouse a naturalized citizen? ☐ Yes ☐ No If yes, when did spouse acquire citizenship? _____

In which country is spouse's habitual residence? _____

Country issuing spouse's passport if not U.S. _____

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3.14 Share of D's estate by percentage and value and give details _____

_____

_____

3.15 Sex of spouse: ☐ Male ☐ Female

3.16 Was spouse pregnant on date of D's death? ☐ Yes ☐ No If yes, give details _____

3.17 Was there a marital property agreement involving D and D's spouse? ☐ Yes ☐ No

3.18 Will spouse disclaim any interest in D's estate? ☐ Yes ☐ No If yes, give details _____

_____

_____

3.19 Will any property pass to spouse as the result of a qualified disclaimer? ☐ Yes ☐ No If yes, give details _____

_____

_____

3.20 Had a marriage of D ever been dissolved by divorce, annulment, or a declaration that the marriage was void? ☐ Yes ☐ No If no, skip to Item 3.29. If yes, complete Items 3.21 through 3.28 for each dissolved marriage:

		(A)	(B)
3.21	Name of spouse	_____	_____
3.22	Sex of spouse	☐ Male ☐ Female	☐ Male ☐ Female
3.23	Social Security number	_____	_____
3.24	Date of marriage to D	_____	_____
3.25	Type of dissolution proceeding	_____	_____
3.25A	Date of court order dissolving marriage	_____	_____
3.25B	Is this date later than date of D's will (2.02)?	☐ Yes ☐ No	☐ Yes ☐ No
3.26	Place of proceeding	_____	_____

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3.27 Was D obligated to make support or alimony payments to any of these former spouses? ☐ Yes ☐ No ☐ Yes ☐ No

If yes, indicate which one(s) and obtain copies of relevant documents. _____ _____

3.28 Was D receiving any support or alimony payments from any of these former spouses? ☐ Yes ☐ No ☐ Yes ☐ No

If yes, indicate which one(s) and obtain copies of relevant documents. _____ _____

3.29 Did any of D's spouses die during marriage to D? ☐ Yes ☐ No If no, skip to Item 3.35. If yes, complete Items 3.30 through 3.34 for each such spouse.

		(A)	(B)
3.30	Name of spouse	_____	_____
3.30A	Sex of spouse	☐ Male ☐ Female	☐ Male ☐ Female
3.31	Social Security number	_____	_____
3.32	Date of marriage to D	_____	_____
3.33	Date of death	_____	_____
3.34	Probate docket no., name of court, etc.	_____	_____

3.35 Did D ever have or adopt children? ☐ Yes ☐ No If no, skip to Item 3.53.

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3.36 If yes, state total number including deceased children _____ and how many survived D _____. Complete Items 3.37 through 3.52 for each child and indicate the identity of the other parent by referring to Items 3.03, 3.21, and 3.30 as applicable.

(Attach additional sheets if necessary.)

		(A)	(B)	(C)
3.37	Name	_____	_____	_____
3.37A	Deceased?	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
3.37B	Date of death	_____	_____	_____
3.38	Sex	☐ Male ☐ Female	☐ Male ☐ Female	☐ Male ☐ Female
3.39	Married?	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
3.39A	Name of child's spouse	_____	_____	_____
3.40	Address	_____	_____	_____
3.41	City, state, zip	_____	_____	_____
3.41A	Remaining with D's family?	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
3.41B	Incapacitated?	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
3.42	Phone number	_____	_____	_____
3.42A	Fax number	_____	_____	_____
3.42B	Email	_____	_____	_____
3.43	Date of birth	_____	_____	_____
3.43A	Minor?	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
3.43B	Child's (natural or other) guardian	_____	_____	_____
3.43C	Dear	_____	_____	_____
3.44	Place of birth	_____	_____	_____
3.45	Social Security number	_____	_____	_____
3.45A	Driver's license number	_____	_____	_____
3.46	Highest income tax bracket	_____	_____	_____
3.47	Natural/adopted	_____	_____	_____
3.48	Share of D's estate by percentage and value and give details	_____	_____	_____

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		_____	_____	_____
		_____	_____	_____
3.49	Did this child have a living parent at D's death?	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
3.50	Will any property pass to this child as a result of a qualified disclaimer?	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No

3.51 Were any of the children born or adopted after the date of D's will or codicil(s) (see Items 2.02, 2.17, and 6.13)? ☐ Yes ☐ No If yes, write their names here _____

_____

3.52 If any children named in Item 3.51 survived D, write their names here _____

_____

3.53 Does D's will provide for a gift to charity, the State of Texas, or a governmental agency of the State of Texas? ☐ Yes ☐ No If yes, state whether it was a specific bequest or payable out of the residue of D's estate _____

_____

3.54 (Reserved)

3.55 Will any property pass to a charity, the State of Texas, or a governmental agency of the State of Texas as the result of a qualified disclaimer? ☐ Yes ☐ No

3.56 Description and value of gifts to charities, the State of Texas, or a governmental agency of the State of Texas, including the names, dates of birth, and sex of all life tenants and annuitants, the length of whose lives may affect the value of any such gift _____

_____

_____

_____

3.57 Will persons or entities other than spouse and children **(including charities, the State of Texas, and a governmental agency of the State of Texas)** receive benefits from D either by will or codicil, insurance, or otherwise? ☐ Yes ☐ No If yes, complete Items 3.58 through 3.70 for each.

		(A)	(B)	(C)
3.58	Name	_____	_____	_____
3.59	Address	_____	_____	_____
3.60	City, state, zip	_____	_____	_____
3.61	Phone number	_____	_____	_____

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3.61A	Person to contact if not an individual	_____	_____	_____
3.61B	Dear	_____	_____	_____
3.61C	Type of entity if not an individual	_____	_____	_____
3.61D	Fax number	_____	_____	_____
3.61E	Email	_____	_____	_____
3.62	Date of birth	_____	_____	_____
3.63	Sex	☐ Male ☐ Female	☐ Male ☐ Female	☐ Male ☐ Female
3.64	Relationship to D	_____	_____	_____
3.65	Social Security or employer ID number	_____	_____	_____
3.65A	Driver's license number	_____	_____	_____
3.66	Highest income tax bracket	_____	_____	_____
3.67	Name of person's spouse	_____	_____	_____
3.68	Nature of benefit or share of D's estate and give details, including character of institution if a charity	_____	_____	_____
		_____	_____	_____
		_____	_____	_____
		_____	_____	_____
		_____	_____	_____
3.69	Value of benefit (if to a charity, reduce by amount shown in Items 26.58 through 26.60)	_____	_____	_____
3.70	Dependent of D?	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No

3.71 Are there other heirs, relatives, or other parties interested in this estate? ☐ Yes ☐ No If yes, complete Items 3.72 through 3.82 for each.

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		(A)	(B)	(C)
3.72	Name	_____	_____	_____
3.73	Address	_____	_____	_____
3.74	City, state, zip	_____	_____	_____
3.75	Phone number	_____	_____	_____
3.75A	Fax number	_____	_____	_____
3.75B	Email	_____	_____	_____
3.76	Date of birth	_____	_____	_____
3.77	Sex	☐ Male ☐ Female	☐ Male ☐ Female	☐ Male ☐ Female
3.78	Relationship to D	_____	_____	_____
3.79	Social Security number	_____	_____	_____
3.80	Highest income tax bracket	_____	_____	_____
3.81	Name of spouse	_____	_____	_____
3.82	Nature of interest or share of D's estate by percentage and value and give details	_____	_____	_____
		_____	_____	_____

Complete Items 3.83(A) through 3.87B(A) for person, often applicant, who will testify to D's death, afterborn children, divorces or other marital dissolutions, venue facts, qualification of administrator or executor and, if applicable, lack of revocation of will. For muniment of title proceeding, see also Item 2.35. For proceeding to declare heirship, complete Items 3.83(B) through 3.87B(B) and 3.83(C) through 3.87B(C) for the two disinterested witnesses who must testify. For small estate proceeding, complete those items for both witnesses who will sign the affidavit.

		(A)	(B)	(C)
3.83	Name	_____	_____	_____
3.84	Dear	_____	_____	_____
3.85	Address	_____	_____	_____
3.86	City, state, zip	_____	_____	_____
3.87	Phone number	_____	_____	_____
3.87A	Fax number	_____	_____	_____
3.87B	Email	_____	_____	_____

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3.88 Did any heir or beneficiary die within five days (120 hours) after the time and date of D's death? ☐ Yes ☐ No If yes, give details and specify whether D's will contains provisions overriding this statutory survivorship requirement _____

_____

_____

3.89 Is any heir or beneficiary a minor or an incompetent? ☐ Yes ☐ No If yes, write "M" for minor or "I" for incompetent next to that person's name in Section 2.0 or 3.0 of this MIL and give details _____

_____

_____

3.90 Did any heir, devisee, or legatee (particularly those named in D's will) predecease D? ☐ Yes ☐ No If yes, give details _____

_____

_____

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4.0 SAFE DEPOSIT BOX

4.01 Did D maintain or have access to one or more safe deposit boxes, either alone or with another person? ☐ Yes ☐ No If no, skip the rest of this Section 4.0. If yes, complete Items 4.02 through 4.14 with respect to each safe deposit box.

4.02 Name of institution _____

4.03 Address _____

4.04 City, state, zip _____

4.05 Phone number _____

4.06 Officer to contact _____

4.07 Box number _____

4.08 Name of joint holder/depositor _____

4.09 Address of joint holder/depositor _____

4.10 City, state, zip _____

4.11 Phone number _____

4.11A Fax number _____

4.11B Email _____

4.12 Relationship to D _____

4.13 Court order needed for entry? ☐ Yes ☐ No If no, skip to Item 4.19. If yes, complete Items 4.14 through 4.18B.

4.14 Contents of box _____

_____

_____

_____

4.15 Name of person filing motion to open safe deposit box _____

4.16 Address _____

4.17 City, state, zip _____

4.18 Phone number _____

4.18A Fax number _____

4.18B Email _____

4.19 Has inventory of box been made? ☐ Yes ☐ No

4.20 When copy of inventory has been obtained, check here ☐

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4.21 If any of the contents did not belong to D or if they will not be included in D's federal estate tax return, explain _____

_____

_____

_____

_____

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5.0 D'S PROFESSIONAL ADVISORS

D'S ATTORNEY—FOR PROBATE PROCEEDINGS

5.01 Name of firm _____

5.02 Responsible attorney _____

5.03 State Bar card number _____

5.04 Probate staff assistant _____

5.05 Address _____

5.06 City, state, zip _____

5.07 Phone number _____

5.08 Fax number _____

5.08A Email _____

5.09 CAF number from IRS _____

5.10 Employer identification number for firm _____

5.11 Social Security number of responsible attorney _____

5.12 Past legal work done for D and D's closely held businesses _____

_____

_____

5.13 - 5.20 (Reserved)

D'S OTHER ATTORNEYS

		(A)	(B)
5.21	Name of firm	_____	_____
5.22	Responsible attorney	_____	_____
5.23	Dear	_____	_____
5.24	Address	_____	_____
5.25	City, state, zip	_____	_____
5.26	Phone number	_____	_____
5.27	Fax number	_____	_____
5.27A	Email	_____	_____
5.28	Nature of representation	_____	_____

5.29 - 5.30 (Reserved)

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D'S ACCOUNTANTS

		Estate	Other
5.31	Name of firm	_____	_____
5.32	Person responsible	_____	_____
5.33	Dear	_____	_____
5.34	Address	_____	_____
5.35	City, state, zip	_____	_____
5.36	Phone number	_____	_____
5.37	Fax number	_____	_____
5.37A	Email	_____	_____
5.38	Nature of representation	_____	_____

5.39 - 5.40 (Reserved)

OTHER ADVISORS

		Estate	Other
5.41	Name	_____	_____
5.42	Firm	_____	_____
5.43	Dear	_____	_____
5.44	Address	_____	_____
5.45	City, state, zip	_____	_____
5.46	Phone number	_____	_____
5.47	Fax number	_____	_____
5.48	Email	_____	_____
5.49	Nature of representation	_____	_____

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6.0 COURT PROCEEDINGS

6.01 Court docket number _____

6.02 D's name to be used in probate proceedings _____

6.03 Name of court in which filed _____

6.04 County in which court is located _____

6.05 Address of court, including building name, room number, city, state, zip _____

_____

_____

_____

6.06 Name of judge _____

6.07 Title of judge: ☐ Probate Judge ☐ County Judge

6.07A Phone number _____

6.07B Fax number _____

6.07C Email _____

6.07D Website _____

6.07E Judge's assistant _____

6.08 Was D domiciled in county in which application is being filed? ☐ Yes ☐ No (see Item 1.11) If no, refer to Special Instruction 15 relating to jurisdiction and venue and make indicated change in application and in testimony of witness.

6.09 What description is to be used to describe the nature of D's estate?

A. Both real and personal property described generally as _____

_____

_____

_____

B. Personal property only described generally as _____

_____

_____

_____

6.10 D's estate has a probable value in excess of $ _____

6.11 Which of the following describes D's will?

A. No will (see Item 2.01)

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B. Holographic (see Item 2.04)

C. Witnessed (see Item 2.10)

6.12 Was will self-proved? ☐ Yes ☐ No (see Item 2.03)

6.13 Which of the following describes children born to or adopted by D?

A. (Reserved)

B. None (see Item 3.35)

C. One born or adopted (see Item 3.36)

D. More than one born or adopted (see Item 3.36)

E. If any surviving children were born to or adopted *after* the date of D's will, specify which one(s) here (see Item 3.52) _____

_____

6.14 If D left a will (see Item 2.01), state which of the following describes D's divorces (or other dissolutions of D's marriages).

A. No marriage of D was ever dissolved by divorce, annulment, or declaration that the marriage was void (see Item 3.20).

B. One or more of D's marriages had been dissolved (see Items 3.20 through 3.28), and date and place are known.

C. One or more of D's marriages had been dissolved (see Items 3.20 through 3.28), but date and place are not known.

If D did *not* leave a will (see Item 2.01), state which of the following describes D's divorces.

D. D was never divorced (see Item 3.20).

E. D had been divorced (see Items 3.20 through 3.28), and date and place are known.

F. D had been divorced (see Items 3.20 through 3.28), but date and place are not known.

6.15 If will is being filed as a muniment of title, see Item 2.27 and state which of the following describes D's estate:

A. No debts at all

B. No debts except those secured by liens on real estate

C. Other reason there is no necessity for administration: _____

6.16 Name of clerk of court _____

6.17 Mailing address _____

6.18 City, state, zip _____

6.19 Phone number _____

6.19A Fax number _____

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6.19B Email _____

6.19C Website _____

6.20 Does clerk prepare citation? ☐ Yes ☐ No

6.21 What officer will post citation? ☐ Sheriff ☐ Constable

6.22 Name of that officer _____

6.23 Date of filing application or small estate affidavit _____

6.23A E-filing envelope number _____

6.23B Date of filing original will _____

6.24 Date of scheduled hearing _____

6.24A Time of scheduled hearing _____

6.25 Date of actual hearing _____

6.26 Date of signing order or judgment _____

6.27 Is bond required for personal representative? ☐ Yes ☐ No

6.28 If yes, state amount of the bond and complete Items 6.29 through 6.37 $ _____

6.29 Name of surety _____

6.30 Address _____

6.31 City, state, zip _____

6.32 Phone number _____

6.32A Fax number _____

6.32B Email _____

6.33 Person to contact _____

6.34 Will surety's co-signature be required for checks, etc.? ☐ Yes ☐ No

6.35 Date of obtaining bond _____

6.36 Date of filing bond _____

6.37 Date of approval of bond by judge _____

6.38 Date of filing oath _____

6.39 Date of qualification (the latest of Items 6.36, 6.37, and 6.38) _____

6.40 Were letters testamentary or letters of administration granted? ☐ Yes ☐ No
If yes, on what date were letters first issued? _____

6.40A Date set by court for expiration of temporary administration _____

6.41 Were appraisers appointed? ☐ Yes ☐ No If no, skip to Item 6.47. If yes, complete Items 6.42 through 6.46.

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		(A)	(B)	(C)
6.42	Name	_____	_____	_____
6.43	Address	_____	_____	_____
6.44	City, state, zip	_____	_____	_____
6.45	Phone number	_____	_____	_____
6.45A	Fax number	_____	_____	_____
6.45B	Email	_____	_____	_____

6.46 How many appraisers must act? ☐ Any one ☐ Any two ☐ All three

6.47 Is ancillary administration in another jurisdiction required? ☐ Yes ☐ No If yes, determine whether D's Texas personal representative may so act.

If original probate was had or is anticipated in another jurisdiction, and ancillary probate in Texas is possible, complete Items 2.02A through 2.02L.

Complete Items 6.48 through 6.67 for each other personal representative and for each attorney representing the estate in other states or foreign countries.

		(A)	(B)	(C)
6.48	State or foreign country for which required	_____	_____	_____
6.49	Name of personal representative	_____	_____	_____
6.50	Dear	_____	_____	_____
6.51	Address	_____	_____	_____
6.52	City, state, zip	_____	_____	_____
6.53	Phone number	_____	_____	_____
6.53A	Fax number	_____	_____	_____
6.53B	Email	_____	_____	_____
6.54	Title of personal representative	_____	_____	_____
6.55	Original/ancillary	_____	_____	_____
6.56 - 6.59 (Reserved)				
6.60	Name of attorney	_____	_____	_____
6.61	Dear	_____	_____	_____
6.62	Address	_____	_____	_____
6.63	City, state, zip	_____	_____	_____
6.64	Phone number	_____	_____	_____

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6.65 Fax number _____ _____ _____

6.66 Email _____ _____ _____

6.67 Name of firm _____ _____ _____

6.68 (Reserved)

6.69 Date for notice to beneficiaries _____

6.69A Date for filing affidavit or certificate of notice to beneficiaries _____

6.69B Date for filing affidavit of fulfillment of will for MT _____

6.70 Will anyone **disclaim benefits** under D's will or under statute of descent and distribution? ☐ Yes ☐ No
If no, skip to Item 6.85. If yes, complete Items 6.71 through 6.84B.

		(A)	(B)
6.71	Name of disclaimant	_____	_____
6.72	Dear	_____	_____
6.73	Address	_____	_____
6.74	City, state, zip	_____	_____
6.75	Phone number	_____	_____
6.75A	Fax number	_____	_____
6.75B	Email	_____	_____
6.76	Relationship to D	_____	_____
6.77	Nature of interest being disclaimed	_____	_____
6.78	Name of person or entity receiving interest being disclaimed	_____	_____
6.79	Dear	_____	_____
6.80	Address	_____	_____
6.81	City, state, zip	_____	_____
6.82	Phone number	_____	_____
6.82A	Fax number	_____	_____
6.82B	Email	_____	_____
6.83	Relationship to D	_____	_____
6.84	Is this entity a charity?	☐ Yes ☐ No	☐ Yes ☐ No

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6.84A Character of institution or charity _____ _____

6.84B Value of benefit _____ _____

6.85 Due date for inventory _____

6.86 Extended due date for inventory _____

6.87 Date inventory was filed _____

6.88 Date inventory was approved _____

6.89 Date affidavit in lieu of inventory was filed _____

6.90 Is sale of **personal property** to be made by order of the court? ☐ Yes ☐ No If no, skip to Item 6.106. If yes, complete Items 6.91 through 6.99.

6.91 Date of order of sale _____

6.92 "Date of sale," "date of concluding sale," or "date of finalizing contract for sale" _____

6.93 Name of purchaser _____

6.94 Total sales price _____

6.95 Costs and expenses of sale _____

6.96 Net sales price (Item 6.94 minus Item 6.95) _____

6.97 Terms of sale _____

_____

6.98 Date of filing report of sale or report of contract for sale _____

6.99 Date of order confirming or approving sale _____

6.100 - 6.105 (Reserved)

6.106 Is sale of **real property** to be made by order of the court? ☐ Yes ☐ No If no, skip to Item 6.120. If yes, complete Items 6.107 through 6.116.

6.107 Date of order of sale _____

6.108 "Date of sale," "date of concluding sale," or "date of finalizing contract for sale" _____

6.109 Place of sale _____

6.110 Date of filing report of sale or report of contract of sale _____

6.111 Name of purchaser _____

6.112 Total sales price _____

6.113 Costs and expenses of sale _____

6.114 Net sales price (Item 6.112 minus Item 6.113) _____

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6.115 Terms of sale _____

_____

6.116 Date of order confirming or approving sale _____

6.117 - 6.119 (Reserved)

6.120 Is **mineral lease** to be made by order of the court? ☐ Yes ☐ No If no, skip to Item 6.125. If yes, complete Items 6.121 through 6.123.

6.121 Name of lessee _____

6.122 Consideration for lease _____

6.123 Date of order granting application to lease _____

6.124 Date of filing heirship application in RDA and IBA _____

6.124A Date of scheduled hearing on heirship application in RDA and IBA _____

6.125 Was an **attorney ad litem** appointed for the unknown heirs? ☐ Yes ☐ No If no, skip to Item 6.135. If yes, complete Items 6.126 through 6.133.

6.126 Name _____

6.127 State Bar card number _____

6.128 Dear _____

6.129 Address _____

6.130 City, state, zip _____

6.131 Phone number _____

6.132 Fax number _____

6.133 Email _____

6.134 (Reserved)

6.135 Is a **guardian ad litem** to be appointed for minor or incompetent heirs and beneficiaries? ☐ Yes ☐ No If no, skip to Item 6.144. If yes, complete Items 6.136 through 6.142.

6.136 Name _____

6.137 Dear _____

6.138 Address _____

6.139 City, state, zip _____

6.140 Phone number _____

6.141 Fax number _____

6.142 Email _____

6.143 (Reserved)

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6.144 Due dates for filing **annual accounts** (one year and sixty days from date shown in Item 6.40 and anniversaries thereof):

A. First year _____

B. Second year _____

C. Third year _____

6.145 Ending dates for **coverage of annual accounts** (one year from date shown in Item 6.40 and anniversaries thereof:

A. First year _____

B. Second year _____

C. Third year _____

6.146 Date of filing final account _____

6.147 Date and time for scheduled consideration of final account _____

6.148 Place for scheduled consideration of final account if not same as Item 6.05 _____

6.149 Date of approval of final account _____

6.150 Name of any other party requiring service of proceeding _____

6.151 Name of attorney for Item 6.150 _____

6.152 - 6.154 (Reserved)

6.155 Has a will contest or an action to interpret D's will been instituted? ☐ Yes ☐ No If yes, give details

_____

_____

_____

6.156 Is any such action planned? ☐ Yes ☐ No If yes, give details _____

_____

_____

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7.0 REAL ESTATE

7.01 Did D own any real estate? ☐ Yes ☐ No If no, skip the rest of this Section 7.0.

7.02 Did D own any real estate outside of Texas? ☐ Yes ☐ No If yes, identify the state or country ____

_____

Furnish the following information for each tract. Attach separate sheets for lengthy legal descriptions and for additional properties. Use the following abbreviations for type of property: HS - family homestead; OH - other residential; C - commercial; F - farm; R - ranch; U - unimproved; M - nonproducing mineral or royalty interest; PM - producing mineral or royalty interest.

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use the entire value of the property.

Use a separate page for each individual tract of real estate.

7.03 Ownership: ☐ Separate ☐ Community

7.04 If D's separate property, was this asset ever held as community property by D and D's surviving spouse?

☐ Yes ☐ No If yes, explain _____

_____

_____

_____

7.05 Type of Property: ☐ HS ☐ OH ☐ C ☐ F ☐ R ☐ U ☐ M ☐ PM

7.06 Was this property used in D's trade or business? ☐ Yes ☐ No

7.07 Was there a pending contract for the sale of this property on date of D's death? ☐ Yes ☐ No

7.08 Legal description, including D's interest in the property _____

_____

_____

_____

7.09 Description of improvements _____

7.10 Street address _____

7.11 City, county, state _____

7.12 Names, addresses, and relationships of all co-owners and their percentage interest of ownership

_____

_____

_____

7.13 - 7.14 (Reserved)

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7.15 Fair market **value at death**:

Land _____

Improvements _____

Total _____

7.16 Fair market value on **alternate valuation** date:

Land _____

Improvements _____

Total _____

7.17 Is fair market value of D's interest in this real estate more than 35 percent of value of D's federal adjusted gross estate? ☐ Yes ☐ No

7.18 Is fair market value of D's interest in this real estate more than 50 percent of value of D's federal taxable estate? ☐ Yes ☐ No

7.19 Is fair market value of D's interest in this real estate more than 65 percent of value of D's federal adjusted gross estate? ☐ Yes ☐ No

7.20 Does this interest qualify for installment payment of all or part of D's federal estate tax? ☐ Yes ☐ No

7.21 - 7.24 (Reserved)

7.25 Name of lienholder _____

7.26 Address _____

7.27 City, state, zip _____

7.28 Loan number _____

7.29 Principal balance due on date of D's death _____

7.30 Interest rate _____

7.31 Accrued interest at date of death _____

7.32 Was D personally liable for the payment of this mortgage? ☐ Yes ☐ No

7.33 Was there an escrow account with this lienholder for the payment of taxes, insurance, or other expenses? ☐ Yes ☐ No

7.34 Balance in escrow account on date of D's death _____

7.35 Deadline for giving notice to lienholder _____

7.36 - 7.39 (Reserved)

7.40 Name of state and county tax assessor _____

7.41 Address _____

7.42 City, state, zip _____

7.43 Account number _____

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7.44 (Reserved)

7.45 Name of school district tax assessor _____

7.46 Name of school district _____

7.47 Address _____

7.48 City, state, zip _____

7.49 Account number _____

7.50 - 7.54 (Reserved)

7.55 Name of city tax assessor _____

7.56 Name of city _____

7.57 Address _____

7.58 City, state, zip _____

7.59 Account number _____

7.60 Name of other tax assessor _____

7.61 Name of other taxing jurisdiction _____

7.62 Address _____

7.63 City, state, zip _____

7.64 Account number _____

7.65 Name of central appraisal district _____

7.66 Name of tax assessor _____

7.67 Address _____

7.68 City, state, zip _____

7.69 Account number _____

7.70 Taxing jurisdictions included _____

7.71 - 7.74 (Reserved)

Insurance

7.75 Is property insured? ☐ Yes ☐ No

7.76 Insurance company _____

7.77 Policy number _____

7.78 Insurance agent _____

7.79 Address _____

7.80 City, state, zip _____

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7.81 Telephone number _____

7.81A Fax number _____

7.81B Email _____

7.82 Policy coverage _____

7.83 Cancel insurance? ☐ Yes ☐ No

7.84 Transfer insurance? ☐ Yes ☐ No

7.85 - 7.89 (Reserved)

Leases and Rentals

7.90 Is property rented or leased? ☐ Yes ☐ No

7.91 Lessee's name _____

7.92 Lessee's address _____

7.93 City, state, zip _____

7.94 Phone number _____

7.95 Amount of monthly rental, purpose and expiration date of lease, and description of options to renew or purchase _____

_____

_____

7.96 Amount of accrued rental at date of death _____

7.97 Name of royalty payor for **producing mineral property** _____

_____

_____

7.98 Address _____

7.99 City, state, zip _____

7.100 Division order number _____

7.101 Field _____

7.102 Unit or lease name and description _____

_____

7.103 Amount of accrued royalty on date of D's death _____

7.104 Total royalties received from this property during the full twelve months before D's death _____

_____

7.105 - 7.106 (Reserved)

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Special Use

7.107 Will woodlands election be made? ☐ Yes ☐ No

7.108 Is this real estate a farm or used in a trade or business? ☐ Yes ☐ No If yes, which use? _____

_____

7.109 If this real estate is a farm or is used in a closely held business, did D and/or a member of D's family own all of the property for at least five of the eight years immediately preceding the date of D's death? ☐ Yes ☐ No

7.110 If this real estate is a farm or used in a closely held business, did D's spouse materially participate in its operation? ☐ Yes ☐ No If yes, number of taxable years in which spouse participated _____

7.111 Does the real estate qualify for special use valuation? ☐ Yes ☐ No

7.112 Will special use valuation be elected? ☐ Yes ☐ No

7.113 Were there any periods during the eight-year period before D's death during which D or a member of D's family—

A. Did not own the property? ☐ Yes ☐ No

B. Did not use the property in a qualified use? ☐ Yes ☐ No

C. Did not materially participate in the operation of the farm or other business? ☐ Yes ☐ No

If yes to any of the foregoing, give details, including date property was acquired, use during last eight years before D's death, material participation, and the identity and relationship to D of the material participants _____

_____

_____

7.114 If special use valuation is elected, identify all parties receiving or holding any interest in the special use property. Attach additional pages if necessary.

7.115 Name _____

7.116 Address _____

7.117 City, state, zip _____

7.118 Phone number _____

7.118A Fax number _____

7.118B Email _____

7.119 Social Security number _____

7.120 Relationship to D _____

7.121 Qualified heir? ☐ Yes ☐ No

7.122 Special use valuation for entire property _____

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7.123 Name and address of agent designated to deal with IRS _____

_____

7.124 Will special use protective election be made? ☐ Yes ☐ No

7.125 Identify all other parties having an interest in the special use property. Attach additional pages if necessary.

7.126 Name _____

7.127 Address _____

7.128 City, state, zip _____

7.129 Phone number _____

7.130 Fax number _____

7.131 Email _____

7.132 Social Security number _____

7.133 Relationship to D _____

7.134 - 7.144 (Reserved)

7.145 If title to this real estate is held in **joint tenancy with right of survivorship**, complete the following for each surviving joint tenant:

Note: If this real estate was the community property of D and D's spouse or they were the sole joint tenants, this real estate should be reported in Part I of Schedule E of D's estate tax return. All other jointly held real estate should be reported in Part II of Schedule E of D's estate tax return.

Name _____

Address _____

City, state, zip _____

Phone number _____

Social Security number _____

Relationship to D _____

Contribution of the nonspouse survivor toward acquisition of this real estate: Amount _____
Percentage of total value _____

7.146 - 7.153 (Reserved)

7.154 Was this asset specifically devised or bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

_____

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Inventory and Estate Tax Return Description

7.155 Enter asset description (in the format to be used on probate documents or estate tax return) and indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

_____

7.156 D's income tax basis in this property _____

7.157 - 7.159 (Reserved)

7.160 Will an election be made to exclude qualifying conservation easements from D's gross estate? ☐ Yes ☐ No If yes, give details _____

_____

_____

_____

_____

7.161 - 7.169 (Reserved)

7.170 Was D or D's spouse **purchasing real estate pursuant to a contract for deed**? ☐ Yes ☐ No If no, skip the rest of this Section 7.0. If yes, complete Items 7.171 through 7.187.

7.171 Name of purchaser _____

7.172 Name of seller _____

7.173 Date of contract _____

7.174 Description of property _____

_____

7.175 Original sales price _____

7.176 Amount of initial payment _____

7.177 Original contract amount _____

7.178 Unpaid contract amount on date of D's death _____

7.179 Interest rate _____

7.180 Date last payment was made _____

7.181 Date to which interest was paid on date of D's death _____

7.182 Accrued interest on date of D's death _____

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7.183 Amount of monthly payments _____

7.184 Value of property on date of D's death _____

7.185 "Equity" in property on date of D's death (Item 7.184 minus Item 7.178) _____

7.186 Value of property on alternate valuation date _____

7.187 "Equity" in property on alternate valuation date (Item 7.186 minus Item 7.178) _____

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8.0 U.S. GOVERNMENT SAVINGS BONDS

8.01 Did D own any U.S. Government Savings Bonds (Series E, F, G, H, J, K, EE, and HH)? ☐ Yes ☐ No
If no, skip the rest of this Section 8.0. If yes, determine the following for each series bond and attach a separate page for each additional series bond:

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use entire value of the bond.

8.02 Series _____

8.03 Date of issue _____

8.04 Denomination of bond _____

8.05 Bond number(s) _____

_____

8.06 Registration _____

8.07 Ownership: ☐ Separate ☐ Community

8.08 If separate property, was this asset ever held as community property by D and D's surviving spouse?
☐ Yes ☐ No If yes, explain _____

_____

_____

When determined, complete the following summary for each denomination:

8.09 Number of bonds of this denomination _____

8.10 Total redemption value _____

8.11 Total initial cost for this denomination _____

8.12 Accrued interest (Item 8.10 minus Item 8.11) _____

8.13 If any bonds are registered in **joint tenancy with right of survivorship**, complete the following for each surviving joint tenant:

Note: If these bonds were the community property of D and D's spouse or they were the sole joint tenants, these bonds should be reported in Part I of Schedule E of D's estate tax return. All other jointly held bonds should be reported in Part II of Schedule E of D's estate tax return.

Name _____

Address _____

City, state, zip _____

Phone number _____

Social Security number _____

Relationship to D _____

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Contribution of the nonspouse survivor toward acquisition of each bond: Amount _____
Percentage of total value _____

8.14 - 8.19 (Reserved)

8.20 Are bonds to be redeemed? ☐ Yes ☐ No

8.21 Were any of these bonds specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

8.22 Are bonds to be transferred? ☐ Yes ☐ No If yes, complete name, address, and Social Security number of transferee and describe bonds to be transferred _____

_____

_____

_____

_____

_____

8.23 - 8.24 (Reserved)

Inventory and Estate Tax Return Description

8.25 Enter asset description (in the format to be used on probate documents or estate tax return) and indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

_____

8.26 D's income tax basis in those bonds _____

_____

_____

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9.0 MARKETABLE SECURITIES

9.01 Did D own any marketable stocks, bonds, mutual funds, warrants, options, or commodities or have any of these or cash in an account with a stockbroker? ☐ Yes ☐ No *Note*: For stock in an inactive or closely held business, use Section 10.0. If no, skip the rest of this Section 9.0.

9.02 Did D have a **brokerage account** or a stockbroker? ☐ Yes ☐ No If no, skip to Item 9.13. If yes, complete Items 9.03 through 9.12 and attach a separate page for each additional broker.

9.03 Name of broker _____

9.04 Name of firm _____

9.05 Address _____

9.06 City, state, zip _____

9.07 Phone number _____

9.07A Fax number _____

9.07B Email _____

9.08 Account number _____

9.09 Type of account _____

9.10 Did broker hold D's funds or securities (credit balance in account)? ☐ Yes ☐ No If yes, also complete Section 11.0 to report cash held in account.

9.11 Did D owe broker funds or securities (debit balance in account)? ☐ Yes ☐ No If yes, also complete Section 21.0.

9.12 Did D have open or unexecuted orders? ☐ Yes ☐ No

9.13 Is any bond the obligation of a foreign government? ☐ Yes ☐ No If yes, give details and complete Items 26.37 through 26.41 _____

_____

9.14 Is any security issued by a corporation incorporated in a foreign country? ☐ Yes ☐ No If yes, give details and complete Items 26.37 through 26.39 _____

_____

9.15 If any brokerage account is registered in **joint tenancy with right of survivorship**, complete the following for each surviving joint tenant:

Note: If this account was the community property of D and D's spouse or they were the sole joint tenants, this account should be reported in Part I of Schedule E of D's estate tax return. All other jointly held brokerage accounts should be reported in Part II of Schedule E of D's estate tax return.

Name _____

Address _____

City, state, zip _____

Phone number _____

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Fax number _____

Email _____

Social Security number _____

Relationship to D _____

Contribution of the nonspouse survivor toward acquisition of this account: Amount _____
Percentage of total value _____

Inventory and Estate Tax Return Description

9.16 Enter description of this account (in format to be used on probate documents or estate tax return) and indicate its value on the date of death and on the alternate valuation date. *Note*: Do not repeat this total if listing individual securities and funds held in this account. _____

_____

_____

_____

_____

9.17 - 9.19 (Reserved)

Publicly Traded Stocks

9.20 Did D own publicly traded stocks other than options, warrants, commodity futures, or mutual funds? ☐ Yes ☐ No If no, skip to Item 9.70. If yes, complete Items 9.21 through 9.69 for one issue of one company and attach separate pages for each additional issue or company.

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use the entire value of the publicly traded stocks.

9.21 Name of company _____

9.22 Type: ☐ Common ☐ Preferred

9.23 Par value, series, etc. _____

9.24 Principal stock exchange where traded _____

9.25 CUSIP number _____

9.26 Total shares owned by D _____

9.27 Certificate numbers _____

_____

_____

9.28 Registration of shares if not held by broker _____

_____

9.29 Ownership: ☐ Separate ☐ Community

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9.30 If D's separate property, was this asset ever held as community property by D and D's surviving spouse? ☐ Yes ☐ No If yes, explain _____

_____

_____

9.31 Name of transfer agent _____

9.32 Address _____

9.33 City, state, zip _____

Value at Death:

9.34 High _____

9.35 Low _____

9.36 Mean or unit value _____

9.37 Extended value (Item 9.26 times Item 9.36) _____

Dividends:

9.38 "Ex-dividend" amount per share _____

9.39 Extended value (Item 9.26 times Item 9.38) _____

9.40 Declared but unpaid amount per share _____

9.41 Date declared _____

9.42 Record date _____

9.43 Date payable _____

9.44 Extended value (Item 9.26 times Item 9.40) _____

Alternate Value:

9.45 High _____

9.46 Low _____

9.47 Mean or unit value _____

9.48 Extended value (Item 9.26 times Item 9.47) _____

9.49 Was this restricted or "letter" stock? ☐ Yes ☐ No

9.50 If Item 9.49 is yes, should the value be discounted? ☐ Yes ☐ No

9.51 If Item 9.50 is yes, what is the percentage discount to be used? _____

9.52 Amount of discount (Item 9.37 or Item 9.48 times Item 9.51) _____

9.52A D's income tax basis _____

9.53 Did D own any of this stock through a **dividend reinvestment program**? ☐ Yes ☐ No If yes, complete the following:

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Name of custodian of plan _____

Address _____

City, state, zip _____

Account number _____

Total number of shares held by custodian on date of D's death _____

Program should be: ☐ Continued ☐ Terminated

D's income tax basis _____

9.54 If any publicly traded stock is registered in **joint tenancy with right of survivorship**, complete the following for each surviving joint tenant:

Note: If these publicly traded stocks were the community property of D and D's spouse or they were the sole joint tenants, these publicly traded stocks should be reported in Part I of Schedule E of D's estate tax return. All other jointly held publicly traded stocks should be reported in Part II of Schedule E of D's estate tax return.

Name _____

Address _____

City, state, zip _____

Phone number _____

Fax number _____

Email _____

Social Security number _____

Relationship to D _____

Contribution of the nonspouse survivor toward acquisition of this asset: Amount _____
Percentage of total value _____

9.55 Is registration of publicly traded stocks to be changed? ☐ Yes ☐ No If no, skip to Item 9.62. If yes, complete Items 9.56 through 9.61.

9.56 Name of new owner _____

9.57 Dear _____

9.58 Address _____

9.59 City, state, zip _____

9.60 Social Security (employer identification) number _____

9.61 Number of shares to be registered to new owner _____

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9.62 Were these shares specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

9.63 Was any of this stock collateral for any loan owed or guaranteed by D? ☐ Yes ☐ No If yes, give details _____

_____

_____

9.64 D's income tax basis _____

9.65 - 9.68 (Reserved)

Inventory and Estate Tax Return Description

9.69 Enter description of publicly traded stocks (in format to be used on probate documents or estate tax return) and indicate value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

Publicly Traded Bonds

9.70 Did D own publicly traded bonds? ☐ Yes ☐ No If no, skip to Item 9.110. If yes, complete Items 9.71 through 9.109 for one publicly traded bond of one government issuer or one company and attach separate pages for each additional issue.

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use the entire value of the publicly traded bond.

9.71 Name of issuer _____

9.72 Kind of bond _____

9.73 Interest rate _____

9.74 Coupon bond? ☐ Yes ☐ No

9.75 CUSIP number _____

9.76 Principal stock exchange where traded _____

9.77 Total face amount _____

9.78 Bond numbers _____

_____

9.79 Negotiability: ☐ Registered ☐ Bearer

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9.80 Registered owner(s) if not held by broker _____

_____

9.81 Ownership: ☐ Separate ☐ Community

9.82 If D's separate property, was this asset ever held as community property by D and D's surviving spouse?
☐ Yes ☐ No If yes, explain _____

_____

_____

9.83 Name of transfer agent _____

9.84 Address _____

9.85 City, state, zip _____

Value at Death:

9.86 High _____

9.87 Low _____

9.88 Mean or unit value _____

9.89 Extended value (Item 9.77 divided by 100 times Item 9.88) _____

9.90 Interest payment dates _____

9.91 Total accrued interest on date of death (include matured but unredeemed coupons) _____

Alternate Value:

9.92 High _____

9.93 Low _____

9.94 Mean or unit value _____

9.95 Extended value (Item 9.77 divided by 100 times Item 9.94) _____

9.96 (Reserved)

9.97 If any publicly traded bond is registered in **joint tenancy with right of survivorship**, complete the following for each surviving joint tenant:

Note: If these publicly traded bonds were the community property of D and D's spouse or they were the sole joint tenants, these publicly traded bonds should be reported in Part I of Schedule E of D's estate tax return. All other jointly held publicly traded bonds should be reported in Part II of Schedule E of D's estate tax return.

Name _____

Address _____

City, state, zip _____

Phone number _____

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Fax number _____

Email _____

Social Security number _____

Relationship to D _____

Contribution of the nonspouse survivor toward acquisition of this asset: Amount _____
Percentage of total value _____

9.98 Is registration of bond to be changed? ☐ Yes ☐ No If no, skip to Item 9.105. If yes, complete Items 9.99 through 9.104.

9.99 Name of new owner _____

9.100 Dear _____

9.101 Address _____

9.102 City, state, zip _____

9.103 Social Security (employer identification) number _____

9.104 Number and face value of bonds to be registered to new owner _____

9.105 Were these bonds specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

9.106 Were any of these bonds collateral for any loan owed or guaranteed by D? ☐ Yes ☐ No If yes, give details _____

_____

_____

9.107 D's income tax basis _____

9.108 (Reserved)

Inventory and Estate Tax Return Description

9.109 Enter description of publicly traded bond (in format to be used on probate documents or estate tax return) and indicate value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

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Mutual Funds

9.110 Did D own any mutual funds? ☐ Yes ☐ No If no, skip to Item 9.150. If yes, complete Items 9.111 through 9.149 for each mutual fund and attach separate pages for each additional mutual fund.

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use the entire value of the mutual fund.

9.111 Name of fund _____

9.112 CUSIP number _____

9.113 Principal stock exchange where traded _____

9.114 Number of issued shares _____

9.115 Certificate numbers of issued shares _____

9.116 Number of unissued shares held by custodian _____

9.117 Total shares (Item 9.114 plus Item 9.116) _____

9.118 Style of account maintained by custodian _____

_____

9.119 Name of custodian _____

9.120 Address of custodian _____

9.121 City, state, zip _____

9.122 Account number _____

9.123 Registration of issued shares _____

9.124 Ownership: ☐ Separate ☐ Community

9.125 If D's separate property, was this asset ever held as community property by D and D's surviving spouse? ☐ Yes ☐ No If yes, explain _____

_____

_____

9.126 Name of transfer agent _____

9.127 Address _____

9.128 City, state, zip _____

Value at Death:

9.129 Asked or offered price at death _____

9.130 Bid price at death _____

9.131 Extended value (Item 9.117 times Item 9.130) _____

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Dividends and Capital Gains Distributions:

9.132 Declared but unpaid amount per share _____

9.133 Extended value (Item 9.117 times Item 9.132) _____

Alternate Value:

9.134 Asked or offered price _____

9.135 Bid price _____

9.136 Extended value (Item 9.117 times Item 9.135) _____

9.137 If any mutual fund is registered in **joint tenancy with right of survivorship**, complete the following for each surviving joint tenant:

Note: If these mutual funds were the community property of D and D's spouse or they were the sole joint tenants, these mutual funds should be reported in Part I of Schedule E of D's estate tax return. All other jointly held mutual funds should be reported in Part II of Schedule E of D's estate tax return.

Name _____

Address _____

City, state, zip _____

Phone number _____

Fax number _____

Email _____

Social Security number _____

Relationship to D _____

Contribution of the nonspouse survivor toward acquisition of this asset: Amount _____
Percentage of total value _____

9.138 Is registration of mutual funds to be changed? ☐ Yes ☐ No If no, skip to Item 9.145. If yes, complete Items 9.139 through 9.144.

9.139 Name of new owner _____

9.140 Dear _____

9.141 Address _____

9.142 City, state, zip _____

9.143 Social Security (employer identification) number _____

9.144 Number of shares to be registered to new owner _____

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9.145 Were these shares specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

9.146 Were any shares in this mutual fund collateral for any loan owed or guaranteed by D? ☐ Yes ☐ No If yes, give details _____

_____

_____

9.147 D's income tax basis _____

9.148 (Reserved)

Inventory and Estate Tax Return Description

9.149 Enter description of mutual fund (in format to be used on probate documents or estate tax return) and indicate value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

Warrants

9.150 Did D own any publicly traded warrants? ☐ Yes ☐ No If no, skip to Item 9.195. If yes, complete Items 9.151 through 9.194 for each warrant and attach a separate page for each additional warrant.

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use the entire value of the warrant.

9.151 Name of company _____

9.152 CUSIP number _____

9.153 Principal stock exchange where traded _____

9.154 Number of warrants _____

9.155 Certificate numbers _____

9.156 Number of shares that may be acquired by the exercise of each warrant _____

9.157 Extended number of shares (Item 9.154 times Item 9.156) _____

9.158 Description of shares that may be acquired _____

9.159 Registration of warrant if not held by broker _____

9.160 Ownership: ☐ Separate ☐ Community

9.161 If D's separate property, was this asset ever held as community property by D and D's surviving spouse?

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☐ Yes ☐ No If yes, explain _____

_____

_____

9.162 Name of warrant agent _____

9.163 Address _____

9.164 City, state, zip _____

Value at Death:

9.165 High _____

9.166 Low _____

9.167 Mean or unit value _____

9.168 Extended value (Item 9.154 times Item 9.167) _____

Alternate Value:

9.169 High _____

9.170 Low _____

9.171 Mean or unit value _____

9.172 Extended value (Item 9.154 times Item 9.171) _____

9.173 Date warrant expires _____

9.174 Exercise price per share _____

9.175 Value per share of stock subject to warrant at date of D's death _____

9.176 Is warrant to be exercised? ☐ Yes ☐ No

9.177 Is warrant to be allowed to lapse? ☐ Yes ☐ No

9.178 Is warrant to be transferred? ☐ Yes ☐ No

9.179 If any warrant is registered in **joint tenancy with right of survivorship**, complete the following for each surviving joint tenant:

Note: If these warrants were the community property of D and D's spouse or they were the sole joint tenants, these warrants should be reported in Part I of Schedule E of D's estate tax return. All other jointly held warrants should be reported in Part II of Schedule E of D's estate tax return.

Name _____

Address _____

City, state, zip _____

Phone number _____

Fax number _____

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Email _____

Social Security number _____

Relationship to D _____

Contribution of the nonspouse survivor toward acquisition of this asset: Amount _____
Percentage of total value _____

9.180 Is registration of warrants to be changed? ☐ Yes ☐ No If no, skip to Item 9.187. If yes, complete Items 9.181 through 9.186.

9.181 Name of new owner _____

9.182 Dear _____

9.183 Address _____

9.184 City, state, zip _____

9.185 Social Security (employer identification) number _____

9.186 Number of warrants to be registered to new owner _____

9.187 Were these warrants specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

9.188 Were any of these warrants collateral for any loan owed or guaranteed by D? ☐ Yes ☐ No If yes, give details _____

_____

_____

9.189 D's income tax basis _____

9.190 - 9.193 (Reserved)

Inventory and Estate Tax Return Description

9.194 Enter description of warrant (in format to be used on probate documents or estate tax return) and indicate value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

Option Contracts

9.195 Did D own any option contracts for publicly traded securities? ☐ Yes ☐ No If no, skip to Item 9.235. If yes, complete Items 9.196 through 9.234 for each option and attach separate pages for each additional option.

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Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use the entire value of the option contract.

9.196 Name of company _____

9.197 CUSIP number _____

9.198 Principal stock exchange where traded _____

9.199 Number of options _____

9.200 Number of shares covered by each option _____

9.201 Description and number of shares of underlying securities _____

_____

9.202 Type: ☐ Put ☐ Call

9.203 Ownership: ☐ Separate ☐ Community

9.204 If D's separate property, was this asset ever held as community property by D and D's surviving spouse?
☐ Yes ☐ No If yes, explain _____

_____

_____

Value at Death:

9.205 High _____

9.206 Low _____

9.207 Mean or unit value _____

9.208 Extended value (Item 9.199 times Item 9.207) _____

Alternate Value:

9.209 High _____

9.210 Low _____

9.211 Mean or unit value _____

9.212 Extended value (Item 9.199 times Item 9.211) _____

9.213 Date option expires _____

9.214 Exercise (strike) price per share _____

9.215 Value per share of stock subject to option at date of D's death _____

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9.215A Is option fully vested? ☐ Yes ☐ No If no, provide details _____

_____

_____

_____

_____

9.216 Is option to be exercised? ☐ Yes ☐ No

9.217 Is option to be allowed to lapse? ☐ Yes ☐ No

9.218 Is option to be transferred? ☐ Yes ☐ No

9.219 If any option contract is registered in **joint tenancy with right of survivorship**, complete the following for each surviving joint tenant:

Note: If these option contracts were the community property of D and D's spouse or they were the sole joint tenants, these option contracts should be reported in Part I of Schedule E of D's estate tax return. All other jointly held option contracts should be reported in Part II of Schedule E of D's estate tax return.

Name _____

Address _____

City, state, zip _____

Phone number _____

Fax number _____

Email _____

Social Security number _____

Relationship to D _____

Contribution of the nonspouse survivor toward acquisition of this asset: Amount _____
Percentage of total value _____

9.220 Is registration of securities to be changed? ☐ Yes ☐ No If no, skip to Item 9.227. If yes, complete Items 9.221 through 9.226.

9.221 Name of new owner _____

9.222 Dear _____

9.223 Address _____

9.224 City, state, zip _____

9.225 Social Security (employer identification) number _____

9.226 Number of shares to be registered to new owner _____

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9.227 Were these option contracts specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference the specific provision in D's will _____

_____

_____

9.228 Was any option contract collateral for any loan owed or guaranteed by D? ☐ Yes ☐ No If yes, give details _____

_____

_____

9.229 D's income tax basis _____

9.230 - 9.233 (Reserved)

Inventory and Estate Tax Return Description

9.234 Enter description of option contract (in format to be used on probate documents or estate tax return) and indicate value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

Commodity Contracts

9.235 Was D buying or selling any commodity contract? ☐ Yes ☐ No If no, skip the rest of this Section 9.0. If yes, complete Items 9.236 through 9.264 for each separate commodity contract and attach separate pages for each additional contract.

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use the entire value of the commodity contract.

9.236 Type of commodity _____

9.237 Exchange on which traded _____

9.238 Contract size and description _____

9.239 Delivery date _____

9.240 Number of contracts _____

9.241 Ownership: ☐ Separate ☐ Community

9.242 If D's separate property, was this asset ever held as community property by D and D's surviving spouse? ☐ Yes ☐ No If yes, explain _____

_____

_____

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Value at Death:

9.243 High _____

9.244 Low _____

9.245 Mean or unit value _____

9.246 Extended value (Item 9.240 times Item 9.245) _____

Alternate Value:

9.247 High _____

9.248 Low _____

9.249 Mean or unit value _____

9.250 Extended value (Item 9.240 times Item 9.249) _____

9.251 Description of action to be taken _____

_____

_____

9.252 If any commodity contract is registered in **joint tenancy with right of survivorship**, complete the following for each surviving joint tenant:

Note: If these commodity contracts were the community property of D and D's spouse or they were the sole joint tenants, these commodity contracts should be reported in Part I of Schedule E of D's estate tax return. All other jointly held commodity contracts should be reported in Part II of Schedule E of D's estate tax return.

Name _____

Address _____

City, state, zip _____

Phone number _____

Fax number _____

Email _____

Social Security number _____

Relationship to D _____

Contribution of the nonspouse survivor toward acquisition of this asset: Amount _____
Percentage of total value _____

9.253 Is registration of commodity contracts to be changed? ☐ Yes ☐ No If yes, complete the following:

9.254 Name of new owner _____

9.255 Dear _____

9.256 Address _____

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9.257 City, state, zip _____

9.258 Social Security (employer identification) number _____

9.259 Number of shares to be registered to new owner _____

9.260 Were these commodity contracts specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

9.261 Was any commodity contract collateral for any loan owed or guaranteed by D? ☐ Yes ☐ No If yes, give details _____

_____

_____

9.262 D's income tax basis _____

9.263 (Reserved)

Inventory and Estate Tax Return Description

9.264 Enter description of commodity contracts (in format to be used on probate documents or estate tax return) and indicate value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

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10.0 CLOSELY HELD CORPORATIONS

10.01 Did D own stock, bonds, or other securities in a closely held or inactive corporation? ☐ Yes ☐ No If no, skip the rest of this Section 10.0. If yes, complete this section for each closely held or inactive corporation and attach a separate page for each additional closely held or inactive corporation. If D owned only stock, complete Items 10.02 through 10.110. If D owned only bonds or debentures, skip to Item 10.111 and complete the remainder of this section.

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use the entire value of this security.

10.02 Name of corporation _____

10.03 Address _____

10.04 City, state, zip _____

10.05 Person to contact _____

10.06 Phone number _____

10.06A Fax number _____

10.06B Email _____

10.07 Nature of business _____

10.08 Taxpayer identification number _____

10.09 Date of incorporation _____

10.10 State of incorporation _____

10.11 Beginning date of fiscal year _____

10.12 Date of fiscal year end _____

10.13 Address of principal business office if different from Items 10.03 and 10.04 _____

_____

_____

10.14 D's position _____

10.15 Description of D's shares: ☐ Voting preferred ☐ Nonvoting preferred ☐ Voting common ☐ Nonvoting common ☐ Other _____

10.16 - 10.19 (Reserved)

10.20 Total voting preferred shares outstanding _____

10.21 Total nonvoting preferred shares outstanding _____

10.22 Total voting common shares outstanding _____

10.23 Total nonvoting common shares outstanding _____

10.24 Number of D's voting preferred shares _____

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10.25 Number of D's nonvoting preferred shares _____

10.26 Number of D's voting common shares _____

10.27 Number of D's nonvoting common shares _____

10.28 Total number of stockholders including D _____

10.29 Ownership: ☐ Separate ☐ Community

10.30 If any of the stock was D's separate property, was it ever held as community property by D and D's surviving spouse? ☐ Yes ☐ No If yes, explain _____

_____

_____

10.31 Did D own or did D within three years of D's death have the right (either alone or with any other person) to vote 20 percent or more of the total combined voting power of all classes of stock? ☐ Yes ☐ No If yes, explain _____

_____

_____

Stock Purchase Agreement

10.32 Is any of D's stock subject to a "buy-sell" or redemption agreement? ☐ Yes ☐ No If no, skip to Item 10.43. If yes, complete Items 10.33 through 10.41.

10.33 Was the agreement entered into or substantially modified on or after October 8, 1990? ☐ Yes ☐ No If yes, give details _____

_____

10.33A Parties to agreement and relationship to D _____

_____

10.33B Purchase price under that agreement _____

10.33C Is agreed price binding on D's estate? ☐ Yes ☐ No

10.33D Is D's death an event forcing an offer to sell? ☐ Yes ☐ No

Purchase price set forth in agreement for each share

10.34 Voting preferred stock _____

10.35 Nonvoting preferred stock _____

10.36 Voting common stock _____

10.37 Nonvoting common stock _____

Extended values as set forth in agreement

10.38 Voting preferred stock (Item 10.24 times Item 10.34) _____

10.39 Nonvoting preferred stock (Item 10.25 times Item 10.35) _____

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10.40 Voting common stock (Item 10.26 times Item 10.36) _____

10.41 Nonvoting common stock (Item 10.27 times Item 10.37) _____

10.42 (Reserved)

10.43 Registration of shares

D's voting preferred _____

D's nonvoting preferred _____

D's voting common _____

D's nonvoting common _____

10.44 (Reserved)

If **no binding price** has been **set by agreement**, give value per share for D's—

10.45 Voting preferred stock _____

10.46 Nonvoting preferred stock _____

10.47 Voting common stock _____

10.48 Nonvoting common stock _____

Extended values where not set forth in agreement

10.49 Voting preferred stock (Item 10.24 times Item 10.45) _____

10.50 Nonvoting preferred stock (Item 10.25 times Item 10.46) _____

10.51 Voting common stock (Item 10.26 times Item 10.47) _____

10.52 Nonvoting common stock (Item 10.27 times Item 10.48) _____

10.53 - 10.54 (Reserved)

10.55 Is value of D's interest in all of this stock more than 35 percent of value of D's federal adjusted gross estate? ☐ Yes ☐ No

10.56 Is value of D's interest in all of this stock more than 50 percent of value of D's federal taxable estate? ☐ Yes ☐ No

10.57 Is value of D's interest in all of this stock more than 65 percent of value of D's federal adjusted gross estate? ☐ Yes ☐ No

10.58 Does stock qualify for IRC Section 303 redemption? ☐ Yes ☐ No

10.59 Does stock qualify for installment payment of all or part of D's federal estate taxes? ☐ Yes ☐ No

10.60 - 10.64 (Reserved)

10.65 Did D's spouse materially participate in the operation of this business? ☐ Yes ☐ No If yes, number of taxable years in which spouse participated _____

10.66 Does family or estate wish to retain ownership if possible? ☐ Yes ☐ No

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10.67 If retained, who will run the business? _____

_____

10.68 - 10.74 (Reserved)

10.75 Does corporation act as transfer agent for its stock? ☐ Yes ☐ No If no, complete Items 10.76 through 10.79B. If yes, skip to Item 10.80.

10.76 Name of transfer agent _____

10.77 Address _____

10.78 City, state, zip _____

10.79 Phone number _____

10.79A Fax number _____

10.79B Email _____

10.80 Was there a **Subchapter S election** in effect for the corporation at the date of D's death? ☐ Yes ☐ No
If yes, is there an agreement between the stockholders for the election to be continued? ☐ Yes ☐ No

10.81 Subchapter S election should be: ☐ Continued ☐ Terminated

10.82 Amount of loss attributed to D's interest for the period before D's death prorated on a daily basis ____

_____

Note: Any "previously taxed income" remaining in the corporation at D's death will lose the right to non-dividend treatment.

10.83 - 10.89 (Reserved)

10.90 If any closely held stock is registered in **joint tenancy with right of survivorship**, complete the following for each surviving joint tenant:

Note: If these closely held stocks were the community property of D and D's spouse or they were the sole joint tenants, these closely held stocks should be reported in Part I of Schedule E of D's estate tax return. All other jointly held closely held stocks should be reported in Part II of Schedule E of D's estate tax return.

Name _____

Address _____

City, state, zip _____

Phone number _____

Fax number _____

Email _____

Social Security number _____

Relationship to D _____

Contribution of the nonspouse survivor toward acquisition of this asset: Amount _____

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Percentage of total value _____

10.91 - 10.99 (Reserved)

10.100 Is registration of stock to be changed? ☐ Yes ☐ No If no, skip to Item 10.107. If yes, complete Items 10.101 through 10.106.

10.101 Name of new owner _____

10.102 Dear _____

10.103 Address _____

10.104 City, state, zip _____

10.105 Social Security (employer identification) number _____

10.106 Number of shares to be registered to new owner _____

10.107 Was this stock specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

10.108 Was this stock collateral for any loan owed or guaranteed by D? ☐ Yes ☐ No If yes, give details

_____

_____

10.109 D's income tax basis in each classification of stock _____

_____

Inventory and Estate Tax Return Description

10.110 Enter description of stock (in format to be used on probate documents or estate tax return) and indicate value on the date of death and on the alternate valuation date _____

_____

_____

_____

10.111 Did D own any **bonds** or **debentures** in this corporation? ☐ Yes ☐ No If no, skip the rest of this Section 10.0. If yes, complete all remaining items.

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use the entire value of this security.

10.112 Kind of bond _____

10.113 Interest rate _____

10.114 Total face amount _____

10.115 Bond number(s) _____

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10.116 Negotiability: ☐ Registered ☐ Bearer

10.117 Registered owner(s) _____

10.118 Ownership: ☐ Separate ☐ Community

10.119 If D's separate property, was this asset ever held as community property by D and D's surviving spouse? ☐ Yes ☐ No If yes, explain _____

_____

_____

10.120 Value at death _____

10.121 Extended value (Item 10.114 divided by 100 times Item 10.120) _____

10.122 Interest payment dates _____

10.123 Total accrued interest at date of death _____

10.124 Alternate value _____

10.125 Extended value (Item 10.114 divided by 100 times Item 10.124) _____

10.126 Should face value of bond be discounted? ☐ Yes ☐ No If no, skip to Item 10.135. If yes, complete Items 10.127 through 10.130.

10.127 Prime rate on date of death _____

10.128 Discounted value on date of death _____

10.129 Prime rate on alternate valuation date _____

10.130 Discounted value on alternate valuation date _____

10.131 - 10.134 (Reserved)

10.135 Does corporation act as transfer agent for its bonds? ☐ Yes ☐ No If yes, skip to Item 10.140. If no, complete Items 10.136 through 10.139B.

10.136 Name of transfer agent _____

10.137 Address _____

10.138 City, state, zip _____

10.139 Phone number _____

10.139A Fax number _____

10.139B Email _____

10.140 If any bond of a closely held corporation is registered in **joint tenancy with right of survivorship**, complete the following for each surviving joint tenant:

Note: If these closely held bonds were the community property of D and D's spouse or they were the sole joint tenants, these closely held bonds should be reported in Part I of Schedule E of D's estate tax return. All other jointly held closely held bonds should be reported in Part II of Schedule E of D's estate tax return.

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Name _____

Address _____

City, state, zip _____

Phone number _____

Social Security number _____

Relationship to D _____

Contribution of the nonspouse survivor toward acquisition of this asset: Amount _____
Percentage of total value _____

10.141 - 10.149 (Reserved)

10.150 Is registration of bonds to be changed? ☐ Yes ☐ No If yes, complete Items 10.151 through 10.156. If no, skip to Item 10.157.

10.151 Name of new owner _____

10.152 Dear _____

10.153 Address _____

10.154 City, state, zip _____

10.155 Social Security (employer identification) number _____

10.156 Number and face value of bonds to be registered to new owner _____

10.157 Were these bonds specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

10.158 Were any of these bonds collateral for any debt owed or guaranteed by D? ☐ Yes ☐ No If yes, give details _____

_____

_____

10.159 D's income tax basis _____

Inventory and Estate Tax Return Description

10.160 Enter description of bond (in format to be used on probate documents or estate tax return) and indicate value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

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11.0 CASH

11.01 Did D have any checking or savings accounts, certificates of deposit, cash, undeposited checks, or cash balances in stock brokerage accounts? ☐ Yes ☐ No If no, skip the rest of this Section 11.0. If yes, complete Items 11.02 through 11.16 and then complete Items 11.20 through 11.50 as of date of D's death for each account or certificate of deposit. Attach a separate page for each account or certificate.

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use the full balance of the account or certificate.

11.02 Amount of cash on hand _____

11.03 Total undeposited checks _____

11.04 Uncashed travelers checks _____

11.05 Cash balances in stock brokerage accounts _____

Estate Bank Account

11.06 Will new checking or savings accounts be established for the estate? ☐ Yes ☐ No If no, skip to Item 11.20. If yes, complete Items 11.07 through 11.16.

11.07 Name of bank or other institution _____

11.08 Address _____

11.09 City, state, zip _____

11.10 Type _____

11.11 Account number _____

11.12 Name or style of account _____

_____

_____

11.13 Signatories for account _____

11.14 Name of officer _____

11.15 Phone number _____

11.16 Email _____

11.17 - 11.19 (Reserved)

Accounts and Certificates of Deposit

11.20 Name of bank or other institution _____

_____

11.21 Person to contact _____

11.22 Address _____

11.23 City, state, zip _____

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11.23A Phone number _____

11.23B Fax number _____

11.23C Email _____

11.24 Type: ☐ Checking ☐ Savings ☐ Certificate of deposit

11.25 Account or certificate number _____

11.26 Name or style of account or certificate _____

11.27 Principal balance or face amount at date of death _____

11.28 Total outstanding checks _____

11.29 Net balance (Item 11.27 minus Item 11.28) _____

11.30 Date of issue, if CD _____

11.31 Date to which interest was paid before D's date of death _____

11.32 Interest rate _____

11.33 Accrued interest available to D on date of death _____

11.34 Maturity date, if CD _____

11.35 Ownership: ☐ Separate ☐ Community

11.36 If D's separate property, was this asset ever held as community property by D and D's surviving spouse?
☐ Yes ☐ No If yes, explain _____

_____

_____

11.37 Did D have preauthorized deposits (e.g., for salary, Social Security benefits, interest from certificates of deposit) or withdrawals (e.g., for automatic bill paying) that were automatically made to D's checking or savings account? ☐ Yes ☐ No If yes, give details _____

_____

_____

11.38 - 11.39 (Reserved)

11.40 If this account or certificate is registered in **joint tenancy with right of survivorship**, complete the following for each surviving joint tenant:

Note: If this account or certificate was the community property of D and D's spouse or they were the sole joint tenants, this account or certificate should be reported in Part I of Schedule E of D's estate tax return. All other jointly held accounts and certificates should be reported in Part II of Schedule E of D's estate tax return.

Name _____

Address _____

City, state, zip _____

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Phone number _____

Fax number _____

Email _____

Social Security number _____

Relationship to D _____

Contribution of the nonspouse survivor toward acquisition of this asset: Amount _____
Percentage of total value _____

11.41 Was this account or certificate specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

11.42 Was this account or certificate collateral for any debt owed or guaranteed by D? ☐ Yes ☐ No If yes, give details _____

_____

Trust, Escrow, or IOLTA Accounts

11.43 Name of eligible institution (financial institution) _____

11.44 Address _____

11.45 City, state, zip _____

11.46 Type _____

11.47 Account number _____

11.48 Name or style of account _____

11.49 (Reserved)

Inventory and Estate Tax Return Description

11.50 Enter description of account, certificate, or other item (in format to be used on probate documents or estate tax return) and indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

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12.0 JUDGMENTS, NOTES, ACCOUNTS RECEIVABLE, AND SALES UNDER CONTRACT FOR DEED

12.01 Did anyone (including D's former spouses for alimony and/or child support) owe D any money, or will any refunds be due to D's estate? ☐ Yes ☐ No If no, skip the rest of this Section 12.0. If yes, complete the following for judgments, notes, accounts receivable, and sales under contracts for deed, and attach separate pages for additional items:

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use the entire value of the asset.

12.02 Ownership: ☐ Separate ☐ Community

12.03 If D's separate property, was this asset ever held as community property by D and D's surviving spouse? ☐ Yes ☐ No If yes, explain _____

_____

_____

12.04 Type: ☐ Judgment ☐ Account ☐ Installment note ☐ Other note ☐ Other

12.05 Original face amount _____

12.06 Amount unpaid on date of D's death _____

12.07 Name of obligor _____

12.08 Address _____

12.09 City, state, zip _____

12.10 Phone number _____

12.10A Fax number _____

12.10B Email _____

12.11 Statute of limitations date _____

12.12 Maturity date _____

12.13 Date last payment was made _____

12.14 Interest rate _____

12.15 Interest payment dates _____

12.16 Date to which interest was paid before D's death _____

12.17 Accrued interest on date of death _____

12.18 Secured? ☐ Yes ☐ No

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12.19 Nature of security _____

_____

_____

_____

12.20 D's percentage interest of ownership in this debt _____

12.21 Other part owners, their addresses, their relationships to D, and their percentage interests in this debt

_____

_____

_____

12.22 Should face value of note be discounted? ☐ Yes ☐ No If no, skip to Item 12.27. If yes, complete Items 12.23 through 12.26.

12.23 Prime rate on date of death _____

12.24 Discounted value on date of death _____

12.25 Prime rate on alternate valuation date _____

12.26 Discounted value on alternate valuation date _____

12.27 Was this account, note, or judgment specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

12.28 Was this account or note collateral for any debt owed or guaranteed by D? ☐ Yes ☐ No If yes, give details _____

_____

_____

12.28A D's income tax basis _____

Inventory and Estate Tax Return Description

12.29 Enter description of account, note, or judgment (in format to be used on probate documents or estate tax return) and indicate its value on the date of death _____

_____

_____

_____

12.30 Was D or D's spouse **selling real estate pursuant to a contract for deed**? ☐ Yes ☐ No If no, skip to Item 12.51. If yes, complete Items 12.31 through 12.50.

12.31 Name of purchaser _____

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12.32 Name of seller _____

12.33 Date of contract _____

12.34 Description of property _____

_____

12.35 Original sales price _____

12.36 Amount of initial payment _____

12.37 Original contract amount _____

12.38 Unpaid contract amount at date of D's death _____

12.39 Interest rate _____

12.40 Date of last payment _____

12.41 Date to which interest was paid before D's death _____

12.42 Amount of each payment _____

12.43 Was this contract collateral for any debt owed or guaranteed by D? ☐ Yes ☐ No If yes, give details

_____

_____

12.44 Was this contract specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

12.45 D's income tax basis _____

12.46 - 12.49 (Reserved)

Inventory and Estate Tax Return Description

12.50 Enter description of contract (in format to be used on probate documents or estate tax return) and indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

12.51 Unapplied amount of **estimated income taxes** paid by D or D's spouse for **year before D's death** ___

_____

12.52 Unapplied amount of **estimated income taxes** paid by D or D's spouse for **year of D's death** _____

12.53 Amount of **income tax refund** _____

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Inventory and Estate Tax Return Description

12.54 Enter description of income tax receivables _____

_____

_____

_____

_____

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13.0 INSURANCE ON D'S LIFE

13.01 Was there any insurance on D's life, including accidental death benefits from credit card companies? ☐ Yes ☐ No If no, skip the rest of this Section 13.0. If yes, complete all items in this section for each policy. Attach separate pages for each additional policy.

13.02 Was any insurance payable to D's estate? ☐ Yes ☐ No

13.03 Was any insurance payable to a named beneficiary? ☐ Yes ☐ No

13.03A Did this beneficiary survive D by 120 hours? ☐ Yes ☐ No

13.04 (Reserved)

Complete Items 13.05 through 13.09 for each of D's life insurance agents.

13.05 Name _____

13.06 Address _____

13.07 City, state, zip _____

13.08 Phone number _____

13.08A Fax number _____

13.08B Email _____

13.09 Company represented _____

_____

Complete the remainder of this section for each policy payable by virtue of D's death.

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use the full amounts shown on IRS Form 712.

13.10 Company _____

13.11 Address _____

13.12 City, state, zip _____

13.13 Type or kind of policy _____

13.14 Policy number _____

13.15 Face amount _____

13.15A Cash surrender value immediately before D's death _____

Policy Loans:

13.16 Principal _____

13.17 Interest to date of death _____

13.18 Total of principal and interest _____

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Net proceeds:

13.19 Accumulated dividends _____

13.20 Postmortem dividends _____

13.21 Returned premiums _____

13.22 Amount of proceeds if payable in one sum _____

13.23 Value of proceeds as of date of death (if not payable in one sum) _____

13.24 Net proceeds after all increases and deductions _____

13.25 Primary beneficiary name _____

13.26 Dear _____

13.27 Address _____

13.28 City, state, zip _____

13.28A Phone number _____

13.28B Fax number _____

13.28C Email _____

13.29 Social Security number _____

13.30 Date of birth _____

13.31 Relationship to D _____

13.32 Contingent beneficiary name _____

13.33 Dear _____

13.34 Address _____

13.35 City, state, zip _____

13.36 Social Security number _____

13.37 Date of birth _____

13.38 Relationship to D _____

13.39 Policy sent for payment by others? ☐ Yes ☐ No

13.40 Policy to be sent by us for payment? ☐ Yes ☐ No

13.41 IRS Form 712 already requested? ☐ Yes ☐ No

13.42 IRS Form 712 received? ☐ Yes ☐ No

13.43 Benefits already paid? ☐ Yes ☐ No

13.44 Owner of policy if not D _____

13.45 Address _____

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13.46 City, state, zip _____

13.47 Relationship to D _____

13.48 Name of applicant for policy _____

13.49 Ownership: ☐ Separate ☐ Community

13.50 If D's separate property, was this asset ever held as community property by D and D's surviving spouse? ☐ Yes ☐ No If yes, explain _____

_____

_____

13.51 Include in inventory? ☐ Yes ☐ No

13.52 Exclude value from D's taxable estate? ☐ Yes ☐ No

13.53 If to be excluded, give details _____

_____

_____

13.54 Date of purchase or issue of policy _____

13.55 Date policy was assigned by D, if applicable _____

13.56 Interpolated terminal reserve value on date of assignment from IRS Form 712 _____

13.57 Did D make a gift of this policy within three years of D's death? ☐ Yes ☐ No If yes, give details

_____

_____

13.58 Did D pay any premiums on this policy within three years of D's death? ☐ Yes ☐ No If yes, give amounts and dates paid _____

_____

13.59 (Reserved)

Installment payment of proceeds:

13.60 Is policy payable in deferred payments or in installments? ☐ Yes ☐ No If no, skip to Item 13.71. If yes, complete Items 13.61 through 13.70.

13.61 Amount of installments _____

13.62 Are payments measured by life of another, either as to term or amount? ☐ Yes ☐ No If no, skip to Item 13.68. If yes, complete Items 13.63 through 13.67.

13.63 Name of that person _____

13.64 Address _____

13.65 City, state, zip _____

13.66 Date of birth _____

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13.67 Social Security number _____

13.68 Amount applied by the insurance company as a single premium representing the purchase of installment benefits _____

13.69 Basis used by insurer in valuing installment benefits (mortality table and rate of interest) _____

_____

13.70 Was the insured the annuitant or beneficiary of any annuity contract issued by *this* company? ☐ Yes ☐ No If yes, give details _____

_____

_____

13.71 Was this policy collateral for any debt owed or guaranteed by D? ☐ Yes ☐ No If yes, give details

_____

_____

13.72 D's income tax basis in this policy _____

13.73 - 13.79 (Reserved)

Inventory and Estate Tax Return Description

13.80 Enter description of insurance policy (in format to be used on probate documents or estate tax return) and indicate its value on the date of death _____

_____

_____

_____

_____

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14.0 INSURANCE ON LIFE OF OTHERS

14.01 Did D own an interest in a policy insuring the life of someone else (including a community interest in a policy insuring D's spouse)? ☐ Yes ☐ No If no, skip the rest of this Section 14.0. If yes, complete Items 14.02 through 14.06 for each life insurance agent who is not listed at Item 13.05 and who is responsible for such policies.

14.02 Name _____

14.03 Address _____

14.04 City, state, zip _____

14.05 Phone number _____

14.05A Fax number _____

14.05B Email _____

14.06 Company represented _____

Complete the remainder of this section for each policy on the life of someone other than D in which D owned an interest, and attach a separate page for each insurance policy.

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use the full amounts shown on IRS Form 712.

14.07 Company _____

14.08 Address _____

14.09 City, state, zip _____

14.10 Type or kind of policy _____

14.11 Policy number _____

14.12 Insured's name _____

14.13 Address _____

14.14 City, state, zip _____

14.15 Relationship to D _____

14.16 Interpolated terminal reserve value on date of D's death (from IRS Form 712) _____

_____

14.17 Amount of last premium paid _____

14.18 Date of payment of last premium _____

14.19 Proportionate part of last premium _____

14.20 Total value (Item 14.16 plus Item 14.19) _____

14.21 Ownership: ☐ Separate ☐ Community

14.22 If D's separate property, was this asset ever held as community property by D and D's surviving spouse?

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☐ Yes ☐ No If yes, explain _____

_____

_____

14.23 Is ownership to be changed? ☐ Yes ☐ No

14.24 If yes, to whom? _____

14.25 Address _____

14.26 City, state, zip _____

14.27 Social Security number _____

14.28 Did D own any insurance on the life of another that is not included in D's gross estate? ☐ Yes ☐ No
If yes, give details _____

_____

_____

14.29 Was this policy specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

14.30 Was this policy collateral for any loan owed or guaranteed by D? ☐ Yes ☐ No If yes, give details

_____

_____

14.31 D's income tax basis _____

14.32 Did D make a gift of this policy within three years of D's death? ☐ Yes ☐ No If yes, give details

_____

_____

14.33 - 14.34 (Reserved)

Inventory and Estate Tax Return Description

14.35 Enter policy description (in format to be used on probate documents or estate tax return) and indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

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15.0 OTHER INSURANCE

15.01 Did D maintain any insurance other than life insurance? ☐ Yes ☐ No If no, skip the rest of this Section 15.0. If yes, complete Items 15.02 through 15.06 for each insurance agent who is not listed at Item 13.05 or Item 14.02 and attach separate pages for additional items.

15.02 Name _____

15.03 Address _____

15.04 City, state, zip _____

15.05 Phone number _____

15.05A Fax number _____

15.05B Email _____

15.06 Company represented _____

_____

15.07 Type of insurance: ☐ Accident ☐ Health ☐ Medical ☐ Homeowners ☐ Vehicle

☐ Fire and extended coverage ☐ Liability ☐ Disability ☐ Other

15.08 Policy number _____

15.09 Amounts of coverage _____

15.10 If accident insurance proceeds were payable due to D's death, did D pay the premiums on those policies within three years before D's death? ☐ Yes ☐ No

15.11 Is coverage adequate? ☐ Yes ☐ No

15.12 Should policy be canceled and unearned premium collected? ☐ Yes ☐ No

15.13 Amount of unearned premium collected _____

15.14 Should policy be transferred? ☐ Yes ☐ No

15.15 If yes, to whom? _____

15.16 Address _____

15.17 City, state, zip _____

15.18 Phone number _____

15.19 Was this policy specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision of D's will _____

_____

_____

15.20 D's income tax basis _____

15.21 - 15.24 (Reserved)

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Inventory and Estate Tax Return Description

15.25 Enter asset description (in format to be used on probate documents or estate tax return) and indicate its value or amount of premium refund on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

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16.0 UNINCORPORATED BUSINESS INTERESTS

16.01 Did D own or operate a sole proprietorship or own an interest in a partnership, joint venture, limited liability company, or other unincorporated business? ☐ Yes ☐ No If no, skip the rest of this Section 16.0. If yes, complete the following for each and attach separate pages for additional items.

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use the entire value of each such business interest.

16.02 Did D own or operate a sole proprietorship? ☐ Yes ☐ No If no, skip to Item 16.30. If yes, complete Items 16.03 through 16.29A.

16.03 Name of business _____

16.04 Address _____

16.05 City, state, zip _____

16.06 Phone number _____

16.06A Fax number _____

16.06B Email _____

16.07 Nature of business _____

16.08 Is this a professional practice? ☐ Yes ☐ No

16.09 Employer identification number _____

16.10 Did D's spouse materially participate in the operation of this business? ☐ Yes ☐ No If yes, number of taxable years in which spouse participated _____

16.11 Does family wish to retain ownership? ☐ Yes ☐ No

16.12 If retained, who will run the business? _____

_____

16.13 Are assets of business shown in other sections of this MIL? ☐ Yes ☐ No

16.14 Which sections? _____

16.15 Ownership: ☐ Separate ☐ Community

16.16 If D's separate property, was this asset ever held as community property by D and D's surviving spouse? ☐ Yes ☐ No If yes, explain _____

_____

_____

16.17 Value at death _____

16.18 Alternate value _____

16.19 Does the business own any real estate? ☐ Yes ☐ No

16.20 If yes, does the real estate qualify for special use valuation? ☐ Yes ☐ No

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16.21 Will special use valuation be elected? ☐ Yes ☐ No

16.22 Is value of D's interest in this business more than 35 percent of value of D's federal adjusted gross estate? ☐ Yes ☐ No

16.23 Is value of D's interest in this business more than 50 percent of the value of D's federal taxable estate? ☐ Yes ☐ No

16.24 Is value of D's interest in this business more than 65 percent of the value of D's federal adjusted gross estate? ☐ Yes ☐ No

16.25 Does this interest qualify for installment payment of all or part of D's federal estate taxes? ☐ Yes ☐ No

16.26 Were any of the assets of this sole proprietorship specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision of D's will _____

_____

_____

16.27 Were any assets of this sole proprietorship collateral for any loan owed or guaranteed by D? ☐ Yes ☐ No If yes, give details _____

_____

_____

16.28 (Reserved)

Inventory and Estate Tax Return Description

16.29 Enter description of sole proprietorship (in format to be used on probate documents or estate tax return) and indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

16.29A D's income tax basis _____

Partnership

16.30 Did D own an interest in a general partnership, limited partnership, or joint venture? ☐ Yes ☐ No If no, skip to Item 16.80. If yes, state which _____ and complete Items 16.31 through 16.70.

16.31 Name of partnership _____

16.32 Address _____

16.33 City, state, zip _____

16.34 Phone number _____

16.34A Fax number _____

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16.34B Email _____

16.35 Person to contact _____

16.36 Employer identification number _____

16.37 Nature of business _____

16.38 Is this a professional practice? ☐ Yes ☐ No

16.39 Total number of partners, including D _____

16.40 D's percentage interest _____

16.41 Does partnership terminate at D's death? ☐ Yes ☐ No

16.42 Ownership: ☐ Separate ☐ Community

16.43 If D's separate property, was this asset ever held as community property by D and D's surviving spouse? ☐ Yes ☐ No If yes, explain _____

_____

_____

16.44 Is interest subject to "buy-sell" agreement? ☐ Yes ☐ No

A. Was the agreement entered into or substantially modified on or after October 8, 1990? ☐ Yes ☐ No If yes, give details _____

_____

B. Parties to agreement and relationship to D _____

_____

C. Purchase price under that agreement _____

D. Is agreed price binding on D's estate? ☐ Yes ☐ No

E. Is D's death an event forcing an offer to sell? ☐ Yes ☐ No

16.45 - 16.47 (Reserved)

16.48 Value at D's death, if agreed price is not binding _____

16.49 Alternate value _____

16.50 Did D's spouse materially participate in the operation of this business? ☐ Yes ☐ No If yes, number of taxable years in which spouse participated _____

16.51 Does family wish to retain ownership, if possible? ☐ Yes ☐ No

16.52 If retained, who will operate the partnership? _____

_____

16.53 Should tax basis be adjusted by the partnership under IRC, Section 743? ☐ Yes ☐ No

16.54 Does the partnership own any real estate? ☐ Yes ☐ No If yes, does the real estate qualify for special use valuation? ☐ Yes ☐ No

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16.55 Will special use valuation be elected? ☐ Yes ☐ No

16.56 Is value of D's interest in this partnership more than 35 percent of value of D's federal adjusted gross estate? ☐ Yes ☐ No

16.57 Is value of D's interest in this partnership more than 50 percent of value of D's federal taxable estate? ☐ Yes ☐ No

16.58 Is value of D's interest in this partnership more than 65 percent of value of D's federal adjusted gross estate? ☐ Yes ☐ No

16.59 Does this interest qualify for installment payment of all or part of D's federal estate taxes? ☐ Yes ☐ No

16.60 Was this partnership interest specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

16.61 Was this partnership interest collateral for any loan owed or guaranteed by D? ☐ Yes ☐ No If yes, give details _____

_____

16.62 (Reserved)

16.63 D's income tax basis _____

16.64 - 16.69 (Reserved)

Inventory and Estate Tax Return Description

16.70 Enter description of partnership or other unincorporated business (in format to be used on probate documents or estate tax return) and indicate its value on the date of death and on the alternate valuation date

_____

_____

_____

_____

16.71 - 16.79 (Reserved)

Limited Liability Company

16.80 Was D a manager or member of, or did D own an interest in, a limited liability company ("LLC")? ☐ Yes ☐ No If yes, complete Items 16.81 through 16.120.

16.81 Name of LLC _____

16.82 Address _____

16.83 City, state, zip _____

16.84 Phone number _____

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16.85 Fax number _____

16.86 Email _____

16.87 Person to contact _____

16.88 Employer identification number _____

16.89 Nature of business _____

16.90 Nature of D's participation: ☐ Manager ☐ Member ☐ Other

16.91 Total number of members _____

16.92 D's percentage interest _____

16.93 Ownership: ☐ Separate ☐ Community

16.94 If D's separate property, was interest ever held as community property by D and D's surviving spouse? ☐ Yes ☐ No If yes, explain _____

_____

_____

16.95 Is interest subject to "buy-sell" agreement? ☐ Yes ☐ No If yes:

A. Was the agreement entered into or substantially modified on or after October 8, 1990? ☐ Yes ☐ No If yes, give details _____

_____

_____

B. Parties to agreement and relationship to D _____

C. Purchase price under that agreement _____

D. Is agreed price binding on D's estate? ☐ Yes ☐ No

E. Is D's death an event forcing an offer to sell? ☐ Yes ☐ No

16.96 Value at D's death, if agreed price is not binding _____

16.97 Alternate value _____

16.98 Did D's spouse materially participate in the operation of this business? ☐ Yes ☐ No If yes, number of taxable years in which spouse participated _____

16.99 Does family or estate wish to retain ownership if possible? ☐ Yes ☐ No

16.100 If retained, who will run business? _____

_____

16.101 - 16.105 (Reserved)

16.106 Is D's interest represented by certificate(s)? ☐ Yes ☐ No If yes, does LLC act as transfer agent for its interests? ☐ Yes ☐ No If no, provide details here _____

_____

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16.107 Will special use valuation be elected? ☐ Yes ☐ No

16.108 Is value of D's interest in this LLC more than 35 percent of value of D's federal adjusted gross estate? ☐ Yes ☐ No

16.109 Is value of D's interest in this LLC more than 50 percent of value of D's federal taxable estate? ☐ Yes ☐ No

16.110 Is value of D's interest in this LLC more than 65 percent of value of D's federal adjusted gross estate? ☐ Yes ☐ No

16.111 Does this interest qualify for installment payment of all or part of D's federal estate taxes? ☐ Yes ☐ No

16.112 (Reserved)

16.113 Was this LLC interest specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

16.114 Was this LLC interest collateral for any loan owed or guaranteed by D? ☐ Yes ☐ No If yes, give details _____

_____

16.115 D's income tax basis _____

16.116 - 16.119 (Reserved)

Inventory and Estate Tax Return Description

16.120 Enter description of LLC interest (in format to be used on probate documents or estate tax return) and indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

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17.0 TRANSPORTATION EQUIPMENT

17.01 Did D own any automobiles, motorcycles, boats, aircraft, or other vehicles? ☐ Yes ☐ No If no, skip the rest of this Section 17.0. If yes, complete Items 17.02 through 17.49 for each ground vehicle, Items 17.50 through 17.109 for each boat, and Items 17.110 through 17.149 for each aircraft. If there are any liens, security interests, or other encumbrances, these should be listed in Section 21.0. Note that liens on motor boats and outboard motors take priority in the chronological order in which each is noted on the certificate of title. Attach separate pages for each additional item.

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but include the entire value of the vehicle, boat, or aircraft.

Ground Vehicles

17.02 Year _____

17.03 Make _____

17.04 Model _____

17.05 Description and condition of vehicle, including accessories _____

_____

_____

17.06 Vehicle identification number (VIN) _____

17.07 State in which registered _____

17.08 Vehicle license number _____

17.09 Expiration date of license _____

17.10 Vehicle weight _____

17.11 Odometer mileage _____

17.12 Present location _____

17.13 Name(s) in which registered _____

17.14 Ownership: ☐ Separate ☐ Community

17.15 If D's separate property, was this asset ever held as community property by D and D's surviving spouse? ☐ Yes ☐ No If yes, explain _____

_____

_____

17.16 Value at death _____

17.17 Alternate value _____

17.18 Currently licensed? ☐ Yes ☐ No

17.19 Title to be transferred? ☐ Yes ☐ No

17.20 Transferee's name _____

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17.21 Address _____

17.22 City, state, zip _____

17.23 Insured? ☐ Yes ☐ No

17.24 Insurance company _____

17.25 Policy number _____

17.26 Insurance agent _____

17.27 Address _____

17.28 City, state, zip _____

17.29 Phone number _____

17.29A Fax number _____

17.29B Email _____

17.30 Policy coverage _____

17.31 Cancel insurance? ☐ Yes ☐ No

17.32 Transfer insurance? ☐ Yes ☐ No

17.33 - 17.34 (Reserved)

17.35 If title is registered in **joint tenancy with right of survivorship**, complete the following for each surviving joint tenant:

Note: If this vehicle was the community property of D and D's spouse or they were the sole joint tenants, this vehicle should be reported in Part I of Schedule E of D's estate tax return. All other jointly held vehicles should be reported in Part II of Schedule E of D's estate tax return.

Name _____

Address _____

City, state, zip _____

Phone number _____

Fax number _____

Email _____

Social Security number _____

Relationship to D _____

Contribution of the nonspouse survivor toward acquisition of this asset: Amount _____
Percentage of total value _____

17.36 Was this vehicle specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference

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to the specific provision of D's will _____

_____

_____

17.37 Was this vehicle collateral for any loan owed or guaranteed by D? ☐ Yes ☐ No If yes, give details

_____

_____

17.38 D's income tax basis _____

_____

17.39 - 17.48 (Reserved)

Inventory and Estate Tax Return Description

17.49 Enter description of ground vehicle (in format to be used on probate documents or estate tax return) and indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

Boats

17.50 Registration or certificate number _____

17.51 Manufacturer and make of vessel _____

17.52 Model _____

17.53 Year _____

17.54 ☐ Homemade ☐ Factory-built

17.55 Hull identification number (HIN) and name of vessel _____

17.56 Length: _____ feet _____ inches

17.57 Construction: ☐ Wood ☐ Steel ☐ Aluminum ☐ Fiberglass ☐ Plastic ☐ Other _____

17.58 Fuel used: ☐ Gasoline ☐ Diesel ☐ Other _____

17.59 Type of use: ☐ Commercial passenger ☐ Commercial fishing ☐ Personal pleasure ☐ Rental/lease ☐ Demo ☐ Other _____

17.60 Type of vessel: ☐ Open ☐ Cabin ☐ Houseboat ☐ Other _____

17.61 Propulsion:

Engine make _____

☐ Outboard (see Item 17.62)

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☐ Inboard—serial no. _____

☐ Inboard/outboard serial no. (1) _____ (2)_____

☐ Auxiliary motor

☐ Other _____

17.62 Outboard motor description _____

17.63 Make _____

17.64 Model _____

17.65 Year _____

17.66 Horsepower _____

17.67 Serial number _____

17.68 Title number _____

17.69 Present location of boat and motor _____

17.70 Name in which registered _____

17.71 Ownership: ☐ Separate ☐ Community

17.72 If D's separate property, was this asset ever held as community property by D and D's surviving spouse?
☐ Yes ☐ No If yes, explain _____

_____

_____

17.73 Value at death _____

17.74 Alternate value _____

17.75 Currently licensed? ☐ Yes ☐ No

17.75A License number _____

17.76 Title to be transferred? ☐ Yes ☐ No

17.77 Transferee's name _____

17.78 Address _____

17.79 City, state, zip _____

17.80 Insured? ☐ Yes ☐ No

17.81 Insurance company _____

17.82 Policy number _____

17.83 Insurance agent _____

17.84 Address _____

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17.85 City, state, zip _____

17.86 Phone number _____

17.86A Fax number _____

17.86B Email _____

17.87 Policy coverage _____

17.88 Cancel insurance? ☐ Yes ☐ No

17.89 Transfer insurance? ☐ Yes ☐ No

17.90 Related gear (trailer, etc.) _____

_____

17.91 - 17.94 (Reserved)

17.95 If title is registered in **joint tenancy with right of survivorship**, complete the following for each surviving joint tenant:

Note: If this boat was the community property of D and D's spouse or they were the sole joint tenants, this boat should be reported in Part I of Schedule E of D's estate tax return. All other jointly held boats should be reported in Part II of Schedule E of D's estate tax return.

Name _____

Address _____

City, state, zip _____

Phone number _____

Fax number _____

Email _____

Social Security number _____

Relationship to D _____

Contribution of the nonspouse survivor toward acquisition of this asset: Amount _____
Percentage of total value _____

17.96 Was this boat specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

17.97 Was this boat collateral for any loan owed or guaranteed by D? ☐ Yes ☐ No If yes, give details

_____

_____

17.98 D's income tax basis _____

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17.99 - 17.108 (Reserved)

Inventory and Estate Tax Return Description

17.109 Enter description of boat (in format to be used on probate documents or estate tax return) and indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

Aircraft

17.110 Manufacturer _____

17.111 Model _____

17.112 U. S. registration number _____

17.113 Aircraft serial number _____

17.114 Other descriptive information _____

17.115 Present location _____

17.116 Cost of storage _____

17.117 Name in which registered _____

17.118 Ownership: ☐ Separate ☐ Community

17.119 If D's separate property, was this asset ever held as community property by D and D's surviving spouse? ☐ Yes ☐ No If yes, explain _____

_____

_____

17.120 Value at death _____

17.121 Alternate value _____

17.122 Currently licensed? ☐ Yes ☐ No

17.123 Title to be transferred? ☐ Yes ☐ No

17.124 Transferee's name _____

17.125 Address _____

17.126 City, state, zip _____

17.127 Insured? ☐ Yes ☐ No

17.128 Insurance company _____

17.129 Policy number _____

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17.130 Insurance agent _____

17.131 Address _____

17.132 City, state, zip _____

17.133 Phone number _____

17.133A Fax number _____

17.133B Email _____

17.134 Policy coverage _____

17.135 Cancel insurance? ☐ Yes ☐ No

17.136 Transfer insurance? ☐ Yes ☐ No

17.137 - 17.139 (Reserved)

17.140 If title is registered in **joint tenancy with right of survivorship**, complete the following for each surviving joint tenant:

Note: If this aircraft was the community property of D and D's spouse or they were the sole joint tenants, this aircraft should be reported in Part I of Schedule E of D's estate tax return. All other jointly held aircraft should be reported in Part II of Schedule E of D's estate tax return.

Name _____

Address _____

City, state, zip _____

Phone number _____

Fax number _____

Email _____

Social Security number _____

Relationship to D _____

Contribution of the nonspouse survivor toward acquisition of this asset: Amount _____
Percentage of total value _____

17.141 Was this aircraft specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

17.142 Was this aircraft collateral for any loan owed or guaranteed by D? ☐ Yes ☐ No If yes, give details

_____

_____

17.143 D's income tax basis _____

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17.144 - 17.148 (Reserved)

Inventory and Estate Tax Return Description

17.149 Enter description of aircraft (in format to be used on probate documents or estate tax return) and indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

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18.0 PERSONAL, HOUSEHOLD, AND MISCELLANEOUS ASSETS

18.01 Did D own any personal, household, artistic, collectible, or miscellaneous assets that are individually scheduled on insurance policies or the total value of which is in excess of $3,000, or any collections whose artistic or collectible value combined is in excess of $10,000? ☐ Yes ☐ No

If yes, complete Items 18.10 through 18.225.

If no, consider describing those items that D owned as "household goods, furniture, furnishings, clothing, and miscellaneous personal property" in Item 18.02 and/or complete Items 18.03 through 18.09. Complete Items 18.27, 18.47, 18.67, 18.87, 18.107, 18.127, 18.147, and 18.148.

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use the entire value of the asset.

18.02 General description _____

_____

_____

18.03 Ownership: ☐ Separate ☐ Community

18.04 Value at death of D's interest _____

18.05 Alternate value of D's interest _____

18.06 Were any of these items specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

18.07 Were any of these items collateral for any loan owed or guaranteed by D? ☐ Yes ☐ No If yes, give details _____

_____

_____

18.08 D's income tax basis _____

Inventory and Estate Tax Return Description

18.09 Enter description (in format to be used on probate documents or estate tax return) and indicate value on the date of death and on the alternate valuation date _____

_____

_____

_____

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Jewelry

18.10 Description _____

_____

_____

18.11 Present location _____

18.12 Ownership: ☐ Separate ☐ Community ☐ Separate property of D's spouse

18.13 If D's separate property, was this asset ever held as community property by D and D's surviving spouse? ☐ Yes ☐ No If yes, explain _____

_____

_____

18.14 Value at death _____

18.15 Alternate value _____

18.16 Insured value _____

18.17 Insurance company _____

18.18 Insurance policy number _____

18.19 Insurance agent _____

18.20 Address _____

18.21 City, state, zip _____

18.22 Phone number _____

18.23 Fax number _____

18.24 Email _____

18.25 Policy coverage _____

18.26 D's income tax basis _____

18.27 Were any items of jewelry specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

18.28 - 18.29 (Reserved)

Furs

18.30 Description _____

_____

_____

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18.31 Present location _____

18.32 Ownership: ☐ Separate ☐ Community ☐ Separate property of D's spouse

18.33 If D's separate property, was this asset ever held as community property by D and D's surviving spouse? ☐ Yes ☐ No If yes, explain _____

_____

_____

18.34 Value at death _____

18.35 Alternate value _____

18.36 Insured value _____

18.37 Insurance company _____

18.38 Insurance policy number _____

18.39 Insurance agent _____

18.40 Address _____

18.41 City, state, zip _____

18.42 Phone number _____

18.43 Fax number _____

18.44 Email _____

18.45 Policy coverage _____

18.46 D's income tax basis _____

18.47 Were any items of furs specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

18.48 - 18.49 (Reserved)

Stamp, Coin, or Other Collection

18.50 Description _____

_____

_____

18.51 Present location _____

18.52 Ownership: ☐ Separate ☐ Community ☐ Separate property of D's spouse

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18.53 If D's separate property, was this asset ever held as community property by D and D's surviving spouse?
☐ Yes ☐ No If yes, explain _____

_____

_____

18.54 Value at death _____

18.55 Alternate value _____

18.56 Insured value _____

18.57 Insurance company _____

18.58 Insurance policy number _____

18.59 Insurance agent _____

18.60 Address _____

18.61 City, state, zip _____

18.62 Phone number _____

18.63 Fax number _____

18.64 Email _____

18.65 Policy coverage _____

18.66 D's income tax basis _____

18.67 Were any collections specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

18.68 - 18.69 (Reserved)

Works of Art

18.70 Description _____

_____

_____

18.71 Present location _____

18.72 Ownership: ☐ Separate ☐ Community ☐ Separate property of D's spouse

18.73 If D's separate property, was this asset ever held as community property by D and D's surviving spouse?
☐ Yes ☐ No If yes, explain _____

_____

_____

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18.74 Value at death _____

18.75 Alternate value _____

18.76 Insured value _____

18.77 Insurance company _____

18.78 Insurance policy number _____

18.79 Insurance agent _____

18.80 Address _____

18.81 City, state, zip _____

18.82 Phone number _____

18.83 Fax number _____

18.84 Email _____

18.85 Policy coverage _____

18.86 D's income tax basis _____

18.87 Were any works of art specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

18.88 - 18.89 (Reserved)

Rare Books

18.90 Description _____

_____

_____

18.91 Present location _____

18.92 Ownership: ☐ Separate ☐ Community ☐ Separate property of D's spouse

18.93 If D's separate property, was this asset ever held as community property by D and D's surviving spouse? ☐ Yes ☐ No If yes, explain _____

_____

_____

18.94 Value at death _____

18.95 Alternate value _____

18.96 Insured value _____

18.97 Insurance company _____

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18.98 Insurance policy number _____

18.99 Insurance agent _____

18.100 Address _____

18.101 City, state, zip _____

18.102 Phone number _____

18.103 Fax number _____

18.104 Email _____

18.105 Policy coverage _____

18.106 D's income tax basis _____

18.107 Were any rare books specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

18.108 - 18.109 (Reserved)

Valuable Antiques

18.110 Description _____

_____

_____

18.111 Present location _____

18.112 Ownership: ☐ Separate ☐ Community ☐ Separate property of D's spouse

18.113 If D's separate property, was this asset ever held as community property by D and D's surviving spouse? ☐ Yes ☐ No If yes, explain _____

_____

_____

18.114 Value at death _____

18.115 Alternate value _____

18.116 Insured value _____

18.117 Insurance company _____

18.118 Insurance policy number _____

18.119 Insurance agent _____

18.120 Address _____

18.121 City, state, zip _____

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18.122 Phone number _____

18.123 Fax number _____

18.124 Email _____

18.125 Policy coverage _____

18.126 D's income tax basis _____

18.127 Were any valuable antiques specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

18.128 - 18.129 (Reserved)

Furnishings

18.130 Description _____

_____

_____

18.131 Present location _____

18.132 Ownership: ☐ Separate ☐ Community ☐ Separate property of D's spouse

18.133 If D's separate property, was this asset ever held as community property by D and D's surviving spouse? ☐ Yes ☐ No If yes, explain _____

_____

_____

18.134 Value at death _____

18.135 Alternate value _____

18.136 Insured value _____

18.137 Insurance company _____

18.138 Insurance policy number _____

18.139 Insurance agent _____

18.140 Address _____

18.141 City, state, zip _____

18.142 Phone number _____

18.143 Fax number _____

18.144 Email _____

18.145 Policy coverage _____

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18.146 D's income tax basis _____

18.147 Were any furnishings specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

18.148 Were any of the assets listed at Items 18.10 through 18.147 collateral for any loan owed or guaranteed by D? ☐ Yes ☐ No If yes, give details _____

_____

_____

18.149 (Reserved)

Digital Assets

18.150 Description _____

_____

_____

18.151 Username or account number (used by custodian to identify account) _____

18.152 Password (used by D to access account) _____

18.153 URL (website hosting account) _____

18.154 User email (address used by custodian for account communications) _____

18.155 Challenge questions and answers (to authenticate password reset requests) _____

_____

18.156 Ownership: ☐ Separate ☐ Community ☐ Separate property of D's spouse

18.157 If D's separate property, was this asset ever held as community property by D and D's surviving spouse? ☐ Yes ☐ No If yes, explain _____

_____

_____

18.158 Value at death _____

18.159 Alternate value _____

18.160 Insured value _____

18.161 Insurance company _____

18.162 Insurance policy number _____

18.163 Insurance agent _____

18.164 Address _____

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18.165 City, state, zip _____

18.166 Phone number _____

18.167 Fax number _____

18.168 Email _____

18.169 Policy coverage _____

18.170 Custodian _____

18.171 Address _____

18.172 City, state, zip _____

18.173 Phone number _____

18.174 Fax number _____

18.175 Email _____

18.176 Were any digital assets specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

18.177 Did D consent to disclosure of the content of an electronic communication of the user? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will, if applicable _____

_____

_____

18.178 Did a court direct disclosure of the content of an electronic communication of the user? ☐ Yes ☐ No If yes, give details, including the court, cause number, jurisdiction, and date of the order _____

_____

_____

18.179 Did D prohibit disclosure of digital assets of the user? ☐ Yes ☐ No

18.180 - 18.189 (Reserved)

Inventory and Estate Tax Return Description

18.190 Enter description (in format to be used on probate documents or estate tax return) of any **jewelry, furs, stamp collection, coin collection, other collection, works of art, rare books, valuable antiques, and furnishings**, and beside each item indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

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_____

_____

_____

18.191 Enter description (in format to be used on probate documents or estate tax return) of the items of **farm or other equipment** owned by D at the date of D's death, including make, model, serial number, year of manufacture, additional related equipment, liens thereon, and the name and address of the lienholder. In addition, beside each item indicate its value on the date of death and on the alternate valuation date ___

_____

_____

_____

_____

_____

_____

18.192 Enter description (in format to be used on probate documents or estate tax return) of the kind and quantity of **livestock** (breed, age, condition, size, and whether used for food, breeding, or recreation) owned by D. In addition, beside each item indicate its value on the date of death and on the alternate valuation date

_____

_____

_____

_____

_____

_____

_____

18.193 Enter description (in format to be used on probate documents or estate tax return) of the nature and quantity of D's **agricultural crops** growing or harvested and stored at the time of D's death. In addition, beside each item indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

_____

_____

18.194 Enter description (in format to be used on probate documents or estate tax return) of any **gold, silver, or foreign currencies** owned by D. In addition, beside each item indicate its value on the date of death and

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on the alternate valuation date _____

_____

_____

_____

_____

_____

_____

18.195 Enter description (in format to be used on probate documents or estate tax return) of any **pending tort claims** in which D was or would have been plaintiff (style of case, docket number, court in which pending, etc.) at the time of D's death _____

_____

_____

_____

_____

_____

_____

18.196 Enter description (in format to be used on probate documents or estate tax return) of any **other pending claims** in which D was or would have been plaintiff (style of case, docket number, court in which pending, etc.) at the time of D's death _____

_____

_____

_____

_____

_____

_____

18.197 Enter description (in format to be used on probate documents or estate tax return) of any **income tax refunds** due at the time of D's death. In addition, beside each item indicate the amount of the refund (see Items 12.51 through 12.54) _____

_____

_____

_____

_____

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_____

_____

18.198 Enter description (in format to be used on probate documents or estate tax return) of any **trademarks** owned by D. In addition, beside each item indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

_____

_____

18.199 Enter description (in format to be used on probate documents or estate tax return) of any **patents** owned by D. In addition, beside each item indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

_____

_____

18.200 Enter description (in format to be used on probate documents or estate tax return) of any **copyrights** owned by D. In addition, beside each item indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

_____

_____

18.201 Enter description (in format to be used on probate documents or estate tax return) of any **royalties other than minerals** owned by D. In addition, beside each item indicate its value on the date of death and on the alternate valuation date _____

_____

_____

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_____

_____

_____

_____

18.202 Enter description (in format to be used on probate documents or estate tax return) of any **franchises** owned by D. In addition, beside each item indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

_____

_____

18.203 Enter description (in format to be used on probate documents or estate tax return) of any **contract rights** owned by D. In addition, beside each item indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

_____

_____

18.204 Enter description (in format to be used on probate documents or estate tax return) of any **memberships in clubs, lodges, and fraternal and professional organizations** owned by D. In addition, beside each item indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

_____

_____

18.205 Enter description (in format to be used on probate documents or estate tax return) of any **rice allotments** owned by D. In addition, beside each item indicate its value on the date of death and on the alternate val-

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uation date _____

_____

_____

_____

_____

_____

_____

18.206 Enter description (in format to be used on probate documents or estate tax return) of any interest D owned in the **estate of another decedent**. In addition, give name and address of the executor of that estate, description of assets, and the value on date of death and on the alternate valuation date _____

_____

_____

_____

_____

_____

_____

18.207 Enter description (in format to be used on probate documents or estate tax return) of any **frequent flyer** or other frequent patron program in which D participated. In addition, indicate the value of each on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

_____

_____

18.208 - 18.209 (Reserved)

18.210 Enter description (in format to be used on probate documents or estate tax return) of any **assets not otherwise described** owned by D. In addition, beside each item indicate its value on the date of death and on the alternate valuation date _____

_____

_____

_____

_____

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_____

_____

18.211 Were any of the assets listed at Items 18.191 through 18.210 collateral for any loan owed or guaranteed by D? ☐ Yes ☐ No If yes, give details _____

_____

_____

18.212 - 18.219 (Reserved)

18.220 Did D's surviving spouse own any income-producing separate property? ☐ Yes ☐ No If yes, determine if **income from surviving spouse's separate property** is community property, and if so, calculate amount of dividends, interest, rents, and royalties from each item accrued as of D's death and enter description (in format to be used on probate documents or estate tax return) _____

_____

_____

18.221 Did D's separate estate have a **claim for reimbursement against the community estate** of D and D's surviving spouse? ☐ Yes ☐ No If yes, give details and enter description (in format to be used on probate documents or estate tax return) _____

_____

_____

18.222 Did the community estate of D and D's spouse have a **claim for reimbursement against the separate estate of D's surviving spouse**? ☐ Yes ☐ No If yes, give details and enter description (in format to be used on probate documents or estate tax return) _____

_____

_____

18.223 Did D's separate estate have a **claim for reimbursement against the separate estate of D's spouse**? ☐ Yes ☐ No If yes, give details and enter description (in format to be used on probate documents or estate tax return) _____

_____

_____

18.224 (Reserved)

18.225 Were any of the assets or claims listed in Items 18.191 through 18.223 specifically bequeathed? ☐ Yes ☐ No If yes, give details, including cross-reference to the specific provision in D's will _____

_____

_____

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19.0 EMPLOYEE AND GOVERNMENT BENEFITS AND ANNUITIES

Social Security

19.01 Was D receiving payments from the Social Security Administration? ☐ Yes ☐ No

19.02 Was D's spouse receiving payments from the Social Security Administration? ☐ Yes ☐ No

19.03 Does D's death entitle either D's spouse or children to receive payments from the Social Security Administration? ☐ Yes ☐ No

19.04 Does D's death entitle D's family to receive a burial allowance from the Social Security Administration? ☐ Yes ☐ No

19.05 If yes, has it been collected? ☐ Yes ☐ No

19.06 Are we to assist in collecting any of these benefits? ☐ Yes ☐ No

Railroad Retirement

19.07 Was D covered by provisions of the Railroad Retirement Act? ☐ Yes ☐ No

19.08 Was D or D's spouse receiving payments pursuant to the Act? ☐ Yes ☐ No

19.09 Does D's death entitle either D's spouse or children to receive such payments? ☐ Yes ☐ No

19.10 Are we to assist in collecting these benefits? ☐ Yes ☐ No

Veterans Affairs (VA)

19.11 Was D or D's spouse receiving payments from the VA? ☐ Yes ☐ No

19.12 Does D's death entitle either D's spouse or children to receive payments from the VA? ☐ Yes ☐ No

19.13 Are death benefits (including marker allowance) payable? ☐ Yes ☐ No

19.14 Have death benefits been collected? ☐ Yes ☐ No

19.15 Are we to assist in collecting these benefits? ☐ Yes ☐ No

Annuities

19.16 Was D or D's spouse receiving a retirement annuity immediately before D's death? ☐ Yes ☐ No If no, skip to Item 19.33. If yes, complete Items 19.16A through 19.32.

19.16A Did the annuity terminate on D's death with no future benefits payable to D's estate or to anyone else? ☐ Yes ☐ No If no, skip to Item 19.33. If yes, complete Items 19.17 through 19.32.

		D	D's Spouse
19.17	Name of payor	_____	_____
19.18	Address	_____	_____
19.19	City, state, zip	_____	_____

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19.20	Approved plan?	☐ Yes ☐ No	☐ Yes ☐ No
19.21	D's contribution toward total cost of annuity (ratio or percent)	_____	_____

NOTE: **IF ANY PAYMENT FOR AN ANNUITY WAS NOT ALLOWABLE AS AN INCOME TAX DEDUCTION, THAT PROPORTION OF THE TOTAL AMOUNT PAID, MULTIPLIED BY THE VALUE OF THE ANNUITY, IS INCLUDIBLE IN D'S FEDERAL GROSS ESTATE.**

		D	D's Spouse
19.22	Name of employer and/or plan and its employer identification number	_____	_____
		_____	_____
19.23	Address	_____	_____
19.24	City, state, zip	_____	_____
19.25	Person to contact	_____	_____
19.26	Phone number	_____	_____
19.26A	Fax number	_____	_____
19.26B	Email	_____	_____
19.27	Amount or percent of employer's contributions	_____	_____
19.27A	Is this an annuity described in the IRS General Instructions for Schedule I?	☐ Yes ☐ No	☐ Yes ☐ No
19.28	Value at date of D's death	_____	_____
19.29	Alternate value	_____	_____
19.29A	Will value of lump-sum distribution be excluded from D's gross estate?	☐ Yes ☐ No	☐ Yes ☐ No

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19.30 Did the annuity contract contain the name of a designated beneficiary to receive the payments after D's death? ☐ Yes ☐ No ☐ Yes ☐ No

If yes, complete Items 19.31 and 19.32.

19.31 Name of beneficiary _____ _____

19.32 Relationship to D _____ _____

19.33 As a result of D's employment and death, will an **annuity** become due and payable to and by virtue of a beneficiary's surviving D? ☐ Yes ☐ No If no, skip to Item 19.44. If yes, complete Items 19.34 through 19.43.

19.34 If yes, give the ratio or percentage of D's contribution _____ and the ratio or percentage of employer's contribution _____ to the total cost of the annuity, and complete Items 19.35 through 19.41 for each beneficiary.

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use the entire value of the benefit.

		(A)	(B)
19.35	Name	_____	_____
19.36	Address	_____	_____
19.37	City, state, zip	_____	_____
19.38	Phone number	_____	_____
19.38A	Fax number	_____	_____
19.39	Relationship to D	_____	_____
19.40	Value of annuity at D's death	_____	_____
19.41	Alternate value	_____	_____

19.42 If any annuity payable to D or D's spouse is payable for a term of years, give details, including the duration of the term and the date on which it began or will begin _____

_____

_____

19.43 If any annuity is payable for the life of a person other than D, give details, including name, address, date

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of birth, sex, and Social Security number of that person _____

_____

_____

19.44 As a result of D's employment and death, will any person receive any bonus or award or will any **employee benefits** become due and payable to anyone or to D's estate? ☐ Yes ☐ No If no, skip to Item 19.57. If yes, complete Items 19.45 through 19.56.

	Type of Benefit	Available?	To Whom Payable and Amount
19.45	$5,000 lump-sum death benefit	☐ Yes ☐ No	_____
19.46	Insurance on D's life	☐ Yes ☐ No	_____
19.47	Medical insurance	☐ Yes ☐ No	_____
19.48	Stock options	☐ Yes ☐ No	_____
19.49	Pension plan	☐ Yes ☐ No	_____
19.50	Profit-sharing or 401(k) plan	☐ Yes ☐ No	_____
19.51	Credit union	☐ Yes ☐ No	_____
19.52	Accrued salary and deferred compensation	☐ Yes ☐ No	_____
19.53	Accrued vacation or other pay	☐ Yes ☐ No	_____
19.54	Accrued commissions and/or insurance "renewals"	☐ Yes ☐ No	_____
19.55	Salary continuation for surviving family members or estate	☐ Yes ☐ No	_____
19.56	Other (describe)		
	_____	☐ Yes ☐ No	_____
	_____	☐ Yes ☐ No	_____

19.57 Did D belong to a **union** or to a **fraternal organization** that provides **benefits** by virtue of D's death? ☐ Yes ☐ No If no, skip to Item 19.65. If yes, complete Items 19.58 through 19.64.

19.58 Name of union or fraternal organization _____

19.59 Person to contact _____

19.60 Address _____

19.61 City, state, zip _____

19.62 Phone number _____

19.62A Fax number _____

19.62B Email _____

19.63 Nature of benefits _____

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19.64 Name(s), address(es), etc. of all beneficiaries _____

_____

_____

_____

_____

19.65 Was D or D's spouse a participant in an **Individual Retirement Account (IRA)**? ☐ Yes ☐ No If no, skip to Item 19.100. If yes, complete Items 19.66 through 19.85.

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use the entire value of the IRA.

		D	D's Spouse
19.66	Name of IRA	_____	_____
19.67	Name of custodian	_____	_____
19.68	Person to contact	_____	_____
19.69	Address	_____	_____
19.70	City, state, zip	_____	_____
19.71	Phone number	_____	_____
19.72	Fax number	_____	_____
19.73	Email	_____	_____
19.74	Type	☐ Regular ☐ Roth	☐ Regular ☐ Roth
19.75	Value on D's date of death	_____	_____
19.76	Name(s), address(es), etc. for all beneficiaries	_____	_____
		_____	_____
		_____	_____
		_____	_____
		_____	_____
19.77	Eligible for spousal rollover?	☐ Yes ☐ No	☐ Yes ☐ No
19.78	Will spouse elect rollover?	☐ Yes ☐ No	☐ Yes ☐ No

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19.79	Amount rolled over after D's death where D was a surviving spouse who rolled over a distribution from a plan or from an IRA	_____	_____
19.80	Was grandfather election made on previously filed IRS Form 5329?	☐ Yes ☐ No	☐ Yes ☐ No
19.81	Initial grandfathered amount	_____	_____
19.82	Total amount previously recovered	_____	_____
19.83	Remaining grandfathered amount (Item 19.81 less Item 19.82)	_____	_____
19.84	Were all contributions proper income tax deductions or rollover contributions?	☐ Yes ☐ No	☐ Yes ☐ No
	If not, what is ratio of those contributions to total contributions?	_____	_____
19.85	D's income tax basis	_____	_____

19.86 - 19.99 (Reserved)

19.100 Was D or D's spouse a participant in a **Qualified Employer Plan**? ☐ Yes ☐ No If no, skip to Item 19.126. If yes, complete Items 19.101 through 19.114.

Do not reduce the indicated asset value by 1/2 when D's interest was a 1/2 community interest, but use the entire value of the plan.

		D	D's Spouse
19.101	Name of plan	_____	_____
19.102	Value on D's date of death	_____	_____

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19.103	Name(s), address(es), etc. for all beneficiaries	_____	_____
19.104	Eligible for spousal rollover?	☐ Yes ☐ No	☐ Yes ☐ No
19.105	Will spouse elect rollover?	☐ Yes ☐ No	☐ Yes ☐ No
19.106	Amount rolled over after D's death where D was a surviving spouse who had rolled over a distribution from a plan	_____	_____
19.107	Amounts payable to certain alternate payees (e.g., QDROs)	_____	_____
19.108	D's investment in the contract	_____	_____
19.109	Was grandfather election made on previously filed IRS Form 5329?	☐ Yes ☐ No	☐ Yes ☐ No
19.110	Initial grandfathered amount	_____	_____
19.111	Total amount previously recovered	_____	_____
19.112	Remaining unused grandfathered amount (Item 19.110 less Item 19.111)	_____	_____
19.113	D's income tax basis	_____	_____

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19.114 Was D an alternate payee under a qualified domestic relations order (**"QDRO"**)? ☐ Yes ☐ No ☐ Yes ☐ No

19.115 - 19.125 (Reserved)

19.126 Was D or D's spouse a participant in an **HR-10 (Keogh) Plan**? ☐ Yes ☐ No If no, skip to Item 19.140. If yes, give details _____

_____

19.127 Were all contributions proper income tax decuctions? ☐ Yes ☐ No ☐ Yes ☐ No

19.128 If not, what is ratio of those contributions to total contributions? _____ _____

19.129 Value on D's date of death _____ _____

19.130 Name(s), address(es), etc. for all beneficiaries _____ _____

_____ _____

_____ _____

_____ _____

_____ _____

19.131 Eligible for spousal rollover? ☐ Yes ☐ No ☐ Yes ☐ No

19.132 Will spouse elect rollover? ☐ Yes ☐ No ☐ Yes ☐ No

19.133 D's income tax basis _____ _____

19.134 - 19.139 (Reserved)

19.140 Was D or D's spouse covered by provisions of **Texas County and District Retirement System**? ☐ Yes ☐ No If yes, give details _____

_____

_____

19.141 Value on D's date of death _____

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19.142 D's income tax basis _____

19.143 - 19.149 (Reserved)

19.150 Was D or D's spouse covered by provisions of **Retired Serviceman's Family Protection Plan**? ☐ Yes ☐ No If yes, give details _____

_____

_____

19.151 Value on D's date of death _____

19.152 D's income tax basis _____

19.153 - 19.159 (Reserved)

19.160 Was D or D's spouse a participant in the **Teacher Retirement System of Texas**? ☐ Yes ☐ No If yes, give details _____

_____

_____

19.161 Value on D's date of death _____

19.162 D's income tax basis _____

19.163 - 19.169 (Reserved)

19.170 Was D or D's spouse a participant in the **Employees Retirement System of Texas**? ☐ Yes ☐ No If yes, give details _____

_____

_____

19.171 Value on D's date of death _____

19.172 D's income tax basis _____

19.173 - 19.179 (Reserved)

19.180 Was D or D's spouse covered by provisions of the **Texas Municipal Retirement Act**? ☐ Yes ☐ No If yes, give details _____

_____

_____

19.181 Value on D's date of death _____

19.182 D's income tax basis _____

19.183 - 19.189 (Reserved)

19.190 Was D or D's spouse a participant in the **Texas Judicial Retirement System**? ☐ Yes ☐ No If yes, give details _____

_____

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19.191 Value on D's date of death _____

_____

19.192 D's income tax basis _____

19.193 - 19.199 (Reserved)

19.200 Was D or D's spouse receiving any military pay or other military allowances if D or D's spouse was killed in a combat zone? ☐ Yes ☐ No If yes, give details _____

_____

_____

19.201 - 19.208 (Reserved)

19.209 Will distributions from any plan be excluded from the gross estate? ☐ Yes ☐ No If yes, give details

_____

_____

Inventory and Estate Tax Return Description

19.210 List below (in format to be used on probate documents or estate tax return) every IRA, 401(k), HR-10 (Keogh Plan), or interest in any other annuity or retirement fund. In addition, beside each item indicate its value on the date of death and on the alternate valuation date. Additional information is required for annuities _____

_____

_____

_____

_____

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20.0 TAXABLE BUT UNUSUAL ITEMS

Note: This section applies generally to gifts made by D and D's spouse, trusts, reversionary interests, powers of appointment, and transfers during D's lifetime where D may no longer "own" an asset, but where the value of that asset may be includible in D's estate for tax purposes. None of these items are included in D's inventory.

20.01 Did D or D's spouse ever do any of the acts described below? ☐ Yes ☐ No

Review each item, check applicable answer, and complete blanks for D and for D's spouse.

		D	D's Spouse
20.02	File a gift tax return?	☐ Yes ☐ No	☐ Yes ☐ No
20.03	If Item 20.02 is yes, give IRS office where each was filed, D's address when filed, and name of D's spouse at time of gift. Period(s) covered _____ IRS office where filed _____ D's address _____ D's city, state, zip _____ D's spouse _____		
20.04	Amount of "adjusted taxable gifts" made on or after January 1, 1977	_____	_____
20.05	Amount of $30,000 specific lifetime gift tax exemption used *before* September 8, 1976	_____	_____
20.06	Amount of $30,000 specific lifetime gift tax exemption used between September 9, 1976, and December 31, 1976 (both dates inclusive)	_____	_____
20.07	Amount of unified credit used on or after January 1, 1977	_____	_____

20.08 Amount of gift taxes paid on gifts made by D or D's spouse within three years of D's death

Dates	Amount	By Whom Paid
_____	_____	☐ D ☐ D's Spouse
_____	_____	☐ D ☐ D's Spouse
_____	_____	☐ D ☐ D's Spouse
	_____	Total amount

20.09	Total gift taxes payable for gifts made after December 31, 1976	_____	_____
20.10	Did D or D's spouse have a duty to file a gift tax return for any gifts previously unreported?	☐ Yes ☐ No	☐ Yes ☐ No

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20.11 If Item 20.10 is yes, complete the following for each previously unreported gift:

Donee's name _____

Address _____

City, state, zip _____

Social Security number _____

Description of gift _____

Date of gift _____

Donor's adjusted basis _____

Value at date of gift _____

Value at date of D's death _____

20.12 Aggregate amount of gift tax marital deduction allowed to D with respect to gifts made between January 1, 1977, and December 31, 1981 (both dates inclusive) _____

20.13 (Reserved)

20.14 Create a trust during lifetime? ☐ Yes ☐ No ☐ Yes ☐ No

20.15 If yes, was trust in existence at D's death? ☐ Yes ☐ No ☐ Yes ☐ No

20.16 Retain the power to remove a trustee or to appoint D as trustee? ☐ Yes ☐ No ☐ Yes ☐ No

If yes, give details, including information to be used on estate tax return

_____

_____

20.17 (Reserved)

20.18 Make a transfer to take effect at D's death where D retained a reversionary interest valued at more than 5 percent of the fair market value of the property? If yes, give details, including information to be used on estate tax return _____ ☐ Yes ☐ No ☐ Yes ☐ No

_____

_____

20.19 Make a transfer where D retained possession or enjoyment of or income from the transferred property? If yes, give details, including information to be used on estate tax return _____ ☐ Yes ☐ No ☐ Yes ☐ No

_____

_____

20.20 Convey title to real estate that D continued to occupy until D's death? If yes, give details, including information to be used on estate tax return, including full fair market value on date of D's death _____ ☐ Yes ☐ No ☐ Yes ☐ No

_____

_____

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20.21 Possess a general power of appointment? ☐ Yes ☐ No ☐ Yes ☐ No

20.22 If yes, give date created. _____ _____

20.23 Transfer property by the testamentary exercise of a general power of appointment? ☐ Yes ☐ No ☐ Yes ☐ No

20.24 Otherwise exercise or release a general power of appointment? ☐ Yes ☐ No ☐ Yes ☐ No

20.25 If Item 20.21 is yes, provide details here. If Item 20.23 or Item 20.24 is yes, give date(s) of exercise or release and describe and give value of property for which D possessed a general power of appointment on date of D's death, including information to be used on estate tax return

_____ _____ _____

_____ _____ _____

_____ _____ _____

20.26 Make a transfer where D retained the right to designate the person who could possess or enjoy property? If yes, give details, including information to be used on estate tax return _____ ☐ Yes ☐ No ☐ Yes ☐ No

_____

_____

20.27 Make a transfer where D had the right to alter the enjoyment of the transferred property? If yes, give details, including information to be used on estate tax return _____ ☐ Yes ☐ No ☐ Yes ☐ No

_____

_____

20.28 Relinquish a power to alter a transfer previously made by D within three years immediately preceding D's death? If yes, give details, including information to be used on estate tax return _____ ☐ Yes ☐ No ☐ Yes ☐ No

_____

_____

20.29 Have a life estate in any property? If yes, and if such interest was retained by D at the time of a transfer, give details, including information to be used on estate tax return _____ ☐ Yes ☐ No ☐ Yes ☐ No

_____

_____

20.30 Have a reversionary interest in any property or in a trust? If yes, give details, including name of transferee, date of transfer, form of transfer, description of the property, value of reversionary interest at date of D's death, and other details to be used on estate tax return _____ ☐ Yes ☐ No ☐ Yes ☐ No

_____

_____

20.31 (Reserved)

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20.32 Have a remainder interest in any property or trust? If yes, give details, including information and value to be used on estate tax return ___ ☐ Yes ☐ No ☐ Yes ☐ No

_____

_____

20.33 Serve as executor or administrator of any estate? ☐ Yes ☐ No ☐ Yes ☐ No

20.34 Serve as a guardian? ☐ Yes ☐ No ☐ Yes ☐ No

20.35 Act as trustee under any trust in existence at the time of D's death? ☐ Yes ☐ No ☐ Yes ☐ No

20.36 If Item 20.35 is yes, did D or D's spouse have a power to alter, amend, revoke, or terminate the enjoyment by a beneficiary of any interest in a trust, whether or not D created such interest? If yes, give details, including information and value to be used on estate tax return ___ ☐ Yes ☐ No ☐ Yes ☐ No

_____

_____

Complete Items 20.36A through 20.36C for each current or former (co)trustee of the trust.

		(A)	(B)	(C)
20.36A	Name	_____	_____	_____
20.36B	Address	_____	_____	_____
20.36C	City, state, zip	_____	_____	_____

Complete Items 20.36D through 20.36F for each potential successor (co)trustee of the trust.

		(A)	(B)	(C)
20.36D	Name	_____	_____	_____
20.36E	Address	_____	_____	_____
20.36F	City, state, zip	_____	_____	_____

Complete Items 20.36G and 20.36H for the trust.

20.36G Trust Name _____

20.36H Style and Date of Original Trust Instrument _____

Style and Date of Second Trust Instrument _____

Style and Date of Third Trust Instrument _____

Style and Date of Fourth Trust Instrument _____

Style and Date of Fifth Trust Instrument _____

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		D	D's Spouse
20.37	At time of D's death have a power or beneficial interest not previously described in a trust not created by D? If yes, give details, including information and value to be used on estate tax return _____ _____	☐ Yes ☐ No	☐ Yes ☐ No
20.38	Serve as custodian under a Uniform Gifts to Minors Act?	☐ Yes ☐ No	☐ Yes ☐ No
20.39	If Item 20.38 is yes, was custodianship funded by someone other than D or D's spouse? If no, give details, including information and value to be used on estate tax return _____ _____ _____	☐ Yes ☐ No	☐ Yes ☐ No
20.40	Make any transfer of any life insurance policy within three years of D's death? If yes, give details, including information to be used on estate tax return _____ _____ _____	☐ Yes ☐ No	☐ Yes ☐ No
20.41	Partition their community property? If yes, give details, including information to be used on estate tax return _____ _____ _____	☐ Yes ☐ No	☐ Yes ☐ No
20.42	Did D pay any premium on insurance on D's life within three years of D's death even though D held no incidents of ownership?	☐ Yes ☐ No	
20.43	Within three years of D's death, did D transfer an interest in a corporation, following which D then had 20 percent or more of the combined voting strength?	☐ Yes ☐ No	
20.44	If Item 20.43 is yes, did D retain or have any voting rights to that stock? If yes, give details, including information to be used on estate tax return, including full value of the stock on the date of D's death_____ _____ _____	☐ Yes ☐ No	
20.45	Were any of D's joint bank accounts closed within three years of D's death?	☐ Yes ☐ No	
20.46	As a result of D's death, will D be a "deemed transferor" for purposes of generation-skipping transfer tax? If yes, give details, including information to be used on estate tax return _____ _____ _____	☐ Yes ☐ No	

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20.47 Did D make any transfers where possession or enjoyment did not take effect until D's death? If yes, give details, including information to be used on estate tax return _____ ☐ Yes ☐ No

_____

_____

20.48 Was D the beneficiary of a trust funded with qualified terminable interest property ("Q-TIP")? If yes, obtain copies of the instrument creating that trust and of its current financial statements, and give details, including information to be used on estate tax return _____ ☐ Yes ☐ No

_____

_____

20.49 Does D's estate contain any Section 2044 property ("Q-TIP")? If yes, give details, including information to be used on estate tax return __ ☐ Yes ☐ No

_____

_____

20.50 Total amount of taxable gifts made on or after January 1, 1977, that are included in D's gross estate

_____

20.51 Total amount of taxable gifts made on or after January 1, 1977, that qualify for special treatment as split gifts _____

20.52 Total lifetime taxable gifts made by D after June 6, 1932 _____

20.53 Total taxable gifts made by D before 1977 _____

20.54 Amount of gift taxes payable on total lifetime taxable gifts made by D, assuming use of rates in year of D's death _____

20.55 Amount of gift taxes payable on total taxable gifts made by D before 1977, assuming use of rates in year of D's death _____

20.56 Gift taxes payable by D on total amount of taxable gifts made on or after January 1, 1977, that qualify for special treatment as split gifts _____

20.57 Gift taxes payable by D's spouse on split gifts if D was the donor spouse and the gifts were included in D's gross estate _____

20.58 Adjustment to unified credit (Item 20.06 multiplied by 20%) _____

20.59 D's life expectancy on date of D's death _____

20.60 - 20.64 (Reserved)

20.65 Did D own any property as a joint tenant with someone other than D's spouse in which the full value of the property will be reduced to reflect the interest of the other joint tenant(s)? ☐ Yes ☐ No

20.66 Amount of credit for all state death taxes _____

20.67 Percentage of credit allowed for year of D's death to offset federal estate tax _____

20.68 Item 20.66 times Item 20.67 _____

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20.69 - 20.75 (Reserved)

20.76 Is any *unrelated* beneficiary more than 37½ years younger than D? ☐ Yes ☐ No

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21.0 DEBTS AND CLAIMS

21.01 At date of death, did D owe any income taxes, debts, accrued utility charges, outstanding but unpaid charge purchases, support obligations, or charitable pledges, or had D guaranteed debts or loans of another? ☐ Yes ☐ No If no, skip the rest of this Section 21.0.

21.02 Will D owe income taxes for income in year of death or prior years? ☐ Yes ☐ No If yes, list below as a debt.

21.03 Does D have an obligation to pay support to a former spouse or children that continues beyond D's death and is binding on D's estate? ☐ Yes ☐ No If yes, list below as a debt.

21.04 Was D a guarantor of loan(s) made to others? ☐ Yes ☐ No If yes, give details, including identity and financial status of principal debtor and description of collateral pledged by D _____

_____

_____

21.05 List all debts owed by D at date of death. If none, see Item 6.15. Be sure to include here those amounts shown at Item 26.10 and Items 26.41 through 26.52. Regardless, list all debit and credit cards, even those with a zero balance.

Enter "S" in right column if debt is secured by lien on any collateral and list that collateral, referring to the item number in this MIL.

Enter "NPL" in right column if D was not personally liable for the payment of the debt.

Enter "D" in right column if debt is (a) business expense, (b) taxes, (c) alimony, (d) an expense for the production of income, (e) an expense for the maintenance of income-producing property, or (f) an expense for determining any tax liability.

If the debt is for the unpaid purchase price of any asset, provide a cross-reference to that asset, referring to the item number in this MIL.

Do not reduce the amount of the debt or claim by 1/2 if it was a community debt, but include the full amount. Attach separate sheets for additional items.

	Name and Address of Creditor or Charity and D's Account Number	Note or Account	Separate or Community	Amount of Debt or Pledge	Accrued Interest at D's Death	S/NPL/D
21.06	_____					
	_____					
	_____					
	_____	☐ N ☐ A	☐ S ☐ C	_____	_____	_____
21.07	_____					
	_____					
	_____					
	_____	☐ N ☐ A	☐ S ☐ C	_____	_____	_____

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21.08 _____

_____

_____

_____ ☐ N ☐ A ☐ S ☐ C _____ _____ _____

21.09 _____

_____

_____

_____ ☐ N ☐ A ☐ S ☐ C _____ _____ _____

21.10 _____

_____

_____

_____ ☐ N ☐ A ☐ S ☐ C _____ _____ _____

21.11 _____

_____

_____

_____ ☐ N ☐ A ☐ S ☐ C _____ _____ _____

21.12 _____

_____

_____

_____ ☐ N ☐ A ☐ S ☐ C _____ _____ _____

21.13 _____

_____

_____

_____ ☐ N ☐ A ☐ S ☐ C _____ _____ _____

21.14 _____

_____

_____

_____ ☐ N ☐ A ☐ S ☐ C _____ _____ _____

21.15 Are any of these debts barred by applicable statute of limitations or statute of frauds? ☐ Yes ☐ No
If yes, give details _____

_____

_____

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21.16 Are any of these liabilities only contingent liabilities? ☐ Yes ☐ No If yes, give details _____

_____

_____

21.17 (Reserved)

21.18 Will all debts other than those secured by liens on real estate be paid before filing of the will for probate? ☐ Yes ☐ No If yes, see Item 6.15.

Complete Items 21.19 through 21.25 for **newspaper** in which notices and/or citations are to be published.

21.19 Name _____

21.20 Address _____

21.21 City, state, zip _____

21.22 Phone number _____

21.23 Publication deadline _____

21.24 Date of publication _____

21.25 County of publication _____

21.26 Did D have accidental death benefits from credit card companies (e.g., American Express) or travel clubs? ☐ Yes ☐ No If yes, complete Section 13.0 for benefits from each company.

21.27 Did D have preauthorized drafts (e.g., to pay insurance premiums) that were automatically withdrawn from D's checking accounts? ☐ Yes ☐ No If yes, give details _____

_____

_____

21.28 If any debts are disputed, contested, or the subject of litigation, give details _____

_____

_____

21.29 For all notes payable, give details, including name of payee, face and unpaid balance at date of D's death, date and term of note, interest rate, date to which interest was paid before death, accrued interest on date of D's death, and exact nature of the claim _____

_____

_____

_____

_____

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21.30 If D is liable for debts of another (by guaranty, joint and several liability, or otherwise), give details, including name and financial responsibility of co-obligor _____

_____

_____

21.31 Did the community estate of D and D's spouse have a claim for reimbursement against D's separate estate? ☐ Yes ☐ No If yes, give details and enter description (in format to be used on probate documents or estate tax return) _____

_____

_____

21.32 Did D's spouse's separate estate have a claim for reimbursement against the community estate of D and D's spouse? ☐ Yes ☐ No If yes, give details and enter description (in format to be used on probate documents or estate tax return) _____

_____

_____

21.33 Did D's spouse's separate estate have a claim for reimbursement against D's separate estate? ☐ Yes ☐ No If yes, give details and enter description (in format to be used on probate documents or estate tax return) _____

_____

_____

21.34 Did D apply for and receive Medicaid benefits on or after March 1, 2005? ☐ Yes ☐ No If yes, complete Item 21.35.

21.35 Has Texas Department of Aging and Disability Services waived any claim against D's estate under MERP? ☐ Yes ☐ No If no, complete Item 21.36.

21.36 Amount of MERP claim _____

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22.0 FUNERAL EXPENSES

		Payee's Name and Address	Amount
22.01	Funeral home	_____	$ _____
		_____	
22.02	Burial plot and other cemetery expense	_____	$ _____
		_____	$ _____
22.03	Monument, tombstone, mausoleum	_____	$ _____
22.04	Floral offering	_____	$ _____
22.05	Religious services	_____	$ _____
22.06	Long-distance calls	_____	$ _____
22.07	Transportation costs	_____	$ _____
22.08	Visitation	_____	$ _____
22.09	Other (specify)	_____	$ _____
	_____	_____	$ _____
	_____	_____	$ _____
	_____	_____	$ _____
		Total	$ _____

		Payor's Name and Address	Amount
22.10	Reimbursements (specify)	_____	$ _____
	_____	_____	$ _____
	_____	_____	$ _____
	_____	_____	$ _____
		Total	$ _____

NOTE: **SOCIAL SECURITY LUMP-SUM BENEFIT PAYABLE TO A SURVIVING SPOUSE DOES NOT REDUCE THE DEDUCTION FOR FUNERAL EXPENSES.**

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23.0 EXPENSES OF LAST ILLNESS

This section is only for those expenses of last illness that were unpaid at D's death.

Do not reduce the amount of the expense by 1/2 if it was a community expense, but include the full amount.

Enter "E" in right column if expense is to be deducted on D's federal estate tax return.

Enter "I" in right column if expense is to be deducted on D's income tax return.

		Payee's Name and Address	Amount	E/I
23.01	Physicians	_____	$ _____	____
		_____	$ _____	____
		_____	$ _____	____
23.02	Hospitals	_____	$ _____	____
		_____	$ _____	____
		_____	$ _____	____
23.03	Nurses	_____	$ _____	____
		_____	$ _____	____
		_____	$ _____	____
23.04	Other (specify)	_____	$ _____	____
	_____	_____	$ _____	____
	_____	_____	$ _____	____
		Total	$ _____	

		Payor's Name and Address	Amount
23.05	Reimbursements from insurance or Medicare (specify)	_____	$ _____
	_____	_____	$ _____
	_____	_____	$ _____
		Total	$ _____

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24.0 PREVIOUSLY TAXED PROPERTY

24.01 Will a federal estate tax return be due for D's estate? ☐ Yes ☐ No If no, skip this Section 24.0. If yes, did D inherit any property within ten years before or two years after D's death from another estate in which it was taxed? ☐ Yes ☐ No If no, skip this Section 24.0. If yes, use a separate page for each estate, and complete this section.

24.02 Name of person (transferor) from whom D inherited _____

24.03 Date of transferor's death _____

24.04 Social Security number _____

24.05 Residence of transferor on date at Item 24.03 _____

24.06 Probate cause number _____

24.07 Court _____

24.08 Type of property _____

_____

_____

_____

24.09 IRS office where transferor's federal estate tax return was filed _____

24.10 Gross value of all of this property when inherited by D _____

24.11 Were special use valuation adjustments made for transferor's estate on or before two years following D's death? ☐ Yes ☐ No If yes, give details _____

_____

_____

_____

24.12 Were generation-skipping transfer adjustments made for transferor's estate? ☐ Yes ☐ No If yes, give details _____

_____

24.13 Amount of marital deduction applicable to this property as shown on transferor's IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return _____

24.14 Total death taxes paid with respect to this property _____

24.15 Total amount of encumbrances on this property at time that D inherited it _____

24.16 Total amount of other obligations allocable to this property at time that D inherited it _____

_____

24.17 - 24.19 (Reserved)

24.20 Amount of transferor's taxable estate _____

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24.21 Total amount of federal estate tax paid for transferor's estate after all credits _____

_____

24.22 Total amount of state death taxes paid for transferor's estate _____

24.23 Total amount of foreign death taxes paid for transferor's estate _____

24.24 Total amount of other death taxes paid for transferor's estate _____

24.25 Amount of credit for gift tax paid on transferor's estate _____

24.26 Amount of credit in transferor's estate for previously taxed property in transferor's estate _____

_____

24.27 Amount of additional federal estate tax paid due to adjustment for special use valuation in transferor's estate _____

24.28 Amount of generation-skipping transfer tax paid for transferor's estate _____

24.29 Adjusted amount of federal estate tax paid by transferor's estate (Add Items 24.21, 24.27, and 24.28)

_____

24.30 Amount of increase in transferor's gross estate due to adjustment for special use valuation in transferor's estate _____

24.31 Amount of increase in transferor's gross estate due to inclusion of amount of generation-skipping transfer

_____

24.32 Adjusted amount of transferor's gross estate (Add Items 24.20, 24.30, and 24.31) _____

24.33 Amount of increase in gross value of property D inherited from transferor due to adjustment for special use valuation in transferor's estate _____

24.34 Adjusted amount of gross value of property D inherited from transferor (Add Items 24.10 and 24.33)

_____

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25.0 EXPENSES OF ADMINISTRATION

Write "E" in right margin if expense is to be deducted on D's federal estate tax return.

Write "I" in right margin if expense is to be deducted on D's income tax return.

Amount

25.01 Executor's fees: ☐ Paid ☐ Agreed upon ☐ Estimated $ _____

A. Statutory amount $ _____

B. Extraordinary amount $ _____

C. Name(s) and address(es) to whom paid _____

_____

_____

25.02 Attorney's fees for this office: ☐ Paid ☐ Agreed upon ☐ Estimated $ _____

A. Fixed fee of $ _____

B. Fixed fee of _____%

C. Hourly at $_____ per hour for attorney time and $_____ per hour for staff time

D. Amount of initial deposit $ _____

E. Other _____ $ _____

F. Name(s) and address(es) to whom paid _____

_____

_____

25.03 Additional professional fees

A. Ancillary executor/administrator $ _____

B. Attorney for ancillary executor/administrator $ _____

C. Tax counsel $ _____

D. Other _____ $ _____

E. Name(s) and address(es) to whom paid _____

_____

_____

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25.04 Accountant's fees: ☐ Paid ☐ Agreed upon ☐ Estimated $ _____

Name(s) and address(es) to whom paid _____

_____

_____

25.05 Appraisal fees: ☐ Paid ☐ Agreed upon ☐ Estimated $ _____

Name(s) and address(es) to whom paid_____

_____

_____

25.06 Court costs $ _____

25.07 Publishing notice to creditors $ _____

Name(s) and address(es) to whom paid _____

_____

_____

25.08 Recording charges $ _____

25.09 Death certificates $ _____

25.10 Bond premiums $ _____

Name(s) and address(es) to whom paid_____

_____

_____

25.11 Copying charges $ _____

25.12 Expenses of maintaining estate property (explain and give name(s) and address(es) to whom paid) _____ $ _____

_____ $ _____

_____ $ _____

25.13 Stock transfer charges $ _____

25.14 Certified copies $ _____

25.15 Letters testamentary or letters of administration $ _____

25.16 Long-distance charges $ _____

25.17 Travel expense $ _____

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25.18 Other (specify and give name(s) and address(es) to whom paid)

_____ $ _____

_____ $ _____

25.19 Expenses incurred during administration in maintaining real estate owned by D (specify and provide details)

_____ $ _____

_____ $ _____

Total $ _____

25.20 - 25.29 (Reserved)

25.30 Are there any expenses incurred in administering property not subject to claims? ☐ Yes ☐ No If yes, give details and amounts _____

_____

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26.0 TAXES FOR D AND FOR D'S ESTATE

26.01 Did D file an income tax return for each of the three years preceding D's death? ☐ Yes ☐ No If no, explain _____

_____

26.02 Do we need to order copies of D's income tax returns for prior years? ☐ Yes ☐ No If yes, which years? _____

26.03 Did D or D's spouse pay estimated income tax for year of D's death? ☐ Yes ☐ No If yes, include aggregate amount paid at date of D's death in Item 12.52.

26.04 Did D or D's spouse pay estimated income tax for year before D's death? ☐ Yes ☐ No If yes, include aggregate amount paid in Item 12.51.

26.05 Will income tax return be due for D for the year before D's death or for the part of the year of D's death? ☐ Yes ☐ No

26.06 If yes, who will prepare? _____

_____

26.07 Is an income tax refund due to D or D's spouse? ☐ Yes ☐ No

26.08 If yes, give year(s) and amount(s) due, and complete Items 12.53 and 18.197 _____

26.09 Are additional income taxes due? ☐ Yes ☐ No

26.10 If yes, give year(s) and amount(s) due, including penalties and interest, and include in Section 21.0 __

_____

26.11 First date on which D's estate will pay wages _____

26.12 Number of employees of estate at time of filing application for employer identification number:

A. Agricultural _____

B. Household _____

C. Other _____

26.13 Employer identification number for estate _____

26.14 End of fiscal year of estate _____

26.15 Will income tax return be due for estate? ☐ Yes ☐ No If yes, complete Items 26.16 through 26.18.

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		First Year	Second Year	Third Year	Fourth Year
26.16	Due date	_____	_____	_____	_____
26.17	Tax to be paid in installments?	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No

26.18 Will this firm prepare income tax returns? ☐ Yes ☐ No If no, who will? _____

_____

_____

26.19 - 26.20 (Reserved)

26.21 Applicable exclusion amount for year of D's death _____

26.22 Alternate valuation date (six months from date of D's death) _____

26.23 Must a United States Estate (and Generation-Skipping Transfer) Tax Return be filed? ☐ Yes ☐ No

26.24 Will this firm prepare United States Estate (and Generation-Skipping Transfer) Tax Return? ☐ Yes ☐ No ☐ N/A If no, who will? _____

26.25 (Reserved)

26.26 Will alternate valuation be used for federal estate tax? ☐ Yes ☐ No

26.27 Will prompt determination of federal estate tax liability be requested? ☐ Yes ☐ No

26.28 Due date for IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return (nine months from date of D's death) _____

26.29 Extended due date for federal estate tax return _____

A. Date requested (not later than six months after 26.28) _____

B. Automatic? ☐ Yes ☐ No

26.30 Will federal estate tax be due? ☐ Yes ☐ No

26.30A If yes, total amount estimated to be due _____

26.31 Will estate elect to pay federal estate tax in installments? ☐ Yes ☐ No

26.32 Does D's estate contain any reversionary or remainder interests? ☐ Yes ☐ No If yes, will estate elect to postpone federal estate taxes attributable to those interests? ☐ Yes ☐ No

26.33 Will estate request extension of time to pay federal estate taxes based on reasonable cause? ☐ Yes ☐ No

26.34 Will estate request extension of time to pay federal estate and generation-skipping transfer taxes for hardship reasons? ☐ Yes ☐ No If yes, specify reasons and give amount of such estimated taxes to be due

_____

_____

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26.35 If estate does not have enough liquidity to pay taxes in full, enter amount of estimated cash shortage

_____

26.36 (Reserved)

26.37 Does D or D's spouse own any foreign property interests? ☐ Yes ☐ No

26.38 Name of country _____

26.39 What was foreign exchange rate of that country's currency on date of D's death? _____ on alternate valuation date? _____

26.40 Will inheritance, estate, or succession tax returns be filed in other states or foreign countries? ☐ Yes ☐ No If yes, who will prepare? _____

26.41 Will inheritance, estate, or succession taxes be due to another state or to a foreign country? ☐ Yes ☐ No If yes, who will prepare? Also specify payment dates, state, country, and amount to each (express amounts in U.S. and foreign currency) _____

_____

_____

If to a foreign country, give name of death tax(es) _____ and specify title of treaty or statute _____, and if any refund has been claimed or allowed, provide details

_____

_____

TOTAL AD VALOREM TAXES PAYABLE FOR CALENDAR YEAR OF D'S DEATH UNLESS PAID BEFORE D'S DEATH:

26.42 D's separate real estate $_____. Include in Section 21.0.

26.43 D's community real estate $_____. Include in Section 21.0.

26.44 D's separate personal property $_____. Include in Section 21.0.

26.45 D's community personal property $_____. Include in Section 21.0.

TOTAL DELINQUENT AD VALOREM TAXES DUE AND UNPAID AT DATE OF D'S DEATH:

26.46 D's separate real estate $_____. Include in Section 21.0.

26.47 D's community real estate $_____. Include in Section 21.0.

26.48 D's separate personal property $_____. Include in Section 21.0.

26.49 D's community personal property $_____. Include in Section 21.0.

TOTAL OTHER TAXES DUE AND UNPAID AT DATE OF D'S DEATH:

26.50 Sales tax $_____. Include in Section 21.0.

26.51 Payroll taxes due for D's employees $_____. Include in Section 21.0.

26.52 Gift taxes $_____. Include in Section 21.0.

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26.53 Amount of federal estate tax paid before filing United States Estate (and Generation-Skipping Transfer) Tax Return _____

26.54 (Reserved)

26.55 Amount of federal estate taxes payable out of property interests passing to D's surviving spouse _____

_____

26.56 Other death taxes payable out of property interests passing to D's surviving spouse _____

26.57 Federal and state generation-skipping taxes payable out of property interests passing to D's surviving spouse _____

26.58 Federal estate tax payable out of any bequest to charity _____

_____

26.59 Other death taxes payable out of any bequest to charity _____

_____

26.60 Federal and state generation-skipping transfer taxes payable out of any bequest to charity _____

26.61 Total estate, inheritance, legacy, and succession taxes paid to states and foreign countries _____

26.62 - 26.69 (Reserved)

26.70 Description to be used in annual and final accountings as to amount of taxes paid, date paid, and governmental agency to which paid _____

_____

_____

_____

_____

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TEXAS PROBATE SYSTEM

CHECKPLAN

NAME OF DECEDENT (D)_____

Note: **To the extent that the client elects to be responsible for any of these steps, the client MUST furnish copies of all outgoing and incoming correspondence and documents. Although these steps are listed in approximate chronological order, it is not necessary to follow them in the exact order set forth in this Checkplan.**

LEGEND: NA-NOT APPLICABLE L-LAWYER S-SUPPORT STAFF

INITIAL CONTACT

	NA	L	S	DATE	INITIALS
1. Do the following upon **initial contact** and learning of D's death:					
a. Determine immediate needs concerning—					
(1) Performance of an autopsy					
(2) Donation of body and/or organs for medical use (check D's driver's license and with Living Bank)					
(3) Disposition of body					
(4) Special burial, cremation, or donation instructions					
(5) Selection of funeral home					
(6) Funeral arrangements					
(7) Information to complete death certificate and prepare obituary notice. Be particularly careful concerning exact dates of death and birth. See Special Instruction 96—Identity Theft concerning information for obituaries.					
(8) Pallbearers					
(9) Fraternal organizations (such as Masons, K. of C., VFW) to be contacted					
(10) Care of minor or incapacitated children					
(11) Flag from VA if D was a veteran					
(12) Notification of clergyman, friends, relatives, and business associates					
(13) Care of livestock, pets, plants, and other perishable property					
(14) Security at home of D					

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	NA	L	S	DATE	INITIALS
(15) Security at homes of D's relatives					
(16) Termination of home deliveries					
(17) Continued employment and compensation of appropriate household and business employees					
(18) Notification of professional organizations and alumni associations					
b. Advise family members to safeguard D's residence and to keep accurate records of all expenses incurred for the funeral, in notifying friends and relatives, and for other immediate arrangements.					
c. Recommend a thorough search of D's home and place of business for hidden assets.					
d. Recommend a thorough search of D's home and place of business for credentials to digital assets, including user IDs, passwords, and challenge questions. See Special Instruction 83—Digital Assets.					
e. Explain the Probate Information List (Form 1) (see Special Instruction 1—Probate Information List for explanation of Form 1).					
f. Make a prompt appointment to meet with client and members of the family.					
g. Consider sending flowers, contributions, or letters of sympathy.					
h. Open office file.					
i. Prepare and send Letter 1 to the person who will be responsible for gathering the documents and information together with a copy of the Probate Information List (Form 1).					

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INITIAL INTERVIEW

	NA	L	S	DATE	INITIALS
2. Plan for the **initial interview**. See Special Instruction 2—Ethics and Attorney's Fees. Immediately before that interview, gather all the following from your files and have available:					
a. D's original will and all codicil(s) or file copies if originals are not available					
b. Memoranda for disposition of personal effects					
c. All open and closed files for D's matters handled by your office, including spouse's will file					
d. Texas Probate System					
3. Do the following at initial interview:					
a. Review Probate Information List (Form 1) and items brought by client, discuss all items with client, obtain as much information as possible regarding D and D's assets, and obtain originals or copies of each of the following:					
(1) D's death certificate (one certified copy for each policy of insurance on D's life, plus one additional certified copy for the file). Confirm all information on it, particularly the exact dates of death and birth.					
(2) D's obituary notice and any newspaper articles if D's death was due to other than natural causes					
(3) D's military discharge papers and other documents relating to military or veterans (VA) benefits being received by D or D's spouse or payable because of D's death					
(4) Financial statements and tax returns of closely held businesses and partnerships for five years immediately before D's death and other items relating to value of and dividends and income from them					
(5) Most recent financial statements for D and D's spouse					
(6) Income tax returns (federal, state, and city) for last three years for D and D's spouse					
(7) Declaration of estimated tax for D and D's spouse for year before and year of D's death					
(8) All gift tax returns ever filed by D or D's spouse					
(9) All trusts (especially living trusts) created by or for the benefit of D or D's spouse and current inventory of each trust					

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	NA	L	S	DATE	INITIALS
(10) Wills, inheritance tax returns, estate tax returns, and audit adjustments for estates of persons from whom D inherited property within ten years before D's death					
(11) All casualty insurance policies on which any personal property is separately scheduled (listed) and valued					
(12) Documents relating to Social Security benefits being received by or payable to D or D's spouse or because of D's death					
(13) Documents relating to veterans benefits being received by or payable to D or D's spouse or because of D's death					
(14) Documents relating to railroad retirement benefits being received by or payable to D or D's spouse or because of D's death					
(15) Will and codicil(s) of surviving spouse					
(16) Other agreements to which D or D's spouse was a party, such as—					
(a) Marital, premarital, partition, and survivorship agreements between D and D's present spouse					
(b) Agreements incident to divorce, other settlement agreements, divorce decrees, and other agreements relating to D's prior marriages					
(c) Partnership agreements					
(d) Buy-sell agreements					
(e) Employment agreements					
(f) Stock purchase (buy-sell) agreements					
(g) Stock option agreements					
(h) Pensions, including information regarding survivorship rights					
(i) Profit-sharing plans					
(j) Annuities					
(k) Franchises					
(l) Patents					
(m) Copyrights					
(n) Leases (apartment, office, mineral, and other)					
(o) Oil and gas division orders					
(p) Notes receivable					

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	NA	L	S	DATE	INITIALS
(q) Notes payable					
(r) Guaranty agreements					
(s) Powers of attorney for D and D's spouse					
(t) Safekeeping and agency accounts					
(u) Policies insuring life of D or D's spouse					
b. Determine the identity, address, Social Security number, marital status, citizenship, and relationship to D, of D's spouse and all of D's heirs, legatees, other beneficiaries who are not heirs, and all others who are necessary or proper parties to the probate proceedings.					
c. Determine if there may be any alleged illegitimate children and whether they or any other person had been adopted into or out of D's family.					
d. Determine if D left a memorandum concerning the disposition of personal property and take appropriate action.					
e. Review D's **income tax returns for last three years** to look for dividends, interest, annuities, rents, royalties, and other investment income from sources you cannot account for (see Special Instruction 3—Income Tax Returns Can Lead You to Assets and Liabilities).					
f. If D's original will and codicil(s) are not produced, determine if there is a **safe deposit box** and, if so, see Special Instruction 4—Safe Deposit Boxes and follow procedure set forth in Item 6 of this Checkplan.					
g. Review D's **will and codicil(s)**. See Special Instruction 36—Execution of Wills and Special Instruction 38—Reading the Will.					
(1) Read will and codicil(s) and explain plan of disposition of D's estate. *Note:* The unlimited marital deduction may not be available if D's will was executed before September 13, 1981, or if D's surviving spouse is not a U.S. citizen (see Special Instruction 42—The Marital Deduction).					
(a) Determine if there is a gift to an attorney who prepared or supervised the preparation of the will and/or codicil (or to the attorney's heir or employee) in which the gift is contained.					
(b) If so, and D's will was executed on or after September 1, 1997, review Estates Code, Section 254.003, to determine if gift is void.					

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	NA	L	S	DATE	INITIALS
(c) Determine identity and address for all legatees and devisees.					
(d) Obtain Beneficiary's Waiver of Notice (Form 100) from devisees and legatees who are at the meeting.					
(e) Prepare and enter information on Worksheet 9.					
(f) If independent administration is contemplated, obtain Waiver of Right to Receive Inventory and Appraisement (Form 122) from devisees and legatees who are at the meeting.					
(g) Obtain IRS Form W-9, Request for Taxpayer Identification Number and Certification (FF 15), from all heirs, devisees, legatees, and beneficiaries who are at the meeting.					
(2) Determine capacity and authority of person proposing to retain you. If will names multiple fiduciaries, reach understanding as to your ability to continue to represent one or more of them in the event of a dispute among them.					
(a) Check your records to determine possible **conflicts of interest**.					
(b) Identify your client in case a conflict of interest exists or could arise in the future. *Note:* This System assumes that you will not represent multiple clients but that you will represent one executor or administrator and that there will be no conflicts of interest. In other situations, your engagement agreement must be modified accordingly.					
(c) If an unresolved conflict of interest exists, decline representation, return all items, and confirm in writing that you do not and will not have any responsibility for this estate.					
(3) Determine if D made any **specific bequests**. If so, consider timing of satisfaction of those bequests and take appropriate action including supervision of any selection process. Note that income from specifically devised or bequeathed property is to be distributed with that property.					
(4) Determine whether circumstances exist under which the terms of the will should be modified or reformed in accordance with Estates Code, Sections 255.451 through 255.455, and, if so, take appropriate action. Further coverage is beyond the scope of this System.					
(5) Determine if D directed **perpetual cemetery care**. If so, make appropriate payment.					

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	NA	L	S	DATE	INITIALS
(6) Determine if inheritance and estate **taxes** are **payable** out of the residue of D's estate or if they are apportioned (see Special Instruction 71—Apportionment of Taxes).					
(7) Determine if D provided for any **charitable gifts**. If so, consider timing of satisfaction of those gifts and take appropriate action.					
(8) Determine if D possessed a **general power of appointment** and whether it was exercised.					
(9) Determine if D's death caused D to be treated as a "deemed transferor" for purposes of the **generation-skipping transfer tax**. *Note: Any* coverage of this tax is beyond the scope of this System.					
(10) Determine if there are any libelous statements in D's will.					
(11) Determine if D attempted to make a gift of a copyright to someone other than D's surviving spouse and children.					
(12) If any beneficiary predeceased D, determine whether the gift(s) lapsed or passed to someone else.					
(13) Determine if D's will and codicil(s) disposed of all of D's property and, if not, consider filing Application to Declare Heirship (Form 77) at same time as filing application to probate will and also follow Item 209 of this Checkplan.					
(14) Determine if a marriage of D was dissolved by divorce, annulment, or declaration that the marriage was void and, if so, whether fiduciary appointments, gifts, or beneficiary designations were revoked by operation of law. See Special Instruction 49—Marital Property Rights.					
(15) Determine if a child was born to or adopted by D after the date of the will or codicil(s) and, if so, whether portions thereof were revoked or modified by operation of law.					
(16) Determine if any nominated executor or trustee should do any one or more of the following:					
(a) Decline to serve					
(b) Renounce the appointment					
(c) Waive fees in whole or in part					
(d) Renounce or disclaim one or more powers					

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	NA	L	S	DATE	INITIALS
(17) If D's will grants authority to designate an administrator, determine whether designation should be made. If so, see Special Instruction 95—Authority to Designate Administrator and follow the procedure at Item 46 of this Checkplan.					
(18) Determine if there is a necessity for a proceeding to construe D's will.					
(19) If D was a "personality," review Property Code, Chapter 26, to determine rights to the use of D's name, voice, signature, photograph, or likeness if these rights were not provided for by D's will or during D's lifetime.					
(20) Advise client, all proposed personal representatives, heirs, and beneficiaries of personal liability for distributing assets before satisfying all debts and taxes due to United States.					
(21) Refer to Special Instruction 25—Disclaimers and caution family members, heirs, and beneficiaries about accepting any property or its benefits if that property is being considered for disclaimer.					
(22) Prepare a summary and analysis of D's will.					
h. Determine if there is any likelihood of a will contest.					
i. If D did not have a will, explain Texas laws concerning inheritance rights (see Special Instruction 58—Who Inherits When There Is No Will).					
j. Determine D's ownership in each asset, whether separate or community, and the rights of D to manage the asset during D's life (see Special Instruction 72—Spousal Liability).					
k. Determine nature and extent of rights of reimbursement between D's community and separate estates and whether any of D's separate property assets had been converted from community property (see Special Instruction 49—Marital Property Rights and Special Instruction 76—Reimbursement). *Note:* The existence of such claims may create conflicts of interest both for the lawyer and for a surviving spouse who is serving as D's executor or administrator. Failure to assert a claim may result in taxable gifts to the surviving spouse or to heirs and devisees. A claim for reimbursement against D would be a debt of D's estate. A claim for reimbursement by D would be an asset of D's estate.					
l. Determine if D's surviving spouse and children have any homestead or other rights with respect to the assets (see Special Instruction 49—Marital Property Rights).					

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	NA	L	S	DATE	INITIALS
m. Determine immediate needs of family. If there is an urgent and immediate need for the appointment of a temporary administrator, determine identity, qualification, and priority rights to appointment of proposed temporary administrator (see Special Instruction 5—Qualification of and Priority Rights to Be Appointed Administrator or Executor, Special Instruction 57—Temporary Dependent Administration (TDA), and Item 14 of this Checkplan) and take appropriate action.					
n. Determine if there is perishable property that must be disposed of immediately. If so, review procedures for temporary administration (see Special Instruction 57—Temporary Dependent Administration (TDA)) and, if required, see Item 14 of this Checkplan and take appropriate action.					
o. Determine if there was a contract for the purchase or sale of any real estate pending on date of D's death and, if so, take appropriate action.					
p. Discuss function of probate and give a rough outline of what client should expect.					
q. Inquire about whether any member of the family desires psychotherapeutic consultation and, if so, make proper referral.					
r. Inquire about circumstances surrounding D's death to determine if there may be a cause of action against one or more persons and whether to pursue the claims.					
s. If D died accidently while on a common carrier using a ticket purchased with a credit card, determine if travel accident insurance was provided by the credit card company or is otherwise available.					
t. Determine the extent of contribution to any joint accounts or other property held jointly by D and other joint tenants.					
u. Determine if D and D's spouse entered into a **survivorship agreement** as to one or more accounts or other assets. If so, do the following: (1) Refer to Estates Code, Chapter 112, to determine if the agreement complies with applicable law.					
(2) Take appropriate action to assist in transferring title to all of D's interest to D's spouse. *Note:* If an asset was community property subject to D's sole or joint management, control, and disposition during marriage, it continues to be subject to D's liabilities without regard to the right of survivorship of D's spouse.					
v. Determine if any real estate owned by D was subject to a transfer on death deed.					

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	NA	L	S	DATE	INITIALS
w. Advise donees of tax problems that might arise out of their disposition of assets given to them by D within three years before D's death.					
x. If D received appreciated property by gift within one year before D's death, do the following:					
(1) Determine if donor or donor's spouse will receive that property under D's will or by inheritance from D.					
(2) Advise donor or donor's spouse of the fact that the income tax basis of that property will not be "stepped up" to date-of-death valuation.					
y. Request information from the principal heirs and beneficiaries about their personal income tax brackets.					
z. Give client a list of additional documents and information that will be required. This can be done by properly marking client's copy of the Probate Information List (Form 1), making a copy for your file, and returning the original to client.					
aa. Discuss services and fees.					
(1) See Special Instruction 2—Ethics and Attorney's Fees.					
(2) Describe the services to be performed by your office.					
(3) Emphasize the need for your office (and not the funeral home or insurance agent) to collect life insurance benefits.					
(4) Introduce client and family to your staff member(s) who will be assisting you in this estate, write down name of staff member(s) for your client, and enter the name(s) as Item 5.04 of MIL (Master Information List).					
(5) Reach an agreement to represent your client, how your fee will be determined, and when and by whom it will be paid, and complete Item 25.02 of MIL.					
(6) Obtain a retainer roughly equal to the value of the work to be performed before the first billing.					
(7) Obtain a deposit for costs and expenses.					
(8) Deposit those funds into your ***trust*** account (see Special Instruction 6—Handling Funds Received from Client).					
(9) If you are **not retained**, prepare and send Letter 129 to confirm nonengagement.					
ab. Prepare **Authorization** (Form 2) on attorney's letterhead or plain paper and have a named executor, surviving spouse, major heir, or beneficiary sign copies (ten is a good starting point) and place in file folder entitled "Authorizations."					

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	NA	L	S	DATE	INITIALS
ac. Prepare **Receipt for Documents** (Form 3) for all original documents you retain and explain their use.					
ad. If not already done: (1) Prepare Beneficiary's Waiver of Notice (Form 100) for each devisee or legatee who is present at this initial meeting, have the waivers signed, and place them in file folder entitled "Notice to Beneficiaries."					
(2) Prepare Worksheet 9 and place in file folder entitled "Notice to Beneficiaries."					
(3) Obtain IRS Form W-9, Request for Taxpayer Identification Number and Certification (FF 15), from all heirs, devisees, legatees, and beneficiaries who are at the meeting.					

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DETERMINING PROPER PROBATE PROCEDURE

	NA	L	S	DATE	INITIALS
4. Complete Worksheet 1 to determine proper probate procedure.					
a. If temporary dependent administration (TDA) appears to be the proper procedure, enter "TDA" on cover page of MIL and on Probate Chart (Worksheet 15).					
b. If muniment of title (MT) appears to be the proper procedure, enter "MT" on cover page of MIL and on Probate Chart (Worksheet 15).					
c. If independent administration (IA) appears to be the proper procedure, determine identity and qualification of proposed executor(s) (see Special Instruction 5—Qualification of and Priority Rights to Be Appointed Administrator or Executor) and enter "IA" on cover page of MIL and on Probate Chart (Worksheet 15).					
d. If administration with dependent executor (ADE) appears to be the proper procedure, determine identity and qualification of proposed executor(s) (see Special Instruction 5—Qualification of and Priority Rights to Be Appointed Administrator or Executor) and enter "ADE" on cover page of MIL and on Probate Chart (Worksheet 15).					
e. If administration with will annexed (AWA) appears to be the proper procedure, determine identity and qualification of proposed administrator(s) (see Special Instruction 5—Qualification of and Priority Rights to Be Appointed Administrator or Executor) and enter "AWA" on cover page of MIL and on Probate Chart (Worksheet 15).					
f. If a small estate proceeding (SE) appears to be the proper procedure, enter "SE" on cover page of MIL and on Probate Chart (Worksheet 15).					
g. If a proceeding to declare heirship (PDH) appears to be the proper procedure, enter "PDH" on cover page of MIL and on Probate Chart (Worksheet 15).					
h. If regular dependent administration (RDA) appears to be the proper procedure, determine identity, qualification, and priority rights of proposed administrator(s) (see Special Instruction 5—Qualification of and Priority Rights to Be Appointed Administrator or Executor) and enter "RDA" on cover page of MIL and on Probate Chart (Worksheet 15).					

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	NA	L	S	DATE	INITIALS
i. If independent administration by agreement where D left a will (TBA) appears to be the proper procedure, determine identity and qualification of proposed executor(s) or administrator(s) (see Special Instruction 5—Qualification of and Priority Rights to Be Appointed Administrator or Executor) and enter "TBA" on cover page of MIL and on Probate Chart (Worksheet 15).					
j. If independent administration by agreement where there is no will (IBA) appears to be the proper procedure, determine identity, qualification, and priority rights of proposed administrator(s) (see Special Instruction 5—Qualification of and Priority Rights to Be Appointed Administrator or Executor) and enter "IBA" on cover page of MIL and on Probate Chart (Worksheet 15).					
k. If ancillary probate of will previously probated elsewhere (AP) appears to be the proper procedure, determine identity and qualification of proposed executor(s) (see Special Instruction 5—Qualification of and Priority Rights to Be Appointed Administrator or Executor) and enter "AP" on cover page of MIL and on Probate Chart (Worksheet 15).					
l. If recording of foreign will (RW) appears to be the proper procedure, enter "RW" on cover page of MIL and on Probate Chart (Worksheet 15).					

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AFTER INITIAL INTERVIEW

	NA	L	S	DATE	INITIALS
5. **Immediately after the initial interview**, do the following:					
a. Meet with your staff assistant(s) to:					
(1) Review all items in this Checkplan to get an overview of this estate and to assign responsibilities for future actions.					
(2) Complete Items 1 through 17 of SDL (Significant Date List). Complete as much of MIL as possible from information provided by client. Remember to enter additional information in MIL as it becomes available. Enter estate on Probate Chart (Worksheet 15). As additional information becomes available, remember to enter it on Probate Chart (Worksheet 15).					
(3) Review all items on SDL to become aware of due dates and deadlines and enter critical dates into office reminder system and on Probate Chart (Worksheet 15).					
b. If decedent or decedent's surviving spouse have an interest in an irrevocable trust, see Special Instruction 102—Revocable Trusts.					
c. Write to client to confirm representation and to outline services and fee.					
(1) If IA, prepare and send Letter 3 together with a copy of the Texas Lawyer's Creed (Form 99).					
(2) If AWA or ADE, prepare and send Letter 59 together with a copy of the Texas Lawyer's Creed (Form 99).					
(3) If MT, prepare and send Letter 64 together with a copy of the Texas Lawyer's Creed (Form 99).					
(4) If TDA, prepare and send Letter 74 together with a copy of the Texas Lawyer's Creed (Form 99).					
(5) If RDA, prepare and send Letter 83 together with a copy of the Texas Lawyer's Creed (Form 99).					
(6) If PDH, prepare and send Letter 85 together with a copy of the Texas Lawyer's Creed (Form 99).					
(7) If SE, prepare and send Letter 87 together with a copy of the Texas Lawyer's Creed (Form 99).					
(8) If TBA, prepare and send Letter 106 together with a copy of the Texas Lawyer's Creed (Form 99).					

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	NA	L	S	DATE	INITIALS
(9) If IBA, prepare and send Letter 107 together with a copy of the Texas Lawyer's Creed (Form 99).					
(10) If AP with independent executor(s), prepare and send Letter 114 together with a copy of the Texas Lawyer's Creed (Form 99).					
(11) If AP with dependent executor(s), prepare and send Letter 115 together with a copy of the Texas Lawyer's Creed (Form 99).					
(12) If RW, prepare and send Letter 118 together with a copy of the Texas Lawyer's Creed (Form 99).					
d. Sort and classify loose documents and place into separate file folders for the following categories as applicable:					
(1) Will and Codicil(s)					
(2) Authorizations					
(3) Safe Deposit Box					
(4) Life Insurance					
(5) Death Certificates					
(6) Other Insurance					
(7) Employee and Government Benefits, Annuities, and IRAs					
(8) Court Proceedings					
(9) Letters Testamentary or of Administration					
(10) Real Estate (including mineral and royalty interest, leases, and contracts for deed when purchasing)					
(11) Cash					
(12) Securities					
(13) Income Tax Returns					
(14) Gift Tax Returns					
(15) Other Tax Returns					
(16) Fiduciary Income Tax Returns					
(17) Partnerships, Trusts, and Other Unincorporated Businesses					
(18) Personal Property					
(19) Judgments, Notes, Accounts Receivable, and Contracts for Deed					

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	NA	L	S	DATE	INITIALS
(20) Transportation Equipment					
(21) Trusts					
(22) Inventory					
(23) Funeral Expenses					
(24) Debts, Claims, and Expenses (Paid)					
(25) Debts, Claims, and Expenses (Unpaid)					
(26) Notice to Beneficiaries					
(27) Federal Estate Tax					
(28) Agreements between D and D's Spouse					
(29) Disclaimers					
(30) Miscellaneous					
e. If you have D's original will and codicil(s), make one copy of each for each client plus six file copies of each. *Do not unstaple* pages or remove from manuscript cover ("blue back"). Place file copies in file folder entitled "Will and Codicil(s)."					
f. If not prepared to file application immediately, file will as required by Estates Code, Section 252.201. Prepare Letter 127, enclose original will and codicil(s), and mail or deliver to clerk of probate court that has jurisdiction of D's estate.					
g. If person or entity holding original will refuses to deliver it to the court for probate, do the following:					
(1) Prepare Application for Order to Show Cause Why [**name**] Should Not Deliver Will, Order to Show Cause, and Order to Deliver Will (Form 147) and Letter 138.					
(2) Send Letter 138, enclosing Application for Order to Show Cause Why [**name**] Should Not Deliver Will, Order to Show Cause, and Order to Deliver Will (Form 147), to person or entity holding original will.					
(3) If response is not received by deadline set in Letter 138, file Application for Order to Show Cause Why [**name**] Should Not Deliver Will, Order to Show Cause, and Order to Deliver Will (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.					
h. Notify anyone to whom D had given a power of attorney that the power terminated at D's death and, if necessary, prepare termination of power to be recorded.					
i. If any releases, deeds, or mortgages were unrecorded, consider recording them.					
j. If any tax returns were not produced by client, try to obtain them from D's tax return preparer or consider requesting transcripts or copies from IRS. See Special Instruction 3—Income Tax Returns Can Lead You to Assets and Liabilities and do the following:					
(1) Determine the address used on the return(s), whether D filed separately or jointly for the year(s) in question, and the Internal Revenue Service Center(s) where filed.					
(2) If requesting **transcripts only**, prepare IRS Form 4506-T, Request for Transcript of Tax Return (FF 5). The form is available online at **www.irs.gov** (click on "Order Transcript"). *Note:* If D's surviving spouse was a joint filer with D for the tax year(s) in question, the form may be signed by that spouse. If D was not married and/or if D did not have the same spouse for the tax year(s) in question, the form must be signed by the personal representatives and letters testamentary or letters of administration must be attached. Contact the IRS for alternate instructions if you are trying to obtain transcripts and there is no executor or administrator.					
(a) Arrange for IRS Form 4506-T, Request for Transcript of Tax Return (FF 5), to be signed by proper person.					
(b) If required, obtain letters testamentary or letters of administration. 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.					

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	NA	L	S	DATE	INITIALS
(c) When signed copy of IRS Form 4506-T, Request for Transcript of Tax Return (FF 5), has been returned and all attachments have been obtained, send to the Internal Revenue Service Center. No cover letter is required.					
(d) On receipt of transcripts from the IRS, place in file folder entitled "Income Tax Returns."					
(3) If requesting **copies** of tax forms, prepare IRS Form 4506, Request for Copy of Tax Return (FF 1). The form is available online at **www.irs.gov/pub/irs-pdf/f4506.pdf**. *Note:* If D's surviving spouse was a joint filer with D for the tax year(s) in question, the form may be signed by that spouse. If D was not married and/or if D did not have the same spouse for the tax year(s) in question, the form must be signed by the personal representatives and letters testamentary or letters of administration must be attached. Contact the IRS for alternate instructions if you are trying to obtain copies of returns and there is no executor or administrator.					
(a) Arrange to have IRS Form 4506, Request for Copy of Tax Return (FF 1), signed by proper person.					
(b) If required, obtain letters testamentary or letters of administration. 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.					
(c) When signed copy of IRS Form 4506, Request for Copy of Tax Return (FF 1), has been returned and all attachments have been obtained, determine correct charge, arrange for payment, charge client's account, and send to the Internal Revenue Service Center. No cover letter is required.					
(d) On receipt of copies of tax returns from the IRS, place in file folder entitled "Income Tax Returns."					
k. Review D's check registers for full year before death for record of payments to insurance companies, to brokerage firms, and for rental of safe deposit box and mini-warehouse, and for recurring payments such as mortgages, alimony, and child support.					
l. Determine if there are assets outside Texas that will require ancillary administration or probate proceedings to transfer title.					

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NA	L	S	DATE	INITIALS

m. If D was a lawyer, as shown at MIL1.28, see Special Instruction 78—Death of a Lawyer. Consider filing application to close D's law practice, pursuant to Texas Rules of Disciplinary Procedure, Rule 13.02, before filing probate application. If no Rule 13.02 appointment is made to close D's practice, see Item 95f of this Checkplan.

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SAFE DEPOSIT BOX

	NA	L	S	DATE	INITIALS
6. If D had a **safe deposit box**, do the following:					
a. See Special Instruction 4—Safe Deposit Boxes.					
b. If entry will be attempted without court order, do the following: (1) Locate key. If key cannot be located, arrange with bank or other institution to have locksmith open box.					
(2) Determine if there is a joint holder who can gain access without intervention of personnel of bank or other institution and, if so, have joint holder open box, remove contents, and bring contents to your office. Prepare a Receipt for Documents (Form 3) for all original items you retain.					
(3) Meet with client and make inventory of box.					
(4) Obtain copy of inventory for file and place in file folder entitled "Safe Deposit Box."					
(5) If some desired items cannot be removed without letters testamentary, letters of administration, or a court order, make list of those items desired. After obtaining letters testamentary, letters of administration, or a court order to the bank or other institution, have client open the box, remove those items, and bring them to your office. Make appropriate copies and furnish client with a Receipt for Documents (Form 3) for all original items you retain.					
(6) If box is relinquished, determine if refund is available. If refund is received, list amount as an account receivable in Section 12.0 of MIL.					
(a) If IA, TBA, IBA, ADE, AWA, RDA, AP, or TDA, deposit refund into estate account.					
(b) If MT, SE, or PDH, distribute refund to appropriate heirs and beneficiaries.					
c. If original will, life insurance policies, and other important documents are believed to be in safe deposit box but access is denied except upon court order, do the following: (1) Prepare Motion to Open Safe Deposit Box and to Examine Papers and Order thereon (Form 4). *Note:* In some counties the probate court prefers to use its own printed forms for this procedure. You should investigate your local practice concerning this.					

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	NA	L	S	DATE	INITIALS
(2) Determine amount of filing fee, arrange for payment, and charge to client's account.					
(3) File Motion to Open Safe Deposit Box and to Examine Papers and Order thereon (Form 4) with clerk of court.					
(4) Determine from clerk if this is the docket number of the estate for this purpose only or if it also will be the docket number when the application to commence probate proceedings is filed. If this number will be used for all proceedings, enter it as Item 6.01 of MIL. If not, make no MIL entry at this time.					
(5) Have judge sign the order.					
(6) Obtain signed copy of order.					
(7) Locate key. If key cannot be located, arrange with bank or other institution to have locksmith open box.					
(8) Make appointment with bank or other institution to meet with one of its officers.					
(9) Present order to bank or other institution named as respondent.					
(10) Meet with client and officer and make inventory of box.					
(11) If no further action is required before removing items from box, take those items that are necessary, make appropriate copies, and furnish client with a Receipt for Documents (Form 3) for all original items you retain.					
(12) If D's original will and codicil(s) are located, they are to be delivered to clerk of court. Obtain copies before delivery. *Note:* It is common practice for the attorney to obtain possession of the original will and codicil(s) for use in preparing documents to be filed with the court, and these originals are customarily filed at the same time as (rather than before) filing an application to probate the will.					
(13) If insurance policies are located and are to be delivered to a named beneficiary rather than to you or to your client, take extensive notes to be sure you get at least all the following for each policy: name and address of insurance company, policy number, face amount, type of policy, date of issuance, name of insured, name of beneficiary, name of agent, and premium information.					
(14) When inventory is made, obtain copy for file and place in file folder entitled "Safe Deposit Box."					

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	NA	L	S	DATE	INITIALS
(15) If box is relinquished, determine if refund is available. If refund is received, list amount as an account receivable in Section 12.0 of MIL.					
(a) If IA, TBA, IBA, ADE, AWA, RDA, AP, or TDA, deposit refund into estate account.					
(b) If MT, SE, or PDH, distribute to appropriate heirs and beneficiaries.					
d. Conform file copies of all documents for dates and signature.					

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INSURANCE ON D'S LIFE

	NA	L	S	DATE	INITIALS
7. If there was **insurance on D's life**, do the following:					
a. See Special Instruction 7—Insurance on Decedent's Life.					
b. Obtain unpaid premium notices and all original policies insuring D's life and place in file folder entitled "Life Insurance."					
(1) Recommend immediate payment of overdue premiums on policies insuring D's life.					
(2) Review conditional premium receipts for any recently purchased policies on D's life.					
(3) Review beneficiary designations to ensure compliance with divorce decrees, property settlement agreements, and other contractual obligations.					
(4) Determine actual ownership of each policy.					
(5) Determine source of funds for payment of premiums.					
c. Review the payment provisions and beneficiary designations and complete as much of Section 13.0 of MIL as possible for each policy.					
d. If there is more than one policy, prepare Worksheet 2—Insurance on D's Life and place in file folder entitled "Life Insurance."					
e. Prepare and send Letter 4 to the *home* office of each insurance company to which a policy has already been sent for payment as indicated in Item 13.39 of MIL.					
f. Prepare and send Letter 5 to the *home* office of the insurance company for each policy not already sent for payment as indicated in Item 13.40 of MIL.					
g. Obtain one copy of death certificate for each policy. If certificate is not otherwise available and if D died in Texas, prepare and send Letter 6 to Department of State Health Services, arrange for payment, and charge to client's account (see Special Instruction 8—Death, Birth, Marriage, and Divorce Records for additional information regarding death certificates). *Note:* For deaths occurring in larger cities, such as Houston, death certificates also may be obtained locally from the city health department.					

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	NA	L	S	DATE	INITIALS
h. Determine the identity of the primary beneficiaries and whether these beneficiaries survived D by 120 hours. If not, determine same information regarding contingent beneficiaries.					
i. Determine if payment options are available and, if so, select option most favorable to beneficiaries (see Special Instruction 9—Surviving Spouse's Federal Income Tax Elections for possible income tax advantage to a surviving spouse).					
j. For each policy do the following:					
(1) Obtain original policy.					
(2) Review response to Letter 5 and assemble all required documents. If claim form is required, complete it, have it properly signed, and make a copy for file.					
(3) Prepare and send by certified or registered mail Letter 7, together with policy and required documents, to insurance company for each policy for which proceeds are to be collected as indicated in Item 13.40 of MIL.					
(4) Attach mailing receipt to file copy of Letter 7.					
(5) As responses are received and other steps are completed, be sure to check completed steps on Worksheet 2.					
(6) When received, attach return receipt to file copy of Letter 7.					
(7) On receipt of IRS Forms 712, Life Insurance Statement (FF 2), from the insurance companies, review Special Instruction 7—Insurance on Decedent's Life, complete the remainder of Section 13.0 of MIL, and place IRS Forms 712, Life Insurance Statement (FF 2), in file folder entitled "Life Insurance."					
(8) If proceeds were sent to beneficiary in care of your office, make a copy of check for file and deliver to beneficiary. If mailing, prepare and send by certified or registered mail two copies of Letter 8 to beneficiary together with check.					
(9) If proceeds were mailed, attach mailing receipt to file copy of Letter 8.					
(10) If proceeds were mailed, attach return receipt to file copy of Letter 8.					
(11) When signed copy of Letter 8 has been returned, substitute it for file copy.					

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	NA	L	S	DATE	INITIALS
k. Determine if death benefits are provided through automobile insurance policies, credit card companies, travel clubs, automobile associations, or other organizations. If so, complete Item 21.26 of MIL and take actions indicated in this Item 7 of this Checkplan.					
l. If seeking to **exclude proceeds** from D's estate, do the following:					
(1) Prepare and send Letter 9 to insurance company for each policy for which proceeds are to be excluded as indicated in Item 13.52 of MIL.					
(2) Obtain copy of policy and place in file folder entitled "Life Insurance."					
(3) On receipt of IRS Form 712, Life Insurance Statement (FF 2), from the insurance company, review Special Instruction 7—Insurance on Decedent's Life, complete the remainder of Section 13.0 of MIL, and place IRS Form 712, Life Insurance Statement (FF 2), in file folder entitled "Federal Estate Tax."					

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EMPLOYEE AND GOVERNMENT BENEFITS, ANNUITIES, AND IRAS

	NA	L	S	DATE	INITIALS
8. Determine if D was receiving **Social Security benefits** or if Social Security benefits will be available to members of D's family and, if so, do the following:					
a. See Special Instruction 10—Social Security Benefits.					
b. If D was receiving monthly payments and checks are received after D's death, prepare and send Letter 10 to Social Security Administration to return those checks. Similar action may be required if funds were received by direct deposit to D's account. *Note:* Return of checks is mandatory. This letter should be addressed to the Social Security Administration Office in the area where D resided.					
c. Determine if one or more of the following benefits is available to D's estate or family and, if so, assist in collecting the benefits (see Section 19.0 of MIL):					
(1) Funeral benefit					
(2) Lump-sum death benefit					
(3) Surviving spouse benefit					
(4) Children's benefits					
d. Place claim forms and other documents in file folder entitled "Employee and Government Benefits, Annuities, and IRAs."					
9. Determine if D was receiving **railroad retirement benefits** or if railroad retirement fund benefits will be available to members of D's family and, if so, do the following:					
a. See Special Instruction 11—Railroad Retirement Benefits.					
b. If D was receiving monthly payments and checks are received after D's death, adapt and send Letter 10 to Railroad Retirement Board to return those checks. Similar action may be required if funds were received by direct deposit to D's account.					
c. Determine if one or more of the following benefits is available to D's estate or family and, if so, assist in collecting the benefits (see Section 19.0 of MIL):					
(1) Funeral benefit					
(2) Lump-sum death benefit					

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	NA	L	S	DATE	INITIALS
(3) Surviving spouse benefit					
(4) Children's benefits					
d. Place claim forms and other documents in file folder entitled "Employee and Government Benefits, Annuities, and IRAs."					
10. Determine if D was receiving **veterans benefits** or if veterans benefits will be available to members of D's family and, if so, do the following:					
a. See Special Instruction 12—Veterans (VA) Benefits.					
b. If D was receiving monthly payments and checks are received after D's death, prepare and send Letter 11 to Department of Veterans Affairs to return those checks. Similar action may be required if funds were received by direct deposit to D's account. *Note:* Return of checks is mandatory. This letter should be addressed to the Regional VA Office in the area where D resided.					
c. Determine if one or more of the following benefits is available to D's estate or family and, if so, assist in collecting the benefits (see Section 19.0 of MIL):					
(1) Funeral benefit					
(2) Lump-sum death benefit					
(3) Surviving spouse benefit					
(4) Children's benefits					
d. Place claim forms and other documents in file folder entitled "Employee and Government Benefits, Annuities, and IRAs."					
11. Determine if D or D's spouse was receiving an **annuity** and, if so, do the following:					
a. See Special Instruction 62—Annuities.					
b. If D was receiving an annuity, determine if paid pursuant to an approved plan and the ratio of D's contribution to its total purchase price and complete applicable portion of Section 19.0 of MIL.					
c. If an annuity will be paid to any beneficiary by reason of the beneficiary's surviving D, determine if pursuant to an approved plan and the ratio of D's contribution to its total purchase price and complete applicable portion of Section 19.0 of MIL.					
d. Place annuity documents in file folder entitled "Employee and Government Benefits, Annuities, and IRAs."					

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	NA	L	S	DATE	INITIALS
12. Prepare and send Letter 12 to D's present and former employers to determine if D had **employee benefits** (see Items 1.33 through 1.36 and Section 19.0 of MIL).					
a. If there are such benefits, assist in collecting them.					
b. If payment options are available, select option most favorable to beneficiaries (see Special Instruction 13—Employee Benefit Plans).					
c. Obtain copy of D's final W-2 form and place in file folder entitled "Income Tax Returns."					
d. Determine if D owned interests in **qualified employer plans** and, if so, complete Section 19.0 of MIL.					
e. Place claim forms and other documents in file folder entitled "Employee and Government Benefits, Annuities, and IRAs." *NOTE:* TAXATION OF RETIREMENT PLANS VARIES DEPENDING ON IDENTITY OF THE PAYEE AND THE MANNER OF PAYMENT OF BENEFITS. **EXTREME CARE** MUST BE EXERCISED IN SELECTING LUMP-SUM OR INSTALLMENT PAYMENTS OR IF ATTEMPTING A "ROLLOVER" OF BENEFITS.					
f. Determine if D had employee stock options, date(s) for their exercise, and whether to exercise them.					
13. Determine whether D or D's spouse had an **IRA account** and, if so, do the following:					
a. See Special Instruction 14—Individual Retirement Arrangements (IRA).					
b. Complete Section 19.0 of MIL.					
c. Place claim forms and other documents in file folder entitled "Employee and Government Benefits, Annuities and IRAs." *NOTE:* TAXATION OF IRAS VARIES DEPENDING ON IDENTITY OF THE PAYEE AND THE MANNER OF PAYMENT OF BENEFITS. **EXTREME CARE** MUST BE EXERCISED IN SELECTING LUMP-SUM OR INSTALLMENT PAYMENTS OR IF ATTEMPTING A "ROLLOVER" OF BENEFITS.					

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TEMPORARY DEPENDENT ADMINISTRATION (TDA)

	NA	L	S	DATE	INITIALS
14. If **temporary dependent administration (TDA)** is not the proper probate procedure, mark Items 14 through 18 of this Checkplan as not applicable and go to Item 19. If TDA is the proper probate procedure, do the following: *Note:* This System contemplates that for temporary dependent administration, all documents will be hand carried to the courthouse for prompt action, that the applicant will accompany you, that the judge will be available, that the surety will be available to sign the bond, that all steps can be concluded in one day, and that local rules of court do not require different or additional actions.					
a. See Special Instruction 5—Qualification of and Priority Rights to Be Appointed Administrator or Executor and Special Instruction 57—Temporary Dependent Administration (TDA) to determine if applicant qualifies to serve as temporary administrator.					
b. See Special Instruction 15—Jurisdiction and Venue and prepare Application for Temporary Administration (Form 83 if there is no will or Form 84 if D left a will).					
c. 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, arrange for proper signature before a notary, and place in file folder entitled "Court Proceedings."					
d. Prepare Application for Temporary Administration (Form 83 or Form 84), arrange for proper signature by applicant before a notary, and place in file folder entitled "Court Proceedings." *Note:* Some courts may require the use of separate written testimony at the hearing. Proof of Death and Other Facts (Form 7 or Form 75) can be adapted for local practice. If required, place completed form in file folder entitled "Court Proceedings."					
e. Prepare Order Appointing Temporary Administrator (Form 85) and place in file folder entitled "Court Proceedings."					
f. Prepare Oath of Temporary Administrator (Form 87) and place in file folder entitled "Court Proceedings."					
g. Determine amount of filing fee, arrange for payment, and charge to client's account.					

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	NA	L	S	DATE	INITIALS
h. File Application for Temporary Administration (Form 83 or Form 84) 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 82a of SDL and as Item 6.23 of MIL.					
i. Obtain the 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. *Note:* Citation is prepared by the clerk of court and is posted *after* the appointment of the temporary administrator.					
j. Arrange for date and time of hearing on the Application for Temporary Administration (Form 83 or Form 84) and enter as Item 82b of SDL and Items 6.24 and 6.24A of MIL. Complete Item 82c of SDL.					
k. If hearing must be rescheduled, enter rescheduled date and time as Items 6.24 and 6.24A of MIL and as Item 82d of SDL, revise Item 82c of SDL, and notify proposed temporary administrator and other witnesses of new date.					
l. One business day before the hearing, call to remind proposed temporary administrator and all witnesses of the time, date, and place of hearing.					
15. For the **hearing** itself, do the following—					
a. Assemble the following documents and take to hearing:					
(1) Original copy of proof of death and other facts (if required by local practice) for person who will testify as to death, etc.					
(2) Original copy of Order Appointing Temporary Administrator (Form 85)					
(3) Original copy of Oath of Temporary Administrator (Form 87)					
(4) Certified copy of D's death certificate if available					
b. Determine if local rules of court require different or additional documents or procedures and, if so, take appropriate action.					
c. Attend hearing, enter actual date of hearing as Item 6.25 of MIL and Item 82e of SDL, have judge sign Order Appointing Temporary Administrator (Form 85), and enter date signed as Item 82f of SDL and Item 6.26 of MIL. Complete Items 82g, 82*l*, and 82m of SDL.					
d. Have temporary administrator sign oath and file it with clerk of court. Complete Item 82i of SDL and Item 6.38 of MIL.					
e. Conform file copies of all documents for dates and signatures.					

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	NA	L	S	DATE	INITIALS
f. Determine if bond is required and, if so, do the following (see Special Instruction 46—Bond): *Note:* The bond *must* be filed within three business days of the date of the order.					
(1) Complete Items 6.27 through 6.34 of MIL.					
(2) Ask insurance agent to prepare the bond for signature by temporary administrator. Determine if a power of attorney is required and, if so, that it has been attached to the bond.					
(3) Arrange to have the bond signed by temporary administrator.					
(4) When the bond has been signed by temporary administrator, have it signed by surety.					
(5) When the bond has been signed by temporary administrator and surety, file with clerk of court and obtain approval by judge.					
(6) Enter date of filing the bond as Item 6.36 of MIL and Item 82g of SDL. Enter date of court approval of bond as Item 6.37 of MIL and Item 82h of SDL. Complete Items 82j and 82k of SDL.					
(7) If you paid the premium for the bond, charge to client's account.					
g. Obtain letters of temporary administration. If clerk of court does not prepare them, prepare Letters of Temporary Administration (Form 88) and deliver to clerk of court for approval and signature. In either event, determine that the powers listed in the Letters of Temporary Administration (Form 88 or the letters issued by clerk of court) are identical to the powers specified in the Order Appointing Temporary Administrator (Form 85). Complete Items 82n and 82p of SDL and Item 6.40 of MIL. *Note:* The clerk of court is required to issue letters of temporary administration within three days after the date the temporary administrator qualifies and to provide notice of appointment by posting.					
h. On date that clerk of court issues letters of temporary administration, prepare Letter 98 for all known heirs. *Note:* This letter must be prepared for the signature of and actually be signed by temporary administrator.					
(1) Arrange for signature by temporary administrator. See Special Instruction 84—Execution of Documents regarding proper execution of documents by client.					

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	NA	L	S	DATE	INITIALS
(2) Send signed letters to each known heir by certified mail, return receipt requested, or other qualified delivery method (see Special Instruction 16—Citation and Notice). Attach mailing receipt or proof of deposit to file copy of Letter 98. Complete Item 82o of SDL.					
(3) When received, attach return receipt or proof of delivery receipt to file copy of Letter 98.					
(4) Prepare Affidavit of Notice of Appointment of Temporary Administrator (Form 98) for signature by temporary administrator and file with the clerk no later than the seventh day after the date letters of temporary administration are issued.					
(5) File signed Affidavit of Notice of Appointment of Temporary Administrator (Form 98), with return receipts or proof of delivery receipts from Letter 98 attached, with clerk of court.					
i. Order two letters of temporary administration from clerk of court and, if you paid for them, charge to client's account. When received, place in file folder entitled "Letters Testamentary or of Administration."					
j. Assist temporary administrator in taking appropriate action(s).					
16. If during the administration it is necessary for temporary administrator to obtain **additional powers**, do the following:					
a. Prepare Application for Enlargement of Powers of Temporary Administrator (Form 89).					
b. Prepare Order Granting Additional Powers to Temporary Administrator (Form 90).					
c. Arrange for temporary administrator to sign Application for Enlargement of Powers of Temporary Administrator (Form 89).					
d. File Application for Enlargement of Powers of Temporary Administrator (Form 89) with, and deliver Order Granting Additional Powers to Temporary Administrator (Form 90) to, clerk of court.					
e. Arrange for time and date of hearing on Application for Enlargement of Powers of Temporary Administrator (Form 89).					
f. Attend hearing, present proof necessary for court's approval of Application for Enlargement of Powers of Temporary Administrator (Form 89), and have Order Granting Additional Powers to Temporary Administrator (Form 90) signed by judge.					
g. Determine if bond will be required or increased.					

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	NA	L	S	DATE	INITIALS
(1) If bond is required for first time, go to Item 15f of this Checkplan and take appropriate action.					
(2) If increased bond is required, go to Item 15f of this Checkplan and follow applicable steps, but make appropriate modifications.					
h. If hearing will not be required, determine date judge signed Order Granting Additional Powers to Temporary Administrator (Form 90).					
i. Obtain *new* letters of temporary administration. If clerk of court does not prepare them, prepare Letters of Temporary Administration (Form 88) and deliver to clerk of court for approval and signature. In either event, determine that the powers listed in the Letters of Temporary Administration (Form 88 or the letters issued by clerk of court) are identical to the powers specified in the Order Appointing Temporary Administrator (Form 85) plus those in the Order Granting Additional Powers to Temporary Administrator (Form 90).					
j. Order two letters of temporary administration from clerk of court and, if you paid for them, charge to client's account. When received, place in file folder entitled "Letters Testamentary or of Administration."					
k. If you paid the premium for the additional bond, charge to client's account.					
l. Collect all of D's records, books, title papers, and business papers. If anyone refuses to deliver the same, see Item 21i in this Checkplan for a procedure to recover estate papers.					
m. Assist temporary administrator in taking appropriate action(s).					
17. If during the temporary administration the court decides to make the **administration permanent**, do the following: a. Prepare Order Making Temporary Administration Permanent (Form 91).					
b. File Order Making Temporary Administration Permanent (Form 91) with clerk of court.					
c. Determine if court hearing will be required and, if so, do the following: *Note:* It is not necessary to have citation issued.					
(1) Arrange for time and date of hearing.					
(2) Attend hearing and present proof necessary for judge to sign Order Making Temporary Administration Permanent (Form 91).					

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	NA	L	S	DATE	INITIALS
d. If hearing will not be required, determine date judge signed Order Making Temporary Administration Permanent (Form 91). Complete Item 82t of SDL.					
e. Prepare *new* Oath of Administrator (Form 86).					
f. Arrange to have *new* Oath of Administrator (Form 86) signed by administrator.					
g. File *new* Oath of Administrator (Form 86) with clerk of court.					
h. Determine if *new* bond is required and, if so, do the following (see Special Instruction 46—Bond): *Note:* Bond must be filed within 20 days of the appointment.					
(1) Complete Items 6.27 through 6.34 of MIL.					
(2) Ask insurance agent to prepare the bond for signature by administrator. Determine if a power of attorney is required and, if so, that it has been attached to the original bond.					
(3) Arrange to have the bond signed by administrator.					
(4) When the bond has been signed by administrator, have it signed by surety.					
(5) When the bond has been signed by administrator and surety, file with clerk of court and obtain approval by judge.					
(6) Determine the dates on which the *new* Oath of Administration (Form 86) and *new* bond were filed and the date on which the bond was approved by the judge; enter these dates as Items 6.38, 6.36, and 6.37, respectively, of MIL; and complete Item 6.39 of MIL and Items 36 through 43, 46, 48, and 50 through 52 of SDL.					
(7) If you paid the premium for the bond, charge to client's account.					
i. 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."					
18. If administration is not made permanent, do the following to **close** the **temporary administration**: a. Prepare Final Account of Temporary Administrator (Form 92).					

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	NA	L	S	DATE	INITIALS
b. Determine identity of persons to whom remainder of property on hand is to be distributed and prepare Receipt and Release (Form 30) for each such person.					
c. Prepare Order Approving Final Account of Temporary Administrator (Form 93).					
d. Arrange for temporary administrator to sign and swear to Final Account of Temporary Administrator (Form 92).					
e. File Final Account of Temporary Administrator (Form 92), together with Order Approving Final Account of Temporary Administrator (Form 93), with clerk of court. Complete Item 83a of SDL.					
f. Arrange to have citation issued by clerk of court. Enter return date as Item 83b of SDL.					
g. Determine if court hearing is required and, if so, do the following:					
(1) Arrange for time and date of hearing on Final Account of Temporary Administrator (Form 92). Complete Item 83c of SDL.					
(2) Attend hearing, present proof necessary for approval, and have judge sign Order Approving Final Account of Temporary Administrator (Form 93). Complete Item 83d of SDL.					
h. After judge has signed Order Approving Final Account of Temporary Administrator (Form 93), distribute remainder of property on hand to persons listed in Order Approving Final Account of Temporary Administrator (Form 93) and obtain proper Receipt and Release (Form 30) from each such person.					
i. Prepare Application to Close Temporary Administration (Form 94) and Order Closing Temporary Administration (Form 95).					
j. Arrange for signature by temporary administrator of Application to Close Temporary Administration (Form 94).					
k. File Application to Close Temporary Administration (Form 94) and Order Closing Temporary Administration (Form 95) with clerk of court. Complete Item 84a of SDL.					
l. Determine if court hearing is required and, if so, do the following:					
(1) Arrange for time and date of hearing. Complete Item 84b of SDL.					
(2) Determine date for filing closing report. Complete Item 84c of SDL.					
(3) File closing report. Complete Item 84d of SDL.					

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	NA	L	S	DATE	INITIALS
(4) Attend hearing, present proof necessary for approval, and have judge sign Order Closing Temporary Administration (Form 95). Complete Item 84e of SDL.					
m. If hearing was not required, determine date judge signed Order Closing Temporary Administration (Form 95). Complete Item 84e of SDL.					
n. Conform file copies of all documents for dates and signatures.					
o. Prepare and send Letter 79 to the surety, together with a copy of Order Closing Temporary Administration (Form 95).					
p. Collect balance due for attorney's fees and expenses.					
q. Review file, locate all original documents that you need not retain, and prepare and send Letter 63 to return all items to person who furnished them. When signed letter has been returned, substitute for file copy.					
r. If representation was limited to temporary administration, close office file. Otherwise, continue to take actions indicated by this Checkplan.					

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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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	NA	L	S	DATE	INITIALS
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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	NA	L	S	DATE	INITIALS
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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MUNIMENT OF TITLE (MT)

	NA	L	S	DATE	INITIALS
22. If **muniment of title (MT)** is not the proper probate procedure, mark Items 22 through 24 of this Checkplan as not applicable and go to Item 25. If MT is the proper probate procedure, go to Items 25 through 45, indicate that they are not applicable, and return here to do the following:					
a. See Special Instruction 73—Muniment of Title (MT).					
b. Complete Item 21.34 of MIL. If D received Medicaid benefits, do the following:					
(1) Obtain Texas Medicaid Estate Recovery Program (MERP) Authorization and MERP Certification form (FF 17) at **www.hhs.texas.gov/sites/default/files/documents/services/aging/txmerpcertificationform.pdf**. See Special Instruction 100—Needs-Based Benefits.					
(2) Complete applicable portions of MERP form (FF 17).					
(3) Arrange for an heir or beneficiary to sign MERP form (FF 17). If mailing, prepare and send Letter 120 to that person, together with two copies of the MERP form (FF 17).					
(4) When signed MERP form (FF 17) is received, repeat if there is a second heir or beneficiary who will sign.					
(5) When signed MERP form (FF 17) is received, forward to MERP as directed on form. If mailing, prepare and send Letter 121, together with signed copy of MERP form (FF 17).					
(6) When completed MERP form (FF 17) is received from MERP, copy it, redact D's identifying number(s) from the original for use in evidence, and place original in file folder entitled "Court Proceedings."					
(7) Complete Item 21.35 of MIL.					
c. See Special Instruction 15—Jurisdiction and Venue and prepare Application for Probate of Will as a Muniment of Title (Form 6).					
d. Determine amount of filing fee, arrange for payment, and charge to client's account.					

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	NA	L	S	DATE	INITIALS
e. File Application for Probate of Will as a Muniment of Title (Form 6) with clerk of court. 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.					
f. 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.					
g. Calculate the return date for the citation and enter as Item 20 of SDL (see Special Instruction 16—Citation and Notice). *Note:* If filing for probate more than four years after D's death, notice by service of process must also be given to D's heirs as required by Estates Code, Section 258.051. Service may be waived by a statutory affidavit. If seeking waiver, prepare Waiver of Notice under Texas Estates Code, Section 258.051 (Form 132), and send a copy to each heir. For heirs from whom executed waivers are not received, request service of process by clerk.					
h. Arrange for date and time of hearing on the Application for Probate of Will as a Muniment of Title (Form 6) 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 31) and place in file folder entitled "Court Proceedings."					

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	NA	L	S	DATE	INITIALS
(2) If witness for Proof of Death and Other Facts (Form 31) is *not* the applicant, prepare and send Letter 13 to witness, together with a copy of the Proof of Death and Other Facts (Form 31), 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.					
i. If D's will is self-proved, skip to Item 22m of this Checkplan.					
j. If D's will is not self-proved or attested, but is holographic, skip to Item 22*l* of this Checkplan.					
k. 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 22k.					
(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."					

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	NA	L	S	DATE	INITIALS
(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.					
(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 22k for each **attested codicil**, referring to Items 2.20 and 2.170 of MIL regarding witnesses.					
l. 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 22*l* for each **holographic codicil**.					

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	NA	L	S	DATE	INITIALS
m. Prepare and send Letter 19 to applicant, together with a copy of the Application for Probate of Will as a Muniment of Title (Form 6), to advise of the date and time of hearing and the method of appearance before the court.					
n. Prepare Order Admitting Will to Probate as a Muniment of Title (Form 32) and place in file folder entitled "Court Proceedings."					
o. 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 client and all witnesses of new date. If method of appearance is changed, notify client and all witnesses and provide revised information.					
p. One business day before the hearing, call to remind client and all witnesses of the time and date and the place of hearing or electronic access information.					
23. 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 31) 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 as a Muniment of Title (Form 32).					
(4) Redacted copy and original of MERP Authorization and Certification form (FF 17).					
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 as a Muniment of Title (Form 32) was signed by judge as Item 6.26 of MIL and Item 28 of SDL. Complete Items 32 and 33 of SDL.					

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	NA	L	S	DATE	INITIALS
e. Order certified copy of will, codicil(s), and Order Admitting Will to Probate as a Muniment of Title (Form 32) from clerk of court and, if you paid for them, charge to client's account. If ordering by mail, determine correct charge, arrange for payment, charge to client's account, and prepare and send Letter 69 to clerk of court. When received, place in file folder entitled "Will and Codicil(s)."					
24. **Follow-up**.					
a. Prepare and send Letter 22 to thank each witness, other than client, who appeared before the court.					
b. Prepare and send Letter 66 to client to explain muniment of title procedure and actions that will follow.					
c. Before the date shown in Item 33 of SDL, do the following if required by the order of the court:					
(1) Determine status of **fulfillment of the terms of D's will**.					
(2) Prepare Affidavit Regarding Fulfillment of Will Admitted to Probate as a Muniment of Title (Form 97).					
(3) Arrange for client to sign and swear to the Affidavit Regarding Fulfillment of Will Admitted to Probate as a Muniment of Title (Form 97). If mailing, prepare and send Letter 48 to client, together with original and all copies of Affidavit Regarding Fulfillment of Will Admitted to Probate as a Muniment of Title (Form 97).					
(4) When Affidavit Regarding Fulfillment of Will Admitted to Probate as a Muniment of Title (Form 97) has been properly signed and sworn to by client, file with clerk of court.					
d. Conform file copies of all documents for dates and signatures.					
e. Collect all of D's records, books, title papers, and business papers. If anyone refuses to deliver the same, file a complaint.					
f. Skip to Item 62 of this Checkplan.					

Note: If the need for administration arises after the will has already been admitted as a muniment of title, refer to Special Instruction 73—Muniment of Title (MT) regarding conversion to an administration with a personal representative.

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PROCEEDINGS TO DECLARE HEIRSHIP (PDH)

	NA	L	S	DATE	INITIALS
25. If **proceedings to declare heirship (PDH)** is not the proper probate procedure, mark Items 25 and 26 of this Checkplan as not applicable and go to Item 27. If PDH is the proper probate procedure, go to Items 27 through 45, indicate that they are not applicable, and return here to do the following:					
a. See Special Instruction 60—Proceedings to Declare Heirship (PDH).					
b. See Special Instruction 58—Who Inherits When There Is No Will and determine the identity of D's heirs to whom D's estate is to be distributed.					
c. See Special Instruction 15—Jurisdiction and Venue and prepare Application to Declare Heirship (Form 77). Make one more copy than there are heirs.					
d. Arrange for one heir to sign and swear to Application to Declare Heirship (Form 77). If mailing, prepare and send Letter 48 to the heir, together with two copies of Application to Declare Heirship (Form 77).					
e. When Application to Declare Heirship (Form 77) has been signed, place in file folder entitled "Court Proceedings."					
f. If court does not automatically appoint an attorney ad litem, prepare Motion to Appoint Attorney Ad Litem and Order thereon (Form 78) and place in file folder entitled "Court Proceedings."					
g. File Application to Declare Heirship (Form 77) and, if applicable, Motion to Appoint Attorney Ad Litem and Order thereon (Form 78) with clerk of court, have clerk of court issue proper citation, enter date of filing Application to Declare Heirship (Form 77) as Item 6.23 of MIL, and complete Items 18 and 19 of SDL.					
h. 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.					
i. For citation by publication, see Special Instruction 16—Citation and Notice. If publishing in newspaper and if clerk of court does not send the citation directly to the newspaper, do the following: (1) Select newspaper in which to publish citation.					

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	NA	L	S	DATE	INITIALS
(2) Determine charge for publication, arrange for payment, and charge to client's account.					
(3) Prepare and send Letter 84 to newspaper, together with citation and payment of charges for publication.					
(4) When citation has been published and publisher's affidavit has been received, file with clerk of court.					
j. Calculate the return date for the citation by posting and enter as Item 20 of SDL (see Special Instruction 16—Citation and Notice).					
k. Prepare [Distributee's/Defendant's] Waiver of Citation and Notice Regarding Proceeding to Declare Heirship (Form 107). Prepare and send Letter 48 to each distributee other than applicant and to any owner of a real property interest not a distributee ("Defendant"), together with two copies of [Distributee's/Defendant's] Waiver of Citation and Notice Regarding Proceeding to Declare Heirship (Form 107). Enclose one copy of the Application to Declare Heirship (Form 77).					
l. On receipt of all properly signed and sworn [Distributee's/Defendant's] Waiver of Citation and Notice Regarding Proceeding to Declare Heirship (Form 107), file with clerk of court.					
m. Calculate the return date for the citation by publication by determining earlier of date of newspaper in which the notice was published and date of publication on the public information Internet website and enter as Item 21 of SDL. Complete Items 22 and 23 of SDL.					
n. Review clerk's file to ensure that a copy of all citations required by Estates Code, Chapter 202, and proof of delivery have been filed. **If D died on or after January 1, 2014**, do the following:					
(1) Determine whether applicant will sign the Affidavit of Service of Citation (Form 104) or if attorney will sign the Certificate of Service of Citation (Form 105).					
(a) If applicant is to sign, prepare Affidavit of Service of Citation (Form 104). If mailing, prepare and send with Letter 48.					
(b) If attorney is to sign, prepare Certificate of Service of Citation (Form 105).					
(2) File signed Affidavit of Service of Citation (Form 104) or Certificate of Service of Citation (Form 105) with clerk of court.					

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	NA	L	S	DATE	INITIALS
o. Coordinate schedules with client(s), other witnesses, and attorney ad litem. Arrange for date and time for hearing on Application to Declare Heirship (Form 77); 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). Provide notice to all affected parties, and complete Items 24 and 25 of SDL and Items 6.24 and 6.24A of MIL.					
p. Determine the identity of **two** disinterested and credible witnesses who will testify as to D's death and other personal history and also determine if each witness will be available to testify before the court. *Note:* Only one such witness will be required if it is shown that only one can be found after a diligent search.					
(1) For *both* of these witnesses who will testify before the court, do the following: (a) Prepare Statement of Facts (Form 80) for each witness and place in file folder entitled "Court Proceedings."					
(b) Prepare and send Letter 13 to each witness, together with a copy of Statement of Facts (Form 80) for that witness, 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.					
(2) For each witness who will not be available to testify before the court, determine an alternate method of proving these facts and take appropriate action (forms not provided in this System).					
q. Prepare Judgment Declaring Heirship (Form 81) and place in file folder entitled "Court Proceedings."					
r. Prepare and send Letter 57 to attorney ad litem, together with copies of Application to Declare Heirship (Form 77), Motion to Appoint Attorney Ad Litem (if applicable) and Order thereon (Form 78), Statement of Facts (Form 80) for each witness, and Judgment Declaring Heirship (Form 81).					
s. 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 client, attorney ad litem, and all witnesses of new date. If method of appearance is changed, notify client, attorney ad litem, and all witnesses and provide revised information.					
t. One business day before the hearing, call to remind client, attorney ad litem, and all witnesses of date and time of hearing and the place of hearing or electronic access information.					

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	NA	L	S	DATE	INITIALS
26. For the **hearing**, do the following:					
a. Assemble the following documents and have available at hearing:					
(1) Original copy of Statement of Facts (Form 80) for each witness who will testify in court.					
(2) Original copy of Judgment Declaring Heirship (Form 81).					
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 judgment was signed by judge as Item 6.26 of MIL and Item 28 of SDL.					
e. Order certified copy of Judgment Declaring Heirship (Form 81) from clerk of court and, if you paid for it, charge to client's account. If ordering by mail, determine correct charge, arrange for payment, charge to client's account, and prepare and send Letter 86 to clerk of court. When received, place in file folder entitled "Court Proceedings."					
f. Prepare and send Letter 22 to thank each witness, other than client, who appeared before the court.					
g. Conform file copies of all documents for dates and signatures.					
h. Collect all of D's records, books, title papers, and business papers. If anyone refuses to deliver the same, file a complaint.					
i. Skip to Item 62 of this Checkplan.					

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SMALL ESTATE (SE)

	NA	L	S	DATE	INITIALS
27. If **small estate (SE)** is not the proper probate procedure, mark Items 27 and 28 of this Checkplan as not applicable and go to Item 29. If SE is the proper probate procedure, go to Items 29 through 45, indicate that they are not applicable, and return here to do the following:					
a. See Special Instruction 63—Small Estates (SE).					
b. See Special Instruction 58—Who Inherits When There Is No Will and determine the identity of D's heirs and "distributees" to whom D's estate is to be distributed and the identity of two disinterested witnesses who can verify D's family history.					
c. Prepare Small Estate Affidavit and Order (Form 82). Make one more copy than there are heirs, distributees, and witnesses.					
d. Arrange for one heir, distributee, or witness to sign and swear to original and all copies of Small Estate Affidavit and Order (Form 82). If mailing, prepare and send Letter 92 to that person, together with original and all copies of Small Estate Affidavit and Order (Form 82).					
e. Repeat for each heir, distributee, and disinterested witness until original and all copies have been signed and sworn to by all heirs, distributees, and disinterested witnesses. When the original and all copies of Small Estate Affidavit and Order (Form 82) have been signed, place in file folder entitled "Court Proceedings."					
f. Determine if local rules of court require different or additional documents or procedures and, if so, take appropriate action.					
g. File Small Estate Affidavit and Order (Form 82) with clerk of court and enter date of filing Small Estate Affidavit and Order (Form 82) as Item 6.23 of MIL and Item 18 of SDL.					
h. 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.					
28. If required, arrange for date and time for **hearing** on Small Estate Affidavit and Order (Form 82); 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).					
a. If required, attend hearing.					

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	NA	L	S	DATE	INITIALS
b. Enter the date order was signed by judge as Item 6.26 of MIL and Item 28 of SDL.					
c. Order certified copy of Small Estate Affidavit and Order (Form 82) from clerk of court and, if you paid for it, charge to client's account. If ordering by mail, determine correct charge, arrange for payment, charge to client's account, and prepare and send Letter 89 to clerk of court. When received, place in file folder entitled "Court Proceedings."					
d. Conform file copies of all documents for dates and signatures and send a copy to each heir, distributee, and witness.					
e. **Perfecting title to D's homestead**. Determine if clerk of court automatically prepares certified copy of the Small Estate Affidavit and Order (Form 82) and has it recorded in the official public records of real property (deed records) in the county in which D's homestead is located. If not, do the following:					
(1) Determine amount of recording charges, arrange for payment, charge to client's account, and enter amount as Item 25.08 of MIL.					
(2) Record certified copy of Small Estate Affidavit and Order (Form 82) in the official public records of real property (deed records) in the county in which D's homestead is located. If mailing, prepare and send Letter 61 to county clerk of the county in which D's homestead is located.					
(3) When the Small Estate Affidavit and Order (Form 82) has been recorded, send a copy to each heir and distributee who is entitled to an interest in D's homestead.					
f. Skip to Item 62 of this Checkplan.					

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ADMINISTRATION WITH DEPENDENT EXECUTOR (ADE)

	NA	L	S	DATE	INITIALS
29. If **administration with dependent executor (ADE)** is not the proper probate procedure, mark Items 29 through 31 of this Checkplan as not applicable and go to Item 32. If ADE is the proper probate procedure, go to Items 32 through 45, indicate that they are not applicable, and return here to do the following:					
a. See Special Instruction 65—Administration with Dependent Executor (ADE).					
b. See Special Instruction 5—Qualification of and Priority Rights to Be Appointed Administrator or Executor and determine if 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 28).					
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 28) with clerk of court. If Waiver and Renunciation of Right to Letters Testamentary (Form 96) was prepared and has been signed, file original with clerk of court. 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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	NA	L	S	DATE	INITIALS
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 the clerk.					
j. Arrange for date and time of hearing on the Application for Probate of Will and Issuance of Letters Testamentary (Form 28) 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 29) and place in file folder entitled "Court Proceedings."					
(2) If witness for Proof of Death and Other Facts (Form 29) 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 29), 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 29o of this Checkplan.					
l. If D's will is not self-proved or attested, but is holographic, skip to Item 29n of this Checkplan.					

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	NA	L	S	DATE	INITIALS
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 29m.					
(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 and time 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 29m 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 29n 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 28), 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 33) 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 date and time of hearing and the place of hearing or electronic access information.					
30. 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 29) 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 33).					
(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 33) was signed by judge as Item 6.26 of MIL and Item 28 of SDL and complete Items 29, 31, and 32 of SDL.					
e. Have executors who attend hearing by physical presence in the courtroom sign their Oaths (Form 18 or Form 19) before appropriate court official and file with clerk of court. If these are the only executors, complete Item 36 of SDL and Item 6.38 of MIL.					

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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 or of Administration."					
g. Determine if bond is required and, if so, do the following (see Special Instruction 46—Bond): *Note:* Bond must be filed within 20 days of the appointment.					
(1) Complete Items 6.27 through 6.34 of MIL.					
(2) Ask insurance agent to prepare the bond for signature by executor. Determine if a power of attorney is required and, if so, that it has been attached to the bond.					
(3) Arrange to have the bond signed by all executors.					
(4) When the bond has been signed by all executors, have it signed by surety.					
(5) When the bond has been signed by all executors and surety, file with clerk of court and obtain approval by judge.					
(6) Enter date of filing the bond as Item 6.36 of MIL and Item 37 of SDL.					
(7) Enter date of approval of the bond by judge as Item 6.37 of MIL and Item 38 of SDL.					
(8) If you paid the premium for the bond, charge to client's account.					
31. **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 (Form 18 or Form 19) before the court, together with the original and one copy of Oath (Form 18 or Form 19).					
a. When all Oaths (Form 18 or Form 19) are returned, file all oaths 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, 46, 48, and 50 through 53 of SDL and Items 6.85, 6.144, 6.145, 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:					

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	NA	L	S	DATE	INITIALS
(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.					
(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.					

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	NA	L	S	DATE	INITIALS
f. Refer to Special Instruction 84—Execution of Documents regarding proper execution of documents by client.					
g. Prepare and send Letter 73 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.					
(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 31i 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 31j 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.					

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NA	L	S	DATE	INITIALS

(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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ADMINISTRATION WITH WILL ANNEXED (AWA)

	NA	L	S	DATE	INITIALS
Note: In this System, AWA is a *dependent* administration with will annexed. For *independent* administration with will annexed, see Independent Administration by Agreement Where D Left a Will (TBA).					
32. If **administration with will annexed (AWA)** is not the proper probate procedure, mark Items 32 through 34 of this Checkplan as not applicable and go to Item 35. If AWA is the proper probate procedure, go to Items 35 through 45, indicate that they are not applicable, and return here to do the following:					
a. See Special Instruction 67—Administration with Will Annexed (AWA).					
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 Probate of Will and Issuance of Letters of Administration with Will Annexed (Form 69).					
d. Prepare Waiver and Renunciation of Right to Letters of Administration with Will Annexed (Form 70) 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.					

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	NA	L	S	DATE	INITIALS
f. File Application for Probate of Will and Issuance of Letters of Administration with Will Annexed (Form 69) with clerk of court. If Waiver and Renunciation of Right to Letters of Administration with Will Annexed (Form 70) was prepared and has been signed, file original with clerk of court. 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.					
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 the 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.					
j. Arrange for date and time of hearing on the Application for Probate of Will and Issuance of Letters of Administration with Will Annexed (Form 69) 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.					

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	NA	L	S	DATE	INITIALS
(1) Prepare Proof of Death and Other Facts (Form 71) and place in file folder entitled "Court Proceedings."					
(2) If witness for Proof of Death and Other Facts (Form 71) 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 71), 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 32o of this Checkplan.					
l. If D's will is not self-proved or attested, but is holographic, skip to Item 32n of this Checkplan.					
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 32m.					
(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 and time 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."					

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	NA	L	S	DATE	INITIALS
(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.					
(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 32m 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.					

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	NA	L	S	DATE	INITIALS
(3) Repeat procedures in this Item 32n for each **holographic codicil**.					
o. Prepare and send Letter 19 to proposed administrator, together with a copy of the Application for Probate of Will and Issuance of Letters of Administration with Will Annexed (Form 69), 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 of Administration with Will Annexed (Form 72) and place in file folder entitled "Court Proceedings."					
q. Review Item 2.58 of MIL, determine whether proposed administrator will sign oath before the court or before a notary, prepare Oath (Form 18), 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 proposed administrator and all other witnesses of new date. If method of appearance is changed, notify proposed administrator and all other witnesses and provide revised information.					
s. 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.					
33. 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 71) 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 in court.					
(3) Original copy of Order Admitting Will to Probate and Authorizing Letters of Administration with Will Annexed (Form 72).					
(4) Original copy of Oath (Form 18) 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.					

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	NA	L	S	DATE	INITIALS
d. Enter the date the Order Admitting Will to Probate and Authorizing Letters of Administration with Will Annexed (Form 72) was signed by judge as Item 6.26 of MIL and Item 28 of SDL and complete Items 29, 31, and 32 of SDL.					
e. Have administrator who attends hearing by physical presence in the courtroom sign the Oath (Form 18) before appropriate court official and file with clerk of court. Complete Item 6.38 of MIL and Item 36 of SDL. If bond was not required, complete Item 6.39 of MIL and Item 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 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."					
g. Determine if bond is required and, if so, do the following (see Special Instruction 46—Bond): *Note:* Bond must be filed within 20 days of the appointment.					
(1) Complete Items 6.27 through 6.34 of MIL.					
(2) Ask insurance agent to prepare the bond for signature by administrator. Determine if a power of attorney is required and, if so, that it has been attached to the bond.					
(3) Arrange to have the bond signed by administrator.					
(4) When the bond has been signed by administrator, have it signed by surety.					
(5) When the bond has been signed by administrator and surety, file with clerk of court and obtain approval by judge.					
(6) Enter date of filing the bond as Item 6.36 of MIL and Item 37 of SDL.					
(7) Enter date of approval of the bond by judge as Item 6.37 of MIL and Item 38 of SDL. If oath also has been filed, complete Items 39 through 43, 46, 48, and 50 through 53 of SDL and Items 6.85, 6.144, 6.145, 7.35, and 21.23 of MIL.					
(8) If you paid the premium for the bond, charge to client's account.					
34. **Follow-up**. Refer to Item 2.58 of MIL. If administrator did not sign Oath (Form 18) before a court official, prepare and send Letter 20 to administrator, together with the original and one copy of Oath (Form 18).					

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	NA	L	S	DATE	INITIALS
a. When signed Oath (Form 18) is returned, file with clerk of court.					
b. Determine the date on which the Oath (Form 18) 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, 46, 48, and 50 through 53 of SDL and Items 6.85, 6.144, 6.145, 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 administrator. If mailing, prepare and send Letter 24 to administrator, 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.					
(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 administrator 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 administrator 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.					

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	NA	L	S	DATE	INITIALS
(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 administrator, 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 73 to administrator 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 34i 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 34j 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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REGULAR DEPENDENT ADMINISTRATION (RDA)

	NA	L	S	DATE	INITIALS
35. If **regular dependent administration (RDA)** is not the proper probate procedure, mark Items 35 through 37 of this Checkplan as not applicable and go to Item 38. If RDA is the proper probate procedure, go to Items 38 through 45, indicate that they are not applicable, and return here to do the following:					
a. See Special Instruction 69—Regular Dependent Administration (RDA).					
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 Letters of Administration (Form 73).					
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 Letters of Administration (Form 73) 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).					
i. 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).					

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	NA	L	S	DATE	INITIALS
(3) When signed Appointment of Resident Agent (Form 15) is received, file with clerk of court.					
j. Arrange for date and time of hearing on the Application for Letters of Administration (Form 73) 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.					
k. Prepare and send Letter 19 to proposed administrator, together with a copy of the Application for Letters of Administration (Form 73), to advise of the date and time of hearing and the method of appearance before the court.					
l. Prepare Order Authorizing Letters of Administration (Form 76) and place in file folder entitled "Court Proceedings."					
m. 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."					
n. 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.					
o. 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.					
36. 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.					

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	NA	L	S	DATE	INITIALS
(3) Original copy of Order Authorizing Letters of Administration (Form 76).					
(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 Letters of Administration (Form 76) was signed by judge as Item 6.26 of MIL and Item 28 of SDL and complete Item 29 of SDL.					
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 Item 6.38 of MIL and Item 36 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."					
g. Determine if bond is required and, if so, do the following (see Special Instruction 46—Bond): *Note:* Bond must be filed within 20 days of the appointment. (1) Complete Items 6.27 through 6.34 of MIL.					
(2) Ask insurance agent to prepare the bond for signature by administrator. Determine if a power of attorney is required and, if so, that it has been attached to the bond.					
(3) Arrange to have the bond signed by administrator.					
(4) When the bond has been signed by administrator, have it signed by surety.					
(5) When the bond has been signed by administrator and surety, file with clerk of court and obtain approval by judge.					
(6) Enter date of filing the bond as Item 6.36 of MIL and Item 37 of SDL.					

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	NA	L	S	DATE	INITIALS
(7) Enter date of approval of the bond by judge as Item 6.37 of MIL and Item 38 of SDL. If oath also has been filed, complete Items 39 through 43, 46, 48, and 50 through 53 of SDL and Items 6.85, 6.144, 6.145, 7.35, and 21.23 of MIL.					
(8) If you paid the premium for the bond, charge to client's account.					
37. **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 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. Also complete Items 36, 39 through 44, 46, 48, and 50 through 53 of SDL and Items 6.85, 6.144, 6.145, 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 94 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.					
(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 37g 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 37h 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.					

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INDEPENDENT ADMINISTRATION BY AGREEMENT WHERE D LEFT A WILL (TBA)

	NA	L	S	DATE	INITIALS
38. If **independent administration by agreement where D left a will (TBA)** is not the proper probate procedure, mark Items 38 through 40 of this Checkplan as not applicable and go to Item 41. If TBA is the proper probate procedure, go to Items 41 through 45 and indicate that they are not applicable, and return here to do the following:					
a. See Special Instruction 88—Independent Administration by Agreement Where Decedent Left a Will (TBA).					
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 or administrator.					
c. See Special Instruction 15—Jurisdiction and Venue and prepare Application for Probate of Will, Independent Administration by Agreement [with Will Annexed], and Issuance of Letters [Testamentary/of Independent Administration] (Form 110).					
d. Prepare Affidavit of [Inability/Unwillingness] to Serve as Executor (Form 143) or Waiver and Renunciation of Right to Letters of Administration (Form 74) for those preferentially entitled to serve as executor or 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.					

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	NA	L	S	DATE	INITIALS
f. File Application for Probate of Will, Independent Administration by Agreement [with Will Annexed], and Issuance of Letters [Testamentary/of Independent Administration] (Form 110) with clerk of court. If Affidavit of [Inability/Unwillingness] to Serve as Executor (Form 143) or Waiver and Renunciation of Right to Letters of Administration (Form 74) was prepared and has been signed, file original with clerk of court. 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 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.					
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. 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 Probate of Will, Independent Administration by Agreement [with Will Annexed], and Issuance of Letters [Testamentary/of Independent Administration] (Form 110).					
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. Determine if any proposed **executor** or **administrator** is a **nonresident** of Texas. If so, do the following:					

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	NA	L	S	DATE	INITIALS
(1) Prepare Appointment of Resident Agent (Form 15 for each nonresident individual executor or administrator and Form 16 for each nonresident corporate executor or administrator) and place in file folder entitled "Court Proceedings."					
(2) Prepare and send Letter 18 to each nonresident executor or administrator, 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.					
l. Arrange for date and time of hearing on Application for Probate of Will, Independent Administration by Agreement [with Will Annexed], and Issuance of Letters [Testamentary/of Independent Administration] (Form 110) 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 112) and place in file folder entitled "Court Proceedings."					
(2) If witness for Proof of Death and Other Facts (Form 112) is *not* the proposed executor or administrator, prepare and send Letter 13 to witness, together with a copy of the Proof of Death and Other Facts (Form 112), 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.					
m. If D's will is self-proved, skip to Item 38q of this Checkplan.					
n. If D's will is not self-proved or attested, but is holographic, skip to Item 38p of this Checkplan.					
o. 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 38o.					
(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."					

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	NA	L	S	DATE	INITIALS
(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 and time 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.					
(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 38o for each **attested codicil**, referring to Items 2.20 and Items 2.170 of MIL regarding witnesses.					

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	NA	L	S	DATE	INITIALS
p. 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 38p for each **holographic codicil**.					
q. Prepare and send Letter 19 to each proposed executor or administrator, together with a copy of the Application for Probate of Will, Independent Administration by Agreement [with Will Annexed], and Issuance of Letters [Testamentary/of Independent Administration] (Form 110), to advise of the date and time of hearing and the method of appearance before the court.					
r. Prepare Order Admitting Will to Probate and Authorizing Independent Administration and Letters [Testamentary/of Independent Administration] (Form 111) and place in file folder entitled "Court Proceedings."					
s. Review Item 2.58 of MIL, determine whether proposed executor or administrator will sign oath before the court or before a notary, prepare Oath (Form 18 for each individual executor or administrator and Form 19 for each corporate executor or administrator), and place in file folder entitled "Court Proceedings."					

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	NA	L	S	DATE	INITIALS
t. 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 proposed executors or administrators and other witnesses of new date. If method of appearance is changed, notify all proposed executors and other witnesses and provide revised information.					
u. One business day before the hearing, call to remind all proposed executors or administrators and all witnesses of the time and date of hearing and the place of hearing or electronic access information.					
39. 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 112) 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 Independent Administration and Letters [Testamentary/of Independent Administration] (Form 111).					
(4) Original copies of Oath (Form 18 or Form 19) for each executor or administrator 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 Independent Administration and Letters [Testamentary/of Independent Administration] (Form 111) 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 or administrators 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 or administrators, 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 or 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 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."					
40. **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 or administrator 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 (Form 18 or Form 19) are signed and returned, file all oaths 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 or administrator. If mailing, prepare and send Letter 24 to executor or administrator, 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 or administrator 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 or administrator 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) or administrator(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 108 to executor(s) or administrator(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 40i 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 40j 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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INDEPENDENT ADMINISTRATION BY AGREEMENT WHERE THERE IS NO WILL (IBA)

	NA	L	S	DATE	INITIALS
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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	NA	L	S	DATE	INITIALS
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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	NA	L	S	DATE	INITIALS
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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	NA	L	S	DATE	INITIALS
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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	NA	L	S	DATE	INITIALS
(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. *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 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.					

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ANCILLARY PROBATE OF WILL PREVIOUSLY PROBATED ELSEWHERE (AP)

	NA	L	S	DATE	INITIALS
44. If **ancillary probate of a will previously probated elsewhere (AP)** is not the proper procedure, mark this Item 44 as not applicable and go to Item 45. If AP is the proper procedure, go to Item 45, indicate that it is not applicable, and return here to do the following:					
a. See Special Instruction 91—Ancillary Probate (AP) or Recording (RW) of Wills Previously Probated Elsewhere and do the following:					
(1) Send Letter 112 to the court that previously probated the will to obtain properly authenticated copy of will, order admitting it to probate, and letters issued in foreign jurisdiction.					
(2) Prepare Application for Ancillary Probate of Foreign Will and Issuance of Ancillary Letters Testamentary (Form 118).					
(3) Determine amount of filing fee, arrange for payment, and charge to client's account.					
(4) File authenticated copy of will and order admitting it to probate in foreign jurisdiction, authenticated copy of letters testamentary issued in foreign jurisdiction, and Application for Ancillary Probate of Foreign Will and Issuance of Ancillary Letters Testamentary (Form 118) with clerk of court.					
(5) Determine from clerk when will and order admitting it to probate in foreign jurisdiction were recorded pursuant to Estates Code, Section 501.004, and complete Items 17B, 31, and 32 of SDL.					
(6) If independent administration by agreement is sought, do the following: (a) Prepare Distributee's Agreement to Ancillary Indpendent Administration [and Power of Sale], with Waiver of Citation and Notice (Form 119). Prepare and send Letter 48 to each distributee other than applicant, together with two copies of Distributee's Agreement to Ancillary Independent Administration [and Power of Sale], with Waiver of Citation and Notice (Form 119). Enclose one copy of the Application for Ancillary Probate of Foreign Will and Issuance of Ancillary Letters Testamentary (Form 118).					

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	NA	L	S	DATE	INITIALS
(b) On receipt of all properly signed and sworn Distributee's Agreement to Ancillary Independent Administration [and Power of Sale], with Waiver of Citation and Notice (Form 119), file with clerk of court.					
b. Determine whether court will require a hearing. *Note:* Complete Items 44c through 44f and Item 44j of this Checkplan in every case. If a hearing is required, also complete Items 44g through 44i.					
c. Prepare Oath (Form 18 for individual executor or Form 19 for corporate executor) for each executor. (1) If no hearing will be required, do the following:					
(a) Send Letter 20 to each executor, together with the original and one copy of Oath (Form 18 or Form 19).					
(b) When all Oaths (Form 18 or Form 19) are returned, file all oaths with clerk of court.					
(2) If a hearing will be required, place the Oaths (Form 18 or Form 19) in file folder entitled "Court Proceedings."					
d. 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 all signed Appointment of Resident Agent (Form 15 or Form 16) forms are returned, file all appointments with clerk of court.					
e. Prepare Order Admitting Foreign Will to Ancillary Probate [, Authorizing Independent Administration,] and Authorizing Ancillary Letters Testamentary (Form 121). (1) If no hearing will be required, place Order Admitting Foreign Will to Ancillary Probate [, Authorizing Independent Administration,] and Authorizing Ancillary Letters Testamentary (Form 121) with clerk of court.					
(2) If a hearing will be required, place Order Admitting Foreign Will to Ancillary Probate [, Authorizing Independent Administration,] and Authorizing Ancillary Letters Testamentary (Form 121) in file folder entitled "Court Proceedings."					

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	NA	L	S	DATE	INITIALS
f. Determine if **bond** will be required and, if so, do the following (see Special Instruction 46—Bond): *Note:* Bond must be filed within 20 days of the appointment. If a hearing will be required, this step should be addressed with Item 44h of this Checkplan. (1) Complete Items 6.27 through 6.34 of MIL.					
(2) Ask insurance agent to prepare the bond for signature by executor. Determine if a power of attorney is required and, if so, that it has been attached to the bond.					
(3) Arrange to have the bond signed by all executors.					
(4) When the bond has been signed by all executors and surety, file with clerk of court and obtain approval by judge.					
(5) Enter date of filing the bond as Item 6.36 of MIL and Item 37 of SDL.					
(6) Enter date of approval of the bond by judge as Item 6.37 of MIL and Item 38 of SDL.					
(7) If you paid the premium for the bond, charge to client's account.					
g. If **no hearing** is required, skip to Item 44j of this Checkplan. If **hearing is required**, arrange for date and time of hearing on application for probate 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 120) and place in file folder entitled "Court Proceedings."					
(2) If witness for proof of death and other facts is *not* the proposed executor, prepare and send Letter 13 to witness, together with a copy of the Proof of Death and Other Facts (Form 120), 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.					
(3) Prepare and send Letter 19 to each proposed executor, together with a copy of the Application for Ancillary Probate of Foreign Will and Issuance of Ancillary Letters Testamentary (Form 118) to advise of the date and time of hearing and the method of appearance before the court.					

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	NA	L	S	DATE	INITIALS
(4) 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.					
(5) 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.					
h. For **hearing** itself, **if required**, do the following:					
(1) Assemble the following documents and have available at hearing:					
(a) Original copy of Proof of Death and Other Facts (Form 120).					
(b) Original copy of Order Admitting Foreign Will to Ancillary Probate [, Authorizing Independent Administration,] and Authorizing Ancillary Letters Testamentary (Form 121).					
(c) Original copies of Oath (Form 18 or Form 19) for each executor who will sign oath before the court.					
(2) Determine if local rules of court require different or additional documents or procedures and, if so, take appropriate action.					
(3) Attend hearing and enter actual date of hearing as Item 6.25 of MIL and Item 27 of SDL.					
(4) Enter the date the Order Admitting Foreign Will to Ancillary Probate [, Authorizing Independent Administration,] and Authorizing Ancillary Letters Testamentary (Form 121) was signed by judge as Item 6.26 of MIL and Item 28 of SDL. Complete Item 29 of SDL.					
(5) 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 or administrators, complete Items 6.38 and 6.39 of MIL and Items 36 and 39 of SDL.					
(6) Order two ancillary 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."					

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	NA	L	S	DATE	INITIALS
i. **After hearing**, refer to Item 2.58 of MIL. If any Oath (Form 18 or Form 19) has not been signed and filed, do the following:					
(1) Prepare and send Letter 20 to each executor who did not sign the Oath (Form 18 or Form 19) before the court, together with the original and one copy of Oath (Form 18 or Form 19).					
(2) When all Oaths (Form 18 or Form 19) are returned, file all oaths with clerk of court.					
j. **Follow-up.**					
(1) 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, 46, and 48 of SDL and Items 6.85, 7.35, and 21.23 of MIL. If independent executor, also complete Items 45A and 45B of SDL. If dependent executor, also complete Items 50 through 53 of SDL and Items 6.144 and 6.145 of MIL.					
(2) By the date shown in Item 31 of SDL (sixty days after date foreign will and evidence of foreign probate recorded by clerk), do the following:					
(a) Review D's will and codicil(s) to identify all devisees and legatees.					
(b) If not already done, prepare Worksheet 9 and place in folder entitled "Notice to Beneficiaries."					
(c) 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).					
(d) Arrange for signature by executor. If mailing, prepare and send Letter 24 to executor, together with two copies of each Letter 102.					
(e) 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).					
(f) Attach mailing receipt or proof of deposit to the copy of Letter 102.					
(g) When received, attach return receipt or proof of delivery receipt to file copy of Letter 102.					

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	NA	L	S	DATE	INITIALS
(h) As letters are sent and return receipts or proof of delivery receipts are returned to office, enter on Worksheet 9.					
(i) 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.					
(3) By the date shown in Item 32 of SDL (ninety days after date foreign will and evidence of foreign probate recorded by clerk), do the following:					
(a) 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).					
(i) 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.					
(ii) If attorney is to sign, prepare Certificate of Notice of Probate (Form 102) and attach all waivers (Form 100).					
(b) 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.					
(4) If applicable, prepare and send Letter 22 to thank each witness other than executor(s) who appeared before the court.					
(5) Refer to Special Instruction 84—Execution of Documents regarding proper execution of documents by client.					
(6) Prepare and send Letter 116 (for independent ancillary administration) or Letter 117 (for dependent ancillary administration) to executor(s) to advise of nature and extent of the duties of office and actions that will follow.					
(7) Conform file copies of all documents for dates and signatures.					
(8) Collect all of D's records, books, title papers, and business papers. If anyone refuses to deliver the same, do the following:					
(a) 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.					

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	NA	L	S	DATE	INITIALS
(b) 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.					
(c) 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.					
(d) 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 44j(8) 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 44j(9) below.					
(9) Collect all personal property of the estate. If anyone refuses to deliver the same, do the following:					
(a) Prepare Motion for Order to Deliver Personal Property of Estate and Order to Deliver Personal Property of Estate (Form 148) and Letter 138.					
(b) 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.					
(c) 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.					
(10) Skip to Item 55 of this Checkplan.					

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RECORDING OF WILL PREVIOUSLY PROBATED ELSEWHERE (RW)

	NA	L	S	DATE	INITIALS
45. If **recording of a will previously probated elsewhere (RW)** is the proper procedure, do the following: a. See Special Instruction 91—Ancillary Probate (AP) or Recording (RW) of Wills Previously Probated Elsewhere.					
b. Send Letter 112 to the court that previously probated the will to obtain properly authenticated copy of will and order admitting it to probate.					
c. When the foregoing documents are received, determine amount of recording charges, arrange for payment, charge to client's account, and enter amount as Item 25.08 of MIL.					
d. If any portion of the foregoing documents is not in English, obtain a sworn translation to be recorded with the authenticated original.					
e. Prepare and send Letter 113 to county clerk to record these documents in the deed records of each Texas county in which D owned real estate, mineral interests, or royalty interests. When the documents have been recorded in one county and have been returned, repeat this procedure until the documents have been recorded in all counties.					
f. Review engagement agreement for scope of agreed services and see appropriate items in this Checkplan, such as Item 82, Real Estate.					

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DESIGNATION OF ADMINISTRATOR

	NA	L	S	DATE	INITIALS
46. If will grants authority to a named executor or another person to designate one or more administrators, see Special Instruction 95—Authority to Designate Administrator and do the following: a. Determine whether any named executor is available, qualified, and able and willing to serve and, if not, whether the designation of an administrator has already been made.					
b. If needed, prepare Affidavit of [Inability/Unwillingness] to Serve as Executor (Form 143) for each relevant named executor, arrange for proper signature before a notary, and place in file folder entitled "Court Proceedings."					
c. If the designation of an administrator has not already been made, prepare Designation of Administrator (Form 144) for person with authority to designate, arrange for proper signature before a notary, and place in file folder entitled "Court Proceedings."					
d. If a designated administrator refuses to serve, prepare Affidavit of Refusal to Serve as Administrator (Form 145) for that designated administrator, arrange for proper signature before a notary, and place in file folder entitled "Court Proceedings."					

47. - 48. (Reserved)

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BENEFICIAL OWNERS

	NA	L	S	DATE	INITIALS
49. If D had or controlled as an officer a corporation, limited liability company, limited partnership, or other entity created by filing a document with a secretary of state or similar office, see Special Instruction 98—Corporate Transparency Act.					

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DIGITAL ASSETS

	NA	L	S	DATE	INITIALS
50. If D had **digital assets**, do the following:					
a. See Special Instruction 83—Digital Assets, and take appropriate action.					
b. If disclosure of the **content** of an electronic communication through TRUFADAA is desired, determine whether D consented to disclosure through an online tool or in D's will. If so, do the following for each such account:					
(1) Prepare Letter 131 and arrange for signature by personal representative. If mailing, prepare and send Letter 24 to personal representative, together with two copies of Letter 131 for each custodian.					
(2) When signed copy of Letter 131 is received from personal representative, forward it to custodian with required enclosures. *Note:* If D did not consent to disclosure, a court order must be obtained. That procedure is beyond the scope of this System.					
c. If disclosure of a **catalog** of D's electronic communications through TRUFADAA is desired, determine whether D prohibited disclosure in an online tool or in D's will. If D did not prohibit disclosure, do the following for each such account:					
(1) Prepare Letter 131 and arrange for signature by personal representative. If mailing, prepare and send Letter 24 to personal representative, together with two copies of Letter 131 for each custodian.					
(2) When signed copy of Letter 131 is received from personal representative, forward it to custodian with required enclosures.					
d. If **termination** of D's account through TRUFADAA is desired, do the following for each such account:					
(1) Prepare Letter 131 and arrange for signature by personal representative. If mailing, prepare and send Letter 24 to personal representative, together with two copies of Letter 131 for each custodian.					
(2) When signed copy of Letter 131 is received from personal representative, forward it to custodian with required enclosures.					

51. - 53. (Reserved)

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ALTERNATE METHOD OF PROVING D'S WILL

	NA	L	S	DATE	INITIALS
54. If the witness will not be available to testify in court, determine an alternate method of proving D's will. If proving D's will by written interrogatories, do the following after D's original will has been filed with clerk of court:					
a. For a subscribing witness, prepare Direct Interrogatories to Be Propounded to Subscribing Witness (Form 9). For a witness testifying to the signature of D or that of a subscribing witness, prepare Direct Interrogatories to Be Propounded to Witness (Form 139). For a witness testifying to the handwriting and signature of D to prove a holographic will, prepare Direct Interrogatories to Be Propounded to Witness (Form 141). Place in file folder entitled "Court Proceedings."					
b. Prepare Notice of Intent to Take Deposition on Written Questions (Form 13), make and attach a copy of the Direct Interrogatories to Be Propounded to Subscribing Witness (Form 9) or Direct Interrogatories to Be Propounded to Witness (Form 139 or Form 141) to each copy of the Notice of Intent to Take Deposition on Written Questions (Form 13), and place in file folder entitled "Court Proceedings."					
c. Prepare Interrogatories and Answers of Witness to Interrogatories (Form 10 for subscribing witness, Form 140 for witness to signature, or Form 142 for witness for holographic will) and place in file folder entitled "Court Proceedings."					
d. Prepare and send Letter 15 to the witness to forward copies of D's will and the Interrogatories and Answers of Witness to Interrogatories (Form 10, Form 140, or Form 142), to be certain that the witness can testify properly.					
e. When you are satisfied that the witness can testify properly, do the following:					
(1) Determine amount of filing fee for Notice of Intent to Take Deposition on Written Questions (Form 13), arrange for payment, and charge to client's account.					
(2) File Notice of Intent to Take Deposition on Written Questions (Form 13) with clerk of court. If there is no opposing party or attorney of record on whom to serve notice and copies of interrogatories, request citation by posting, pay the required fee, and charge to client's account.					
(3) Order a certified copy of D's purported will (the one you recently filed) from clerk of court.					

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	NA	L	S	DATE	INITIALS
(4) Determine charge for certified copy, arrange for payment, and charge to client's account.					
f. When you have received the certified copy of D's purported will, send copies of Notice of Intent to Take Deposition on Written Questions (Form 13) to applicant.					
g. Obtain a deposition envelope and do the following:					
(1) Complete all information on the Deposition Envelope (FF 3).					
(2) Make a photocopy of the completed deposition envelope to send to witness as an instruction sample. Use colored pen to complete the instruction copy of the envelope as shown in the Instruction Sample (FF 4).					
(3) If you cannot locate a deposition envelope, copy the details from FF 3 on a large envelope. Complete all the information except the two signature lines reserved for the officer/notary. *Note:* Some courts prefer tamper-evident envelopes for transmitting interrogatories. Contact the clerk for specific requirements.					
h. Contact the witness to discuss the procedure that will be expected and have the witness arrange for a notary.					
i. Assemble the following items to send to witness:					
(1) Certified copy of D's purported will					
(2) Original copy of Interrogatories and Answers of Witness to Interrogatories (Form 10, Form 140, or Form 142)					
(3) Deposition envelope					
(4) Instruction sample of deposition envelope that you prepared					
j. Provide witness with all items listed in Item 54i of this Checkplan. If mailing, send Letter 16 to witness to forward those documents by certified or registered mail.					
(1) Attach mailing receipt to file copy of Letter 16.					
(2) When received, attach return receipt to file copy of Letter 16.					
k. Ensure that deposition envelope and its contents are received by clerk.					
l. Schedule the date and time for hearing, enter as Items 6.24 and 6.24A of MIL and Item 24 of SDL, and complete Item 25 of SDL.					
m. If IA, return to Item 19*l* of this Checkplan.					

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NA	L	S	DATE	INITIALS

n. If MT, return to Item 22k of this Checkplan.

o. If ADE, return to Item 29m of this Checkplan.

p. If AWA, return to Item 32m of this Checkplan.

q. If TBA, return to Item 38o of this Checkplan.

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NOTICES TO CREDITORS

	NA	L	S	DATE	INITIALS
Note: Items 55 through 61 of this Checkplan do not apply to MT, SE, PDH, or RW proceedings. 55. Dealing with **general and unsecured creditors**. a. By the date shown in Item 42 of SDL (one month after clerk issues letters testamentary or of administration), do the following: (1) See Special Instruction 54—Claims of Creditors.					
(2) Prepare Notice to Creditors and Publisher's Affidavit (Form 20).					
(3) Select newspaper in which to publish notice, determine charge for publication, arrange for payment, charge to client's account, and enter amount as Item 25.07 of MIL.					
(4) Prepare and send Letter 32 to newspaper, together with the original and a copy of the Notice to Creditors and Publisher's Affidavit (Form 20) and payment of charges for publication.					
(5) When Notice to Creditors and Publisher's Affidavit (Form 20) has been published and returned, file with clerk of court.					
(6) Determine if D remitted or should have remitted taxes administered by the Comptroller of Public Accounts (e.g., sales taxes). If so, do the following:					
(a) Prepare Letter 82 and arrange for signature by executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with two copies of each Letter 82.					
(b) Send signed Letter 82, together with copy of the Notice to Creditors and Publisher's Affidavit (Form 20), to Comptroller of Public Accounts by registered or certified mail, return receipt requested, or other qualified delivery method (see Special Instruction 16—Citation and Notice).					
(c) Attach mailing receipt or proof of deposit to the copy of Letter 82.					
(d) When received, attach return receipt or proof of delivery receipt to file copy of Letter 82.					

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	NA	L	S	DATE	INITIALS
(e) Prepare Certificate of Delivery of Notice (Form 153) and file it, together with copy of Letter 82, a copy of the Notice to Creditors and Publisher's Affidavit (Form 20), and the return receipt or proof of delivery receipt, with clerk of court.					
b. Determine whether to give permissive notice to bar or force filing of claims by unsecured creditors having claims for money. If so, do the following for each such creditor at any time before estate is closed.					
(1) Refer to Section 21.0 of MIL, prepare Letter 99 for each such creditor, and complete Worksheet 13 for each such creditor. *Note:* This letter must be prepared for the signature of and actually be signed by an executor or administrator.					
(2) Arrange for signature by an executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with two copies of Letter 99 for each creditor.					
(3) Send signed Letter 99 to each creditor by certified or registered mail, return receipt requested, or, in proceedings commenced on or after September 1, 2023, by any qualified delivery method (see Special Instruction 16—Citation and Notice). Attach each mailing receipt to appropriate file copy of Letter 99.					
(4) Enter date of mailing or delivery by a qualified delivery method as Item 76a of SDL and on Worksheet 13.					
(5) When received, attach return receipt or proof of delivery receipt to file copy of Letter 99, enter date received as Item 76b of SDL, calculate and complete Item 76c of SDL, and enter dates on Worksheet 13.					
(6) For each unsecured creditor with a claim for money who fails to present a claim within the 120-day period shown in Item 76c of SDL, complete Item 21.15 of MIL, prepare and send Letter 100 to advise executor or administrator not to pay any portion of the claim, and change Class on Worksheet 13 to "Barred."					
(7) If claim is presented before date shown in Item 76c of SDL, refer to procedures starting at Item 67h of this Checkplan and take appropriate action.					

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	NA	L	S	DATE	INITIALS
56. **Secured creditors**. By the date shown in Item 7.35 of MIL and Item 43 of SDL (two months after clerk issues letters testamentary or of administration), do the following: a. Refer to Items 7.25, 17.37, and 21.05 of MIL and prepare Letter 33 for each creditor shown to be holding a lien on real estate, vehicles, or other estate assets. *Note:* This letter must be prepared for the signature of and actually be signed by an executor or administrator.					
b. Arrange for signature by an executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with two copies of each Letter 33.					
c. Send signed letters by certified or registered mail, return receipt requested, or other qualified delivery method (see Special Instruction 16—Citation and Notice). Attach mailing receipt or proof of deposit to file copy of Letter 33, complete Item 44 of SDL, and enter date of mailing or deposit on Worksheet 13.					
d. When received, make photocopy of return receipt or proof of delivery; attach photocopy to extra copy of that Letter 33; complete Items 45, 47, and 49 of SDL; and enter date of receipt or proof of delivery on Worksheet 13.					
e. Attach return receipt or proof of delivery receipt to file copy of Letter 33.					
f. Prepare Proof of Service of Notice on Secured Claimants (Form 21) and attach copies of return receipts or proof of delivery receipts from Letter 33 to the original. *Note:* This proof *must* be prepared for the signature of and actually be signed by executor or administrator.					
g. When Proof of Service of Notice on Secured Claimants (Form 21) has been properly signed, file with clerk of court.					
h. Prepare Certificate of Delivery of Notice (Form 153) and file it, together with copies of Letter 102 and the return receipts or proof of delivery receipts, with clerk of court.					
i. Conform file copies of all documents for dates and signatures.					

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ESTATE BANK ACCOUNT AND ACCOUNTING SYSTEM

	NA	L	S	DATE	INITIALS
57. Determine if estate will be a separate taxpayer or whether an estate bank or brokerage account is to be opened. If so, a separate **employer identification number (EIN)** will be required. If client does not already have such a number, it may be obtained as follows:					
a. Complete IRS Form SS-4, Application for Employer Identification Number (FF 6). *Note:* If estate is engaged in an active trade or business, Items 12 through 15 of IRS Form SS-4, Application for Employer Identification Number (FF 6), may require modification. This form must be prepared for the signature of and actually be signed by one executor or administrator.					
b. Arrange to have IRS Form SS-4, Application for Employer Identification Number (FF 6), signed by an executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with completed IRS Form SS-4, Application for Employer Identification Number (FF 6). *Note:* It is possible to obtain this number if the executor or administrator is present by completing Form SS-4, Application for Employer Identification Number, through accessing the IRS website, **www.irs.gov**.					
c. If mailing, prepare and send Letter 25 to IRS, together with completed IRS Form SS-4, Application for Employer Identification Number (FF 6).					
d. When notified by IRS of employer identification number, enter as Item 26.13 of MIL and advise executor or administrator of the number.					
e. File all relevant documents in file folder entitled "Fiduciary Income Tax Returns."					
58. Establish **bank account(s)** for estate. *Note:* It is not appropriate to establish bank account(s) in MT, SE, or PDH proceedings.					
a. Obtain and complete appropriate signature cards and have them signed by all executors or administrators.					
b. Furnish bank with employer identification number (EIN) for estate, letters testamentary or letters of administration, and signed signature cards.					
c. Order printed checks and deposit slips.					

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	NA	L	S	DATE	INITIALS
d. Have account styled "Estate of (Item 6.02 of MIL), Deceased."					
e. When you have the account number, order rubber stamp "For Deposit Only to the Estate of (Item 6.02 of MIL), Deceased, Account Number (Item 11.11 of MIL)." Determine price, arrange for payment, and charge to client's account. *Note:* If the executor or administrator is an individual, particularly one with no business experience, the attorney should consider retaining custody of the estate checkbook and having all bank statements sent to the attorney's office.					
f. Make initial deposit, including D's cash on hand, traveler's checks, and checks undeposited at D's death.					
g. Plan for investment of estate funds during administration.					
h. Consider establishing **savings account** for estate.					
(1) Obtain and complete appropriate signature cards and have them signed by all executors or the administrator.					
(2) Furnish bank with employer identification number (EIN) for estate, letters testamentary or letters of administration, and signed signature cards.					
(3) Have account styled "Estate of (Item 6.02 of MIL), Deceased."					
i. Evaluate cash requirements and arrange for funds necessary to pay debts, taxes, and expenses of administration (see Worksheet 10).					
59. Establish **accounting system** for estate and determine whether to use cash or accrual method.					
60. See Special Instruction 19—Fiscal Years, select **fiscal year** for estate, and enter ending date as Item 26.14 of MIL. Complete all parts of Items 54 and 55 of SDL.					
61. Provide appropriate **IRS** notices.					
a. Give IRS **notice of fiduciary relationship**.					
(1) Complete IRS Form 56, Notice Concerning Fiduciary Relationship (FF 7).					
(2) Arrange to have IRS Form 56, Notice Concerning Fiduciary Relationship (FF 7), signed by an executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with completed IRS Form 56, Notice Concerning Fiduciary Relationship (FF 7).					

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	NA	L	S	DATE	INITIALS
(3) Prepare and send Letter 26 to IRS, together with completed IRS Form 56, Notice Concerning Fiduciary Relationship (FF 7), and a copy of letters testamentary or letters of administration.					
b. Determine if appropriate to **change D's address** with IRS and, if so, do the following:					
(1) Complete IRS Form 8822, Change of Address (FF 13).					
(2) Arrange to have IRS Form 8822, Change of Address (FF 13) signed by an executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with completed IRS Form 8822, Change of Address (FF 13).					
(3) Prepare and send Letter 31 to IRS, together with completed IRS Form 8822, Change of Address (FF 13).					
c. To authorize IRS to **deal directly with attorney**, do the following:					
(1) Prepare IRS Form 2848, Power of Attorney and Declaration of Relationship (FF 10).					
(2) Arrange to have IRS Form 2848, Power of Attorney and Declaration of Relationship (FF 10), signed by an executor, administrator, or other proper person. If mailing, prepare and send Letter 24 to such person(s), together with completed IRS Form 2848, Power of Attorney and Declaration of Relationship (FF 10).					
(3) If using this power of attorney for purposes other than estate tax return, prepare and send Letter 97 to IRS, together with completed IRS Form 2848, Power of Attorney and Declaration of Relationship (FF 10). Otherwise, place signed copy in file folder entitled "Federal Estate Tax."					

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RESIDENCE

	NA	L	S	DATE	INITIALS
62. Arrange for adequate security for D's residence and belongings and, unless adequate security exists or there is a responsible person present, arrange for custody of D's personal papers and other records and consider removing D's **valuables** from D's places of business and residence.					
63. If **D lived alone**, consider the following:					
a. Arrange for D's mail to be forwarded to executor, administrator, or client (U.S. Postal Service Form 3575 may be used).					
b. Terminate magazine subscriptions and all home deliveries, such as newspapers, milk, and propane, and obtain refunds. If refunds are received, list amounts as accounts receivable in Section 12.0 of MIL.					
(1) If IA, TBA, IBA, ADE, AWA, RDA, AP, or TDA, deposit refunds into estate account.					
(2) If MT, SE, or PDH, distribute refunds to appropriate heirs and beneficiaries.					
c. Clean out refrigerator and freezer and arrange for care of plants and pets.					
d. Notify police department and neighbors that residence will be vacant.					
e. Change locks.					
f. Terminate utility service and obtain refunds of deposits. If refunds are received, list amounts as accounts receivable in Section 12.0 of MIL.					
(1) Electrical					
(2) Gas					
(3) Telephone					
(4) Water					
(5) Cable television					
(6) Exterminators					
(7) Other					
(a) If IA, TBA, IBA, ADE, AWA, RDA, AP, or TDA, deposit refunds into estate account.					

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	NA	L	S	DATE	INITIALS
(b) If MT, SE, or PDH, distribute refunds to appropriate heirs and beneficiaries.					
g. Arrange for storage or other disposition of D's personal effects.					
h. Contact D's insurance agent to obtain vacancy endorsement. Consider naming executor or administrator as additional insured. When received, place in file folder entitled "Other Insurance."					
i. Arrange for yard care.					
j. Arrange for night lighting.					
64. If D's place of **residence** was **leased**, consider the following:					
a. Obtain copy of lease and review to see if lease can be terminated. Place in file folder entitled "Real Estate." *Note:* If D lived alone, termination may be available under Property Code, Section 92.0162. Thirty days' notice from D's representative is required.					
b. Consider terminating lease if in best interests of D's estate or heirs and if possible.					
c. If lease cannot be terminated, do the following:					
(1) Enter date of expiration as Item 56a of SDL.					
(2) Consider subleasing or assignment if permitted.					
(3) Consider termination of utility service and obtain refunds of deposits. If refunds are received, list amounts as accounts receivable in Section 12.0 of MIL.					
(a) If IA, TBA, IBA, ADE, AWA, RDA, AP, or TDA, deposit refunds into estate checking account.					
(b) If MT, SE, or PDH, distribute refunds to appropriate heirs and beneficiaries.					
(4) Be sure that executor, administrator, or client knows name and address of person to whom rent must be paid and amount thereof.					
d. Contact D's insurance agent to obtain vacancy endorsement. When received, place in file folder entitled "Other Insurance." Consider naming executor or administrator as additional insured.					
e. On termination of lease, obtain refunds of prepaid rent and security deposits. If refunds are received, list amounts as accounts receivable in Section 12.0 of MIL.					
(1) If IA, TBA, IBA, ADE, AWA, RDA, AP, or TDA, deposit refunds into estate account.					

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NA	L	S	DATE	INITIALS

(2) If MT, SE, or PDH, distribute refunds to appropriate heirs and beneficiaries.

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OTHER LEASED PROPERTY

	NA	L	S	DATE	INITIALS
65. If D was a tenant of any **other property**, consider all steps listed in Items 62 through 64 of this Checkplan and take appropriate action, enter dates of expiration of leases as Items 56b and 56c of SDL, and do the following:					
a. Obtain copy of lease and review to see if lease can be terminated. Place in file folder entitled "Real Estate."					
b. Terminate lease if in best interests of D's estate and if possible under lease.					
c. If lease cannot be terminated, do the following:					
(1) Consider subleasing or assignment if permitted.					
(2) Consider termination of utility service and obtain refunds of deposits. If refunds are received, list amounts as accounts receivable in Section 12.0 of MIL.					
(a) If IA, TBA, IBA, ADE, AWA, RDA, AP, or TDA, deposit refunds into estate account.					
(b) If MT, SE, or PDH, distribute refunds to appropriate heirs and beneficiaries.					
(3) Be sure that executor, administrator, or client knows name and address of person to whom rent must be paid and amount thereof.					
d. Contact D's insurance agent to obtain vacancy endorsement. When received, place in file folder entitled "Other Insurance." Consider naming executor or administrator as additional insured.					
e. On termination of lease, obtain refunds for prepaid rent and security deposits. If refunds are received, list amounts as accounts receivable in Section 12.0 of MIL.					
(1) If IA, TBA, IBA, ADE, AWA, RDA, AP, or TDA, deposit refunds into estate account.					
(2) If MT, SE, or PDH, distribute refunds to appropriate heirs and beneficiaries.					

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CREDIT CARDS AND CHARGE ACCOUNTS

	NA	L	S	DATE	INITIALS
66. **Credit cards and charge accounts**. See Special Instruction 96—Identity Theft.					
a. Locate and safeguard all of D's credit cards.					
b. Regarding credit report for D, complete Letter 132 and send to executor or administrator. If executor or administrator will request credit report, also complete and send Letter 133 to executor or administrator. If attorney is requesting credit report, complete and send Letter 137 to credit bureaus. Surviving spouse should request his or her own credit report for comparison.					
c. Determine if D had credit or credit card life insurance. If so, enter in Section 13.0 of MIL and obtain claim forms.					
d. Determine unpaid balance of all of D's obligations at date of D's death and enter in Section 21.0 of MIL.					
e. Determine if D's unsatisfied charitable pledges are enforceable.					
f. Determine whether to cancel orders for or return recently purchased items that D's family cannot use.					
g. Determine if other members of D's family had and wish to continue the use of D's credit cards or charge accounts. If so, have them make appropriate arrangements with those creditors. If not, prepare and send Letter 27 to each creditor listed in Section 21.0 of MIL.					
h. Ensure that all persons who paid D's debts and claims are repaid before distribution of D's estate.					
i. Determine if D had a credit balance due for overpayment of any accounts. If refunds are received, list as accounts receivable in Section 12.0 of MIL.					
(1) If IA, TBA, IBA, ADE, AWA, RDA, AP, or TDA, deposit refunds into estate account.					
(2) If MT, SE, or PDH, distribute refunds to appropriate heirs and beneficiaries.					
j. Refer back to Item 55 of this Checkplan and take appropriate action.					

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CLAIMS AGAINST D'S ESTATE

	NA	L	S	DATE	INITIALS
Note: Item 67 of this Checkplan does not apply to MT, SE, PDH, or RW.					
67. If there are potential claims against the estate, including administration expenses, family allowance, or allowance in lieu of exempt property, do the following:					
a. See Special Instruction 54—Claims of Creditors.					
b. Refer to Item 21.34 of MIL. If D received Medicaid benefits, complete the steps in Item 22b of this Checkplan. If MERP claim is not waived by Texas Department of Aging and Disability Services, complete Item 21.36 of MIL. See Special Instruction 100—Needs-Based Benefits.					
c. If not already done, prepare Worksheet 13 in duplicate and place a copy in file folders entitled "Debts, Claims, and Expenses (Paid)" and "Debts, Claims, and Expenses (Unpaid)."					
d. Indicate whether each creditor is secured or unsecured. Classify all claims and potential claims and determine priority of payment.					
e. If not already done, consider giving permissive notice to unsecured creditors. If doing so, follow Item 55b(1)–(5) of this Checkplan before returning to this Item 67e.					
f. If executor or administrator has a claim against D's estate, it must be verified and filed within six months after date of qualification (Item 48 of SDL), or claim will be barred.					
g. If executor or administrator desires to pay a claim that is not barred and has not yet been presented to the executor or administrator or deposited with clerk of court, and if executor or administrator desires to ensure that the claim will be presented, do the following:					
(1) Prepare Authenticated Unsecured Claim (Form 58) for each claimant designated by D's executor or administrator.					
(2) Prepare and send Letter 75 to claimant's attorney, together with appropriate copies of the Authenticated Unsecured Claim (Form 58).					

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	NA	L	S	DATE	INITIALS
h. For each claim timely presented to D's executor or administrator or deposited with clerk of court, do the following: (1) Determine the date it was presented, enter on Worksheet 13 and as Item 77a of SDL, and, if a dependent administration, calculate Item 77b of SDL and enter on Worksheet 13.					
(2) Compare amount of claim with records of executor or administrator and verify amount.					
(3) Review claim for proper content, form, execution, and verification.					
(4) Determine whether secured creditor elected to have claim approved as a matured secured claim or as a preferred debt and lien and enter on Worksheet 13. *Note:* If election was made late or if no election was made, claim automatically will be preferred debt and lien. *Note:* If this is an independent administration, a creditor with a lien on real estate also must have recorded in the deed records of the county in which the real property is located notice of the creditor's election to have the claim regarded as a matured secured claim.					
i. If executor or administrator desires to **allow** the payment of a claim that has been timely presented to D's executor or administrator or deposited with clerk of court, do the following: (1) If claim is for proper amount and is in proper form, arrange to have it allowed by executor or administrator within thirty days after claim was presented or deposited.					
(a) Prepare Allowance of Claim (Form 123), attach the claim itself, and arrange for signature by an executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with two copies of Allowance of Claim (Form 123) and attachments. *Note:* This form must be prepared for the signature of and actually be signed by an executor or administrator.					
(b) On allowance by executor or administrator, enter date of allowance as Item 77c of SDL and make entry on Worksheet 13. If an independent administration, arrange for payment to be made unless claim was filed as a secured debt and lien.					

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	NA	L	S	DATE	INITIALS
(c) In a dependent administration or, if an independent administration and the creditor presented its claim by deposit with the clerk, prepare Memorandum of Allowance of Claim (Form 124), attach the properly signed Allowance of Claim (Form 123) (with original claim), and file with clerk of court. Enter date of filing as Item 77d of SDL and on Worksheet 13.					
(d) Mail the creditor a copy of Allowance of Claim (Form 123) and, if applicable, the Memorandum of Allowance of Claim (Form 124) filed with clerk of court.					
Note: The following steps (2) and (3) are inapplicable in an independent administration.					
(2) On approval of claim by court, enter date of approval as Item 77e of SDL and make entry on Worksheet 13, advise executor or administrator of approval, and arrange for payment to be made unless claim was filed as a secured debt and lien.					
(3) If claim was allowed by executor or administrator but disapproved by court, enter date of disapproval as Item 77i of SDL and make entry on Worksheet 13.					
j. If executor or administrator desires to **reject** (disallow) a claim that is in proper form and that has been timely presented to D's executor or administrator or deposited with clerk of court, do the following within thirty days after claim was presented or deposited:					
Note: If the claim is not in proper form (e.g., insufficient exhibits or not properly authenticated), skip to Item 67k of this Checkplan and instead object to the claim.					
(1) Prepare [Rejection/Partial Rejection] of Claim (Form 125), attach the claim itself, and arrange for signature by an executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with two copies of Form 125 and attachments. *Note:* This form must be prepared for the signature of and actually be signed by an executor or administrator.					
(2) On rejection by executor or administrator, enter date of rejection as Item 77f of SDL and make entry on Worksheet 13. Complete Items 77g and 77h of SDL. Conform entry in S/L Date on Worksheet 13 to 77h of SDL if 77h is earlier.					

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	NA	L	S	DATE	INITIALS
(3) In a dependent administration or, if an independent administration and the creditor presented its claim by deposit with the clerk, prepare Memorandum of [Rejection/Partial Rejection] of Claim (Form 126), attach the properly signed [Rejection/Partial Rejection] of Claim (Form 125) (with original claim), and file with clerk of court. Enter date of filing on Worksheet 13.					
k. If executor or administrator desires to **object** to the form of a claim that has been timely presented to D's executor or administrator or deposited with clerk of court, do the following within thirty days after claim was presented or deposited:					
(1) Prepare Objection to Claim (Form 127), attach the claim itself, and arrange for signature by an executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with two copies of Objection to Claim (Form 127) and attachments. *Note:* This form must be prepared for the signature of and actually be signed by an executor or administrator.					
(2) On objection by executor or administrator, make entry on Worksheet 13.					
(3) In a dependent administration or, if an independent administration and the creditor presented its claim by deposit with the clerk, prepare Memorandum of Objection to Claim (Form 128), attach the properly signed Objection to Claim (Form 127) (with original claim), and file with clerk of court. Enter date of filing on Worksheet 13.					
(4) Consider mailing the creditor a copy of Objection to Claim (Form 127) and, if applicable, the Memorandum of Objection to Claim (Form 128) filed with clerk of court.					
l. For each unsecured creditor with a claim *not* for money who fails to file suit before the S/L Date on Worksheet 13, change Class on Worksheet 13 to "Barred."					
m. If a secured creditor in preferred debt and lien status seeks to collect a deficiency from the other assets of the estate, prepare and send Letter 125 to the creditor.					
n. In a *dependent* administration, for each unsecured creditor with a claim for money who fails to file suit within the 90-day period shown in Item 77h of SDL, change Class on Worksheet 13 to "Barred."					

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OTHER INSURANCE

	NA	L	S	DATE	INITIALS
68. Other Insurance:					
a. For expenses of last illness, obtain all original health, medical, hospitalization, and accident insurance policies insuring D, place them in file folder entitled "Other Insurance," and file claims under the following types of D's insurance policies (see Section 15.0 of MIL):					
(1) Health, medical, and hospitalization					
(2) Medicare					
(3) Accident (including automobile and travel clubs)					
(4) Fire, casualty, liability, etc.					
b. Analyze D's policies, especially health policies, to determine whether any policies provide for payment of death benefits, medical expenses, or funeral expenses.					
c. Inquire as to circumstances of D's death to determine if worker's compensation or accidental death benefits may be payable.					
d. Advise D's family members to convert or replace D's medical, hospitalization, and other insurance.					
69. Dealing with D's **accident insurance** policies (see Section 15.0 of MIL). Do the following:					
a. Locate policy and review. Place in file folder entitled "Other Insurance."					
b. Inquire as to circumstances of D's death to determine if accidental death benefits may be payable. If so, file appropriate claims.					
c. Determine if D paid any of the premiums of these policies within three years of death.					
d. If death benefits are payable, refer to Section 13.0 of MIL and Item 7 of this Checkplan.					
70. Dealing with D's **homeowner's and personal property insurance** policies, **fire and extended coverage insurance** policy, **liability insurance** policy, and **automobile insurance** policy (see Section 15.0 of MIL). See Special Instruction 92—Duty to Insure. Do the following:					
a. Determine whether client informed each insurance agent of D's date of death or appointment of personal representative.					

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	NA	L	S	DATE	INITIALS
b. Determine whether client asked each insurance agent for declarations page of each policy in which D had an interest, tasks and deadlines to keep each policy in force, and list of any coverage changes needed immediately.					
c. Determine whether client has been added as a named insured to D's homeowner's and other insurance policies.					
d. If requested by client, send Letter 130 to each insurance agent. *Note:* In the smallest, simplest estates, it may be unreasonable to use an attorney for this task.					
e. Locate policies and each insurance agent's responses, and review. Complete and correct Section 15.0 of MIL for each policy.					
f. If there is separately scheduled (listed) personal property on **homeowner's and personal property insurance** policies, make copy of list of property and place copy and policy in file folder entitled "Other Insurance."					
g. Determine if any benefits are payable under any policy. If so, file appropriate claims.					
h. Determine whether to terminate coverage. If so, collect unearned premium and list amount as an account receivable in Section 12.0 of MIL.					
(1) If IA, TBA, IBA, ADE, AWA, RDA, AP, or TDA, deposit refund into estate account.					
(2) If MT, SE, or PDH, distribute refund to appropriate heirs and beneficiaries.					
i. Determine adequacy of coverage. If there is no coverage or existing coverage is inadequate, do the following: (1) Determine kind and amount of coverage needed.					
(2) Obtain required insurance. When received, place in file folder entitled "Other Insurance."					
j. Obtain endorsements to transfer existing coverage to estate or to persons who inherited this property. When received, place in file folder entitled "Other Insurance."					
71. Dealing with D's **health and medical insurance** policies (see Section 15.0 of MIL). Do the following: a. Locate policies and review. Place in file folder entitled "Other Insurance."					
b. Advise D's agent of fact and date of D's death.					
c. Determine if any benefits, including death benefits, are payable under these policies. If so, file appropriate claims.					

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	NA	L	S	DATE	INITIALS
d. Determine whether to terminate coverage. If so, collect unearned premiums and list amounts as accounts receivable in Section 12.0 of MIL.					
(1) If IA, TBA, IBA, ADE, AWA, RDA, AP, or TDA, deposit refunds into estate account.					
(2) If MT, SE, or PDH, distribute refunds to appropriate heirs and beneficiaries.					
e. Determine if policy covers other members of D's family and consult with them regarding continuance of coverage. *Note:* Under the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272 ("COBRA"), many employers are required to permit D's surviving spouse and certain other dependents to continue coverage under D's group health plan.					
(1) Determine kind and amount of coverage needed.					
(2) Obtain required insurance. When received, place in file folder entitled "Other Insurance."					
(3) Be sure this coverage is paid for by those family members.					
72. Determine whether to obtain **other** necessary **insurance coverage** for assets and general public liability insurance coverage for estate, executors, administrator, beneficiaries, or clients, and take appropriate action. See Special Instruction 92—Duty to Insure. Do the following: a. Review D's will, contracts (construction, mortgage, lease), marital agreements and orders (prenuptial, postnuptial, temporary orders, final decree, agreement incident to divorce), and ongoing activities (professional practice, unincorporated business, employees), discuss with client, and assess estate's insurance needs.					
(1) Identify estate's assets and activities.					
(2) Determine whether any of estate's assets and activities are prohibited or restricted by will or statute.					
(3) Determine D's contractual or judicial insurance and indemnity obligations.					
(4) Determine whether there are others with insurable interests in estate property (homesteader or life tenant, remainderman, landlord, tenant).					
(5) Determine whether executor or administrator has full or limited power to manage all.					
(6) Determine whether power to insure is granted or restricted.					

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	NA	L	S	DATE	INITIALS
(7) Determine court orders, if any, necessary to insure estate.					
(8) Determine whether diversification of estate's assets is required, limited, or prohibited.					
(9) Determine anticipated distribution plan for estate assets.					
(10) Determine timetable for finalizing investment or distribution plan.					
b. Determine whether executor or administrator will consult insurance analyst or risk manager.					
(1) Review any insurance analysis contract.					
(2) If client engages insurance analyst or risk manager, place contract in file folder entitled "Other Insurance."					
c. When new policies are received, place in file folder entitled "Other Insurance."					

73. - 75. (Reserved)

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CASH

	NA	L	S	DATE	INITIALS
76. If D had **checking** or **savings accounts**, **certificates of deposit**, **undeposited checks**, or **currency**, do the following: a. See Special Instruction 20—Cash Items. *Note:* **If D was a lawyer**, as shown at Item 1.28 of MIL, also see Special Instruction 78—Death of a Lawyer and Item 76u in this Checkplan.					
b. Investigate all accounts and certificates of deposit to ensure full coverage under FDIC or other government insurance.					
c. Obtain D's check register and canceled checks, deposit slips, and bank statements for the month before, the month of, and the month following D's death and also all certificates of deposit and passbooks for savings accounts. Place in file folder entitled "Cash."					
d. If D had certificate of deposit, enter maturity date in office reminder system to determine whether to renew or to collect the proceeds at maturity. If certificate is to be redeemed before maturity, see Special Instruction 20—Cash Items.					
e. If there is more than one account and/or certificate of deposit, prepare Worksheet 3 and place in file folder entitled "Cash."					
f. If D was married, prepare and send Letter 28 to each bank, savings and loan association, or credit union where either D or D's spouse maintained an account, certificate of deposit, safe deposit box, or loan in either or both of their names.					
g. If D was not married, prepare and send Letter 29 to each bank, savings and loan association, and credit union where D maintained an account, certificate of deposit, safe deposit box, or loan. *Note:* Letter 28 and Letter 29 follow similar IRS requests sent to account custodians on audit of the estate tax return. If the IRS is going to have the information, you should too. These letters reach probate and nonprobate assets, both of which are required to complete estate tax returns and basis calculations and may be liable for claims of creditors.					
h. Make photocopies of all checks payable to D or D's spouse that were undeposited on the date of D's death, list in Section 11.0 of MIL, and place copies in file folder entitled "Cash."					
i. Make photocopies of all traveler's checks belonging to D or D's spouse, list in Section 11.0 of MIL, and place copies in file folder entitled "Cash."					

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	NA	L	S	DATE	INITIALS
j. List currency in possession of D and D's spouse in Section 11.0 of MIL.					
k. Complete Section 11.0 of MIL.					
l. Prepare Worksheet 4 for each of D's checking accounts to reconcile D's records and checks outstanding at D's death to balance furnished by bank (see Special Instruction 20—Cash Items). Place Worksheet 4 for each account in file folder entitled "Cash."					
m. If not certain whether D had an account at a particular bank or credit union, prepare and send Letter 30 to each of them you have reason to believe should be contacted to determine the possible existence of such an account. If account exists, take actions indicated in this Item 76 of this Checkplan.					
n. Determine if each cash item was community property or D's separate property.					
o. Consider transferring community interest in cash to D's surviving spouse.					
p. If name of account should be changed to eliminate D's name, take appropriate action.					
q. If account will continue and D's Social Security number was applicable to the account or certificate, take appropriate action to substitute the Social Security number of the successor to that account. This is particularly helpful if the surviving spouse becomes the owner of all the funds.					
r. Determine if there are any preauthorized withdrawals or automatic bank drafts for any of D's accounts and, if so, whether to terminate them.					
s. Evaluate cash requirements and arrange for funds necessary to pay debts, taxes, and expenses of administration (see Worksheet 10).					
t. As responses are received, place in file folder entitled "Cash." As these steps are completed, be sure to enter that information on Worksheet 3.					
u. If D was a lawyer with a trust, escrow, or IOLTA account and it is necessary to gain access to such an account, do the following: (1) Determine whether executor or administrator is a duly licensed Texas lawyer in good standing.					
(2) If so, prepare Statement Pursuant to Chapter 456 of the Texas Estates Code (Form 129) and Letter 126 and arrange to have signed by executor or administrator.					

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	NA	L	S	DATE	INITIALS
(3) If not, determine identity of lawyer who will undertake to handle application of funds, prepare Agreement Pursuant to Chapter 456 of the Texas Estates Code (Form 130), and arrange to have signed by executor or administrator and designated lawyer. Prepare Letter 126 and arrange to have signed by designated lawyer.					
(4) Send Letter 126 to each institution holding funds, together with a signed copy of Statement (Form 129) or Agreement (Form 130); a copy of Estates Code, Chapter 456 (Form 131); a certified copy of D's death certificate; current original letters testamentary or letters of administration; and proof that lawyer is in good standing.					

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SUBCHAPTER S CORPORATIONS

	NA	L	S	DATE	INITIALS
77. Determine if D owned stock in a **Subchapter S corporation** (see Item 10.80 of MIL). If so, do the following:					
a. See Special Instruction 70—Subchapter S Corporations.					
b. Determine if stock was community property or D's separate property.					
c. Consider transferring community interest to D's surviving spouse.					
d. Enter date of fiscal year end for Subchapter S Corporation as Item 10.12 of MIL and as Item 57 of SDL and complete Item 58 of SDL.					
e. Review shareholder agreements to determine if there is an obligation to continue the election.					
f. Determine whether to continue or revoke the election. Complete Item 10.81 of MIL.					
g. If the election is to be revoked by action of a majority interest of the shareholders and D's shares are to be included in the revocation, do the following: (1) If IA, TBA, IBA, ADE, AWA, RDA, AP, or TDA, for each corporation for which the election will be terminated, arrange for executor or administrator to join in the revocation. Place copies in file folder entitled "Securities."					
(2) If MT, SE, or PDH, for each corporation for which the election will be terminated, arrange for signature by person(s) receiving the stock to join in the revocation. Place copies in file folder entitled "Securities."					
h. Determine amount of income, loss, deductions, and credits attributed to D's stock for the period before D's death as prorated on a daily basis and enter as Item 10.82 of MIL. *Note:* These items for the remainder of the corporation's fiscal year will be taxable to D's estate or to the person(s) acquiring D's stock. Any of D's undistributed "previously taxed income" remaining in the corporation at D's death will lose its right to nondividend treatment.					
i. See Special Instruction 40—Section 303 Redemption and determine whether D's estate is eligible under IRC Section 303 for redemption and special treatment.					

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NA	L	S	DATE	INITIALS

j. See Special Instruction 98—Corporate Transparency Act and determine whether a report should be made to Financial Crimes Enforcement Network.

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D'S LIFETIME TAX LIABILITIES

	NA	L	S	DATE	INITIALS
78. Handling **D's lifetime tax liabilities**. Letter 3 and the other representation letters in this System disclaim responsibility for gift and income tax returns and suggest the client use a certified public accountant. However, Letter 3 commits the lawyer to determining the nature and amount of the liabilities of the estate, which includes D's lifetime tax liabilities. Although addressed to the lawyer preparing income tax returns, this Item 78 is as much for the lawyer reviewing another preparer's work. Do the following: a. See IRS Publication 559, *Survivors, Executors, and Administrators*, for examples of completed forms.					
b. See Special Instruction 21—Helpful Publications Relating to Federal Tax Matters.					
c. If D died between January 1 and April 15, complete Items 59 and 60 of SDL and be sure that D's **income tax return**, prepared on IRS Form 1040 (form not provided in this System) for the prior calendar year, has been filed and the tax paid by April 15 of year of D's death.					
(1) If tax return cannot be filed by April 15 of year of D's death, do the following: (a) Determine approximate amount of tax due.					
(b) Prepare Application for Automatic Extension of Time to File U.S. Individual Income Tax Return on IRS Form 4868 (form not provided in this System).					
(c) Arrange for signature by D's surviving spouse, executor or administrator, client, or distributee, or by preparer of return.					
(d) File Application for Automatic Extension of Time to File U.S. Individual Income Tax Return on IRS Form 4868 (form not provided in this System) with, and pay tax to, IRS by April 15.					
(e) Enter extended due date as Item 60a of SDL.					
(2) File the return and pay balance of tax due, if any, within the period of the extension.					
(3) Place copies in file folder entitled "Income Tax Returns."					

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	NA	L	S	DATE	INITIALS
(4) When finally determined, enter D's share of total income tax liability as Item 26.10 of MIL or D's share of total refund as Item 12.05 of MIL.					
d. Determine whether to continue payments of **estimated income tax** on IRS Form 1040-ES (form not provided in this System), since D's death is not an exception to the penalty for underpayment of those taxes. *Note:* After D's death, the surviving spouse should continue to make the required payments out of funds of that spouse rather than from funds from D's estate. This will avoid a possible inadvertent distribution of estate funds and income. If no other funds are available, consider a loan.					
(1) Enter due dates in office reminder system.					
(2) File declaration with, and pay tax to, IRS by each due date. No transmittal letter is required.					
(3) Place copies in file folder entitled "Income Tax Returns."					
e. Consider making contributions to IRA account for D and D's spouse for the year of D's death.					
f. Determine if D engaged in activities that generated **passive activity losses**. If so, do the following:					
(1) Determine if D had suspended losses from a passive activity. If so, do the following:					
(a) Determine D's adjusted basis in the asset immediately before D's death and subtract that amount from the fair market value of the asset on the date of D's death.					
(b) Determine amount of suspended losses as shown on D's income tax return(s).					
(2) Claim the smaller of the two amounts of the suspended loss on D's final income tax return.					
g. Prepare and file **D's final federal income tax return** on IRS Form 1040 (form not provided in this System) for D's income from January 1 through the date of D's death in the calendar year during which D died. The return must be filed and the taxes paid by April 15 of the calendar year following D's death.					
(1) Review D's records for year of death for information required for D's final income tax return.					

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	NA	L	S	DATE	INITIALS
(2) If **estimated tax** payments had been made by D and D's spouse for calendar year of D's death, consider revising amounts to be paid by D's spouse by revising and filing IRS Form 1040-ES (form not provided in this System). Enter payment dates in office reminder system. Place copy in file folder entitled "Income Tax Returns."					
(3) If tax return cannot be filed by April 15 of the calendar year following D's death, do the following:					
(a) Determine approximate amount of tax due.					
(b) Prepare Application for Automatic Extension of Time to File U.S. Individual Income Tax Return on IRS Form 4868 (form not provided in this System).					
(c) Arrange for signature by D's surviving spouse, executor or administrator, client, or distributee, or by preparer of return.					
(d) File Application for Automatic Extension of Time to File U.S. Individual Income Tax Return on IRS Form 4868 (form not provided in this System) with, and pay tax to, IRS by April 15.					
(4) Enter extended date as Item 60a of SDL.					
(5) Determine if D or D's spouse had capital loss carryovers. If so, consider selling appreciated property owned by D's surviving spouse and then filing a joint return.					
(6) Determine if D had net operating losses in excess of the combined ordinary income of D and D's spouse. If so *and* if the fiscal year of D's estate closes within the taxable year of the spouses, consider making income distributions to D's spouse from D's estate.					
(7) If D's final return is or was a joint return with D's spouse, compute the deduction for D's share of total income tax liability and enter amount as Item 26.10 of MIL.					
(8) File the return and pay the balance of tax due within the period of the extension. *Note:* It is good practice to file a return for the year of D's death even if no tax is due. If D was not married, it would be appropriate to write "FINAL RETURN" at the top of Page 1 of the return.					
(9) When finally determined, enter D's share of total income tax liability as Item 26.10 of MIL or D's share of total refund as Item 12.05 of MIL.					
(10) Determine whether to request prompt assessment of D's income taxes.					

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	NA	L	S	DATE	INITIALS
(11) Place copies in file folder entitled "Income Tax Returns."					
h. If unable to locate copies of D's income tax returns for the three years before death, consider requesting transcripts or copies from IRS. See Special Instruction 3—Income Tax Returns Can Lead You to Assets and Liabilities and do the following:					
(1) Determine the address used on the return(s), whether D filed separately or jointly for the year(s) in question, and the Internal Revenue Service Center(s) where filed.					
(2) If requesting **transcripts only**, prepare IRS Form 4506-T, Request for Transcript of Tax Return (FF 5). The form is available online at **www.irs.gov** (click on "Order Transcript"). *Note:* If D's surviving spouse was a joint filer with D for the tax year(s) in question, the form may be signed by that spouse. If D was not married and/or if D did not have the same spouse for the tax year(s) in question, the form must be signed by the personal representatives and letters testamentary or letters of administration must be attached. Contact the IRS for alternate instructions if you are trying to obtain transcripts and there is no executor or administrator.					
(a) Arrange for IRS Form 4506-T, Request for Transcript of Tax Return (FF 5), to be signed by proper person.					
(b) If required, obtain letters testamentary or letters of administration. 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.					
(c) When signed copy of IRS Form 4506-T, Request for Transcript of Tax Return (FF 5), has been returned and all attachments have been obtained, send to the Internal Revenue Service Center. No cover letter is required.					
(d) On receipt of transcripts from the IRS, place in file folder entitled "Income Tax Returns."					

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	NA	L	S	DATE	INITIALS
(3) If requesting **copies** of tax forms, prepare IRS Form 4506, Request for Copy of Tax Return (FF 1). The form is available online at **www.irs.gov/pub/irs-pdf/f4506.pdf**. *Note:* If D's surviving spouse was a joint filer with D for the tax year(s) in question, the form may be signed by that spouse. If D was not married and/or if D did not have the same spouse for the tax year(s) in question, the form must be signed by the personal representatives and letters testamentary or letters of administration must be attached. Contact the IRS for alternate instructions if you are trying to obtain copies of returns and there is no executor or administrator.					
(a) Arrange to have IRS Form 4506, Request for Copy of Tax Return (FF 1), signed by proper person.					
(b) If required, obtain letters testamentary or letters of administration. 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.					
(c) When signed copy of IRS Form 4506, Request for Copy of Tax Return (FF 1), has been returned and all attachments have been obtained, determine correct charge, arrange for payment, charge client's account, and send to the Internal Revenue Service Center. No cover letter is required.					
(d) On receipt of copies of tax returns from the IRS, place in file folder entitled "Income Tax Returns."					
(4) Determine if D had not filed income tax returns for prior year(s) and, if not, arrange for missing returns to be prepared. *Note:* Old tax forms are at **www.irs.gov/forms-instructions** and **www.unclefed.com**.					
i. Determine if D was liable for filing a **gift tax return** for unreported gifts. If so, prepare and file IRS Form 709, United States Gift Tax Return (form not provided in this System), pay tax due, and enter the amount as Item 26.52 of MIL. *Note:* D's gift tax returns must be filed no later than the date for filing D's federal estate tax return.					
(1) Determine if any gift tax returns are presently under audit.					

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	NA	L	S	DATE	INITIALS
(2) If unable to determine if D ever filed gift tax returns or if all returns cannot be located, and if executor, administrator, client, heir, beneficiary, or distributee has even the slightest grounds for believing such returns may have been filed, request copies of D's gift tax returns filed for periods after December 31, 1975, to avoid personal liability when relying on returns obtained from IRS. IRS Form 4506, Request for Copy of Tax Return (FF 1), may be modified and used for this purpose. *Note:* It is not wise to file the federal estate tax return before investigating the existence of and then reviewing all of D's gift tax returns.					
(3) If gifts were made to third parties by D's surviving spouse before D's death, consider making election to split those gifts.					
(4) Determine whether to request prompt assessment of gift taxes.					
(5) Place copies of *all* gift tax returns in file folder entitled "Gift Tax Returns."					
j. Determine if D was liable for filing **employer quarterly tax returns**. If so, prepare and file final return on IRS Form 941, Employer's Quarterly Federal Tax Return (form not provided in this System), pay tax due, and enter the amount as Item 26.51 of MIL. Place copy of return(s) in file folder entitled "Other Tax Returns."					
k. Pay particular attention to the following items:					
(1) Medical expenses unpaid on date of D's death may be deducted as medical expenses on D's income tax return for the year in which paid or as a debt on federal estate tax return (see Special Instruction 22—Federal Tax Elections and Deductions).					
(2) Accrued interest from U.S. Series E and EE bonds may be reported as income on D's final income tax return.					
(3) A joint income tax return may be filed for D and D's surviving spouse (see Special Instruction 9—Surviving Spouse's Federal Income Tax Elections).					
(4) D's capital losses and net operating losses expire in the year of D's final income tax return. Determine whether to increase income on a joint return in the final year to absorb any such losses.					

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	NA	L	S	DATE	INITIALS
l. See Special Instruction 3—Income Tax Returns Can Lead You to Assets and Liabilities and review D's income tax returns for the three years before D's death to determine nature of business and itemized deductions and income from businesses and investments, that all income taxes have been paid, if any returns are presently under audit, if claims for refund are pending or should be filed, and if there are unused loss carryovers.					
m. Determine whether to notify IRS of change of address for D. If so, do the following:					
(1) Determine new address (such as the address of the executor, administrator, surviving spouse, or other person to whom IRS notices should be sent).					
(2) Complete IRS Form 8822, Change of Address (FF 13).					
(3) Arrange to have IRS Form 8822, Change of Address (FF 13), signed by an executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with completed IRS Form 8822, Change of Address (FF 13).					
(4) Prepare and send Letter 31 to IRS, together with completed IRS Form 8822, Change of Address (FF 13).					
n. If any executor or administrator has a change of address, do the following:					
(1) Complete IRS Form 8822, Change of Address (FF 13), to report a change of address for any executor or administrator.					
(2) Arrange to have IRS Form 8822, Change of Address (FF 13), signed by an executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with completed IRS Form 8822, Change of Address (FF 13).					
(3) Prepare and send Letter 31 to IRS, together with completed IRS Form 8822, Change of Address (FF 13).					
o. Determine if D owned a **partnership** interest in which the **tax basis** of D's interest should be **adjusted** under IRC Section 743 (see Item 16.53 of MIL). If so, see that the partnership makes the election under IRC Section 754 for the taxable year of the partnership during which D's death occurred. Place copy in file folder entitled "Partnerships, Trusts, and Other Unincorporated Businesses."					

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INCOME TAX RETURNS FOR ESTATE

	NA	L	S	DATE	INITIALS
Note: Item 79 of this Checkplan does not apply to MT, SE, or PDH proceedings. 79. **Fiduciary income tax returns**. In any fiscal year in which any beneficiary is a nonresident alien or D's estate has gross income of $600 or more, IRS Form 1041, U.S. Income Tax Return for Estates and Trusts (form not provided in this System) must be prepared and filed.					
a. See Special Instruction 21—Helpful Publications Relating to Federal Tax Matters, Special Instruction 22—Federal Tax Elections and Deductions, Special Instruction 19—Fiscal Years, and Special Instruction 74—Income Taxation of Estate.					
b. Advise client to ensure that IRS Form 1041, U.S. Income Tax Return for Estates and Trusts (form not provided in this System), is prepared and filed.					
c. If D's estate will not be closed before the end of the second fiscal year, advise client to ensure that IRS Form 1041-ES (form not provided in this System) for D's estate and appropriate vouchers for each fiscal year thereafter are prepared.					
d. If any executor or administrator has a change of address, ensure that executor or administrator files IRS Form 8822, Change of Address (FF 13).					

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VALUATION

NA	L	S	DATE	INITIALS

80. Begin **valuation** of all assets (see Special Instruction 24—General Rules for Valuation of Assets).

    a. Obtain valuation of assets on date of D's death (Item 1.07 of MIL).

    b. Obtain valuation of each asset on alternate valuation date (Item 26.22 of MIL) or on date asset was sold or distributed if before regular alternate valuation date.

    c. Consider the impact of valuations on marital and charitable deductions and on estate tax liability in general.

    Note: Alternate valuation is not necessary, and its election will not be recognized for federal tax purposes unless IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, must be filed and not then unless it results in a decrease in the value of the gross estate and a decrease in the amount of taxes due.

    d. Obtain written appraisals of real estate, closely held businesses, vehicles, and valuable items of personal property. When received, place in file folders entitled "Real Estate," "Securities," "Partnerships, Trusts, and Other Unincorporated Businesses," and "Personal Property" as applicable.

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DISCLAIMERS

	NA	L	S	DATE	INITIALS
81. **Disclaimers** (see Special Instruction 25—Disclaimers). *NOTE:* DISCLAIMERS ARE NOT NORMALLY USED IN CONNECTION WITH MUNIMENT OF TITLE OR SMALL ESTATE PROCEEDINGS OR IN PROCEEDINGS TO DECLARE HEIRSHIP. IN THOSE SITUATIONS, IF YOU PROPOSE FOR SOMEONE TO DISCLAIM AN INTEREST IN PROPERTY, MAKE APPROPRIATE ADJUSTMENTS TO THE ITEMS IN THIS SECTION. *NOTE:* THE PROCEDURES IN THIS SYSTEM APPLY ONLY TO THE COMPLETE DISCLAIMER BY AN ADULT OF ALL PRESENT RIGHTS IN AN ESTATE WITH NO PROPERTY LOCATED OUTSIDE THE STATE OF TEXAS. In other situations (e.g., the disclaimer of nonprobate assets), the procedures will have to be modified significantly.					
a. If it has been determined that a disclaimer will be made by any heir or beneficiary, prepare Disclaimer (Form 23) for each person disclaiming an interest.					
b. Prepare and send Letter 34 to each person disclaiming an interest, together with original and two copies of Disclaimer (Form 23). *Note:* For a tax-qualified disclaimer, the heir or beneficiary must deliver the disclaimer within nine months after D's death.					
c. On receipt of properly signed and acknowledged Disclaimer (Form 23), furnish a copy of the Disclaimer (Form 23) to each executor or administrator. If mailing, prepare and send Letter 35 to each executor or administrator, together with a copy of the Disclaimer (Form 23).					

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REAL ESTATE

	NA	L	S	DATE	INITIALS
82. If D owned **real estate**, do the following:					
a. See Special Instruction 26—Real Estate.					
b. Obtain copies of and review deeds, contracts for deeds, title policies, plats, appraisals, mortgages, leases, tax statements and receipts, division orders, and other documents relating to each tract of land owned or being purchased by D or D's spouse. Place in file folder entitled "Real Estate."					
c. Complete Section 7.0 of MIL.					
d. Determine if there was a contract for the purchase or sale of any real estate pending on date of D's death.					
e. Obtain appraisal of each tract as of date of D's death, with improvements valued separately from the land. Place in file folder entitled "Real Estate."					
f. Obtain copies of royalty stubs and other statements for producing mineral interests covering payments made during twelve months before D's death, prepare calculation of value of each producing mineral interest (Worksheet 7), complete Items 7.15, 7.16, and 7.104 of MIL, and place in file folder entitled "Real Estate."					
g. If property was leased, prepare and send Letter 36 to each tenant to notify of the place and manner of making payments.					
h. If D lived alone, see Item 63 of this Checkplan and take appropriate action.					
i. If improved property becomes vacant, contact insurance agent and obtain vacancy endorsement. When received, place in file folder entitled "Other Insurance."					
j. Determine if D had claimed the ad valorem tax homestead exemption for all applicable years and, if not, take appropriate action through the appraisal district in the county where D's homestead is located.					
k. Determine if D's spouse is eligible for homestead exemption and, if so, take appropriate action with all taxing jurisdictions.					

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	NA	L	S	DATE	INITIALS
l. Prepare and send Letter 37 to the central appraisal district for each tract. *Note:* Almost all property is subject to taxation by the county and by a school district and may also be subject to taxation by water districts and other special jurisdictions. The central appraisal district and the county tax assessor can tell you which other jurisdictions are taxing the particular property.					
m. Update account information with each taxing jurisdiction.					
n. If payment status of ad valorem taxes is unknown for prior years, obtain tax certificates from each taxing jurisdiction. If there are any delinquent taxes, enter amount as Items 26.46 and 26.47 of MIL and arrange for payment. When certificates are received, place in file folder entitled "Real Estate."					
o. If D's estate is likely to exceed the federal exclusion amount (Item 26.21 of MIL) (see Special Instruction 80—Federal Estate Tax), obtain reappraisal of each tract as of alternate valuation date (Item 26.22 of MIL). Place in file folder entitled "Real Estate."					
p. If D owned real estate in a county in Texas *other than* county of probate, be sure to complete Item 200 of this Checkplan.					
q. Determine whether each tract was community property or D's separate property.					
r. Consider conveying community interest in real estate to D's surviving spouse.					
s. If property is to be sold before obtaining full release of estate tax liens, it may be necessary to obtain a release of those liens. If so, obtain and file IRS Form 4422, Application for Certificate Discharging Property Subject to Estate Tax Lien (form not provided in this System). *Note:* Release will be given only when necessary (usually to raise funds to pay debts, expenses, and taxes) and then only for a specific tract.					
t. Determine whether any tract will qualify for and whether to elect special use valuation for federal estate tax (see Special Instruction 27—Special Use Valuation for Certain Real Estate). If so, do the following: (1) Consider the effect on the marital and charitable deductions and on the estate tax liability in general.					
(2) Obtain necessary appraisal.					
(3) Obtain consent of all necessary parties.					
(4) Prepare required statements.					

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	NA	L	S	DATE	INITIALS
u. If D owned real estate outside Texas, do the following:					
(1) Arrange for out-of-state attorney to handle necessary administration ("ancillary administration") in each state and foreign country.					
(2) If necessary, see that ancillary administrator is appointed and qualifies in each state and foreign country.					
(3) See that all death taxes are paid for each state and foreign country. If paid to a foreign country and if IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, will be filed, complete Schedule P of that return and IRS Form 706-CE, Certificate of Payment of Foreign Death Tax (form not provided in this System).					
(4) See that ancillary administrator files a separate IRS Form 1041, U.S. Income Tax Return for Estates and Trusts (form not provided in this System), with the Internal Revenue Service office for that state with respect to income of D's estate that is attributable to property being so administered.					
(5) See that title to the property is vested in rightful owners.					
v. If D or D's spouse was purchasing any real estate pursuant to a contract for deed, complete Items 7.171 through 7.187 of MIL and place a copy of the contract in file folder entitled "Real Estate."					
83. If **real estate** is to be **sold by private sale** during administration, and if Inventory, Appraisement, and List of Claims (Form 22) has been filed and approved by the court, but power of sale of real property is not specified in D's will or granted by court order, or if this is TDA, AWA, ADE, RDA, or AP (dependent), do the following: a. See Special Instruction 47—Sale of Real Property during Administration.					
b. Complete Item 21.34 of MIL. If D received Medicaid benefits, do the following:					
(1) Obtain Texas Medicaid Estate Recovery Program (MERP) Authorization and MERP Certification form (FF 17) at **www.hhs.texas.gov/sites/default/files/documents/services/aging/txmerpcertification form.pdf**. See Special Instruction 100—Needs-Based Benefits.					
(2) Complete applicable portions of MERP form (FF 17).					
(3) Arrange for an heir or beneficiary to sign MERP form (FF 17). If mailing, prepare and send Letter 120 to that person, together with two copies of the MERP form (FF 17).					

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	NA	L	S	DATE	INITIALS
(4) When signed MERP form (FF 17) is received, repeat if there is a second heir or beneficiary who will sign.					
(5) When signed MERP form (FF 17) is received, forward to MERP as directed on form. If mailing, prepare and send Letter 121, together with signed copy of MERP form (FF 17).					
(6) When completed MERP form (FF 17) is received from MERP, copy it, redact D's identifying number(s) from the original for use in evidence, and place original in file folder entitled "Court Proceedings."					
(7) Complete Item 21.35 of MIL.					
c. Prepare Application for Sale of Real Property (Form 39), Verified Exhibit Showing Condition of the Estate (Form 40), and Order of Sale of Real Property (Form 42).					
d. Determine amount of filing fee, arrange for payment, and charge to client's account.					
e. File Application for Sale of Real Property (Form 39), Verified Exhibit Showing Condition of the Estate (Form 40), and Order of Sale of Real Property (Form 42) with clerk of court.					
f. Determine if court hearing is required and, if so, do the following:					
(1) Obtain a date and time for hearing and enter in office reminder system. 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).					
(2) Notify executor or administrator of time and date of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
(3) Attend hearing, present proof necessary for court's approval, and have Order of Sale of Real Property (Form 42) signed by judge.					
g. If hearing will not be required, determine date judge signed Order of Sale of Real Property (Form 42) and obtain certified copy of order (Form 42) and of Application for Sale of Real Property (Form 39).					
h. Determine if existing general bond is sufficient and, if not, obtain an additional bond in the amount indicated by the court.					
i. Enter date Order of Sale of Real Property (Form 42) was signed as Item 65b of SDL and Item 6.107 of MIL.					

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	NA	L	S	DATE	INITIALS
j. Conclude sale or finalize contract for sale and enter date as Item 65c of SDL and Item 6.108 of MIL. Complete Item 65d of SDL.					
k. Prepare Report of [Contract for] Sale of Real Property (Form 43).					
l. Arrange for executor or administrator to sign and swear to Report of [Contract for] Sale of Real Property (Form 43). If mailing, prepare and send Letter 48 to executor or administrator, together with original and one copy of Report of [Contract for] Sale of Real Property (Form 43).					
m. File Report of [Contract for] Sale of Real Property (Form 43) with clerk of court.					
n. Determine date of filing Report of [Contract for] Sale of Real Property (Form 43), enter as Item 65e of SDL, and complete Items 65f and 65g of SDL and Item 6.110 of MIL.					
o. Prepare Order [Confirming/Approving] Sale of Real Property (Form 44).					
p. File Order [Confirming/Approving] Sale of Real Property (Form 44) with clerk of court.					
q. Determine date judge signed Order [Confirming/Approving] Sale of Real Property (Form 44) and enter as Item 65h of SDL and Item 6.116 of MIL.					
r. Prepare Deed (Form 45) and arrange for signature and acknowledgment by executor or administrator. If mailing, prepare and send Letter 48 to executor or administrator, together with original and one copy of Deed (Form 45). If sale was on terms, prepare note(s) and deed of trust (forms not provided in this System).					
s. Obtain certified copy of Report of Sale (Form 43) and Order [Confirming/Approving] Sale of Real Property (Form 44).					
t. Deliver or mail certified copies of Application for Sale of Real Property (Form 39), Verified Exhibit Showing Condition of the Estate (Form 40), Order of Sale of Real Property (Form 42), Report of [Contract for] Sale of Real Property (Form 43), Order [Confirming/Approving] Sale of Real Property (Form 44), and Deed (Form 45) to title company and to attorney representing purchaser.					
u. If proof of absence of debts or unpaid taxes is required by purchaser or title company, prepare Affidavit Regarding Debts and Taxes (Form 37). Arrange for signature by affiant and for proper delivery.					
v. Close sale of property, collect proceeds, and complete Item 65i of SDL.					

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	NA	L	S	DATE	INITIALS
w. If sale is not consummated, prepare and file Application to Set Aside Report of [Contract for] Sale and Order [Confirming/Approving] Sale and the proposed Order thereon (Form 46) and follow local rules of procedure concerning hearings. *Note:* Public sales are not covered by this System.					
84. If **property** is to be **leased for mineral exploration** or development through private negotiations, and if Inventory, Appraisement, and List of Claims (Form 22) has been filed and approved by the court, but power to lease is not specified in D's will or granted by court order, or if this is TDA, AWA, ADE, RDA, or AP (dependent), do the following: a. See Special Instruction 53—Mineral Leases.					
b. Prepare Application to Lease Property for Mineral Exploration and Development at Private Sale Pursuant to Section 358.101 of the Estates Code (Form 56).					
c. Determine amount of filing fee, arrange for payment, and charge to client's account.					
d. File Application to Lease Property for Mineral Exploration and Development at Private Sale Pursuant to Section 358.101 of the Estates Code (Form 56) with clerk of court, enter date of filing as Item 66a of SDL, and complete Items 66b and 66c of SDL.					
e. Obtain date and time for hearing; enter as Item 66d of SDL; 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). Notify executor or administrator of date and time of hearing and the method of appearance before the court.					
f. Prepare Order Granting Application to Lease Property for Mineral Exploration and Development at Private Sale (Form 57).					
g. Attend hearing and do the following: (1) Take original Order Granting Application to Lease Property for Mineral Exploration and Development at Private Sale (Form 57) to the hearing.					
(2) Present proof necessary for court's approval of lease of property and have Order Granting Application to Lease Property for Mineral Exploration and Development at Private Sale (Form 57) signed by judge.					
h. Determine if existing general bond is sufficient and, if not, obtain an additional bond in the amount indicated by court.					

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	NA	L	S	DATE	INITIALS
i. Enter date that Order Granting Application to Lease Property for Mineral Exploration and Development at Private Sale (Form 57) was signed as Item 66e of SDL and Item 6.123 of MIL. Complete Item 66f of SDL. *Note:* This date is considered for all purposes as the date of the authorized lease if the lease form approved by the court was not dated.					
j. Arrange for executor or administrator to sign and swear to lease. If mailing, prepare and send Letter 48 to executor or administrator, together with original and one copy of lease.					
k. Deliver or mail copies of Application to Lease Property for Mineral Exploration and Development at Private Sale Pursuant to Section 358.101 of the Estates Code (Form 56) and Order Granting Application to Lease Property for Mineral Exploration and Development at Private Sale (Form 57) to proposed mineral lessee.					
l. Deliver lease and other documents, collect fee, and complete Item 66g of SDL. *Note:* Public leasing is not covered by this System.					

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SECURITIES

	NA	L	S	DATE	INITIALS
85. If D owned **publicly traded securities**, do the following:					
a. See Special Instruction 28—Stocks, Bonds, and Other Securities.					
b. Obtain actual certificates for shares of stock, mutual funds, and bonds that are owned by D or D's spouse, that are in bearer form, or for which the name of D or D's spouse appears as one or more of the registered owners.					
(1) Determine dates for expiration of puts, calls, and options and dates for payment of interest on coupon bonds and enter into office reminder system.					
(2) Place in file folder entitled "Securities."					
c. Obtain most recent statement from each brokerage firm where D or D's spouse maintained an account. Place in file folder entitled "Securities."					
d. Determine if D participated in a dividend reinvestment program. If so, do the following:					
(1) Place statements of account in file folder entitled "Securities."					
(2) Prepare and send Letter 58 to custodian to request information regarding unissued shares and requirements for transfer.					
e. Determine whether to exercise options, puts, and calls.					
f. Prepare Worksheet 5 and place in file folder entitled "Securities."					
g. If D had an account with stockbroker, prepare and send Letter 38 to stockbroker to cancel and settle open orders and accounts. If stockbroker requires the letter to be signed by an executor, administrator, client, heir, beneficiary, or distributee, add appropriate signature line and have signed. If mailing, prepare and send Letter 24 to that person, together with original Letter 38 to stockbroker. *Note:* Letter 38 follows similar IRS requests sent to account custodians on audit of the estate tax return. If the IRS is going to have the information, you should too. This letter reaches probate and nonprobate assets, both of which are required to complete estate tax returns and basis calculations and may be liable for claims of creditors.					

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	NA	L	S	DATE	INITIALS
h. Determine if there is accrued interest as of the date of D's death or if there are dividends declared before but payable after the date of D's death.					
i. Determine whether each security was community property or D's separate property.					
j. Consider transferring community interest in securities to D's surviving spouse.					
k. Prepare and send Letter 39 to stockbroker to obtain values on date of death.					
l. Complete Section 9.0 of MIL and be sure to obtain **C**ommittee on **U**niform **S**ecurity **I**dentification **P**rocedure (CUSIP) number for each security. Determine maturity dates of notes and bonds and payment dates for interest and dividends and enter into office reminder system.					
m. Prepare Letter 40 for each company for which dividend or interest payment address is to be changed.					
n. Arrange for signature by client. If mailing, prepare and send Letter 24 to client, together with original and one copy of Letter 40.					
o. When signed copy of Letter 40 is received from client, forward it to company.					
p. Prepare and send Letter 39 to stockbroker to obtain values on alternate valuation date (Item 26.22 of MIL). When seeking to determine the alternate value, this letter should not be sent until at least six months following the date of death. When answer is received, place in file folder entitled "Securities."					
q. Determine whether each security, including those in a dividend reinvestment program, will be sold, transferred to D's estate, or transferred directly to the beneficiaries under D's will and codicil(s) or to D's heirs or distributees.					
r. Prepare Irrevocable Stock Power (Form 24) for each stock and mutual fund certificate and Irrevocable Bond Power (Form 25) for each bond certificate registered in D's name.					
s. Prepare Affidavit of Domicile (Form 26) for each security registered in D's name.					
t. Prepare IRS Form W-9, Request for Taxpayer Identification Number and Certification (FF 15), for each transferee of each security registered in D's name.					

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	NA	L	S	DATE	INITIALS
u. Prepare and send Letter 42 to executor, administrator, heir, devisee, or distributee, together with all IRS Forms W-9, Request for Taxpayer Identification Number and Certification (FF 15), that are to be signed by that person, original Irrevocable Stock Power (Form 24) and/or Irrevocable Bond Power (Form 25), and Affidavit of Domicile (Form 26), to have signature guaranteed.					
v. Obtain appropriate documents from clerk of court:					
(1) If MT, do the following:					
(a) Order one certified copy of D's will and codicil(s) and Order Admitting Will to Probate As a Muniment of Title (Form 32) for each *company* whose securities are to be sold or transferred. Arrange for payment and charge to client's account. If ordering by mail, determine appropriate number of copies and the correct charge, arrange for payment, charge to client's account, and prepare and send Letter 69.					
(b) Prepare and send by certified or registered mail Letter 68 to transfer agent for each security to be sold or transferred, together with original certificates, certified copies of D's will and codicil(s) and Order Admitting Will to Probate As a Muniment of Title (Form 32), Irrevocable Stock Power (Form 24) or Irrevocable Bond Power (Form 25), Affidavit of Domicile (Form 26), IRS Form W-9, Request for Taxpayer Identification Number and Certification (FF 15), and death certificate.					
(c) Attach mailing receipt to file copy of Letter 68.					
(d) Attach return receipt to file copy of Letter 68.					
(2) If PDH, do the following:					
(a) Order one certified copy of Judgment Declaring Heirship (Form 81) for each *company* whose securities are to be sold or transferred. Arrange for payment and charge to client's account. If ordering by mail, determine correct charge, arrange for payment, charge to client's account, and prepare and send Letter 86.					
(b) Prepare and send by certified or registered mail Letter 43 to transfer agent for each security to be sold or transferred, together with original certificates, Irrevocable Stock Power (Form 24) or Irrevocable Bond Power (Form 25), Affidavit of Domicile (Form 26), IRS Form W-9, Request for Taxpayer Identification Number and Certification (FF 15), death certificate, and Judgment Declaring Heirship (Form 81).					

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	NA	L	S	DATE	INITIALS
(c) Attach mailing receipt to file copy of Letter 43.					
(d) Attach return receipt to file copy of Letter 43.					
(3) If SE, do the following: (a) Order one certified copy of Small Estate Affidavit and Order (Form 82) for each *company* whose securities are to be sold or transferred. Arrange for payment and charge to client's account. If ordering by mail, determine correct charge, arrange for payment, charge to client's account, and prepare and send Letter 89.					
(b) Prepare and send by certified or registered mail Letter 88 to transfer agent for each security to be sold or transferred, together with original certificates, Irrevocable Stock Power (Form 24) or Irrevocable Bond Power (Form 25), Affidavit of Domicile (Form 26), IRS Form W-9, Request for Taxpayer Identification Number and Certification (FF 15), death certificate, and Small Estate Affidavit and Order (Form 82).					
(c) Attach mailing receipt to file copy of Letter 88.					
(d) Attach return receipt to file copy of Letter 88.					
(4) In all other proceedings (IA, TBA, IBA, ADE, AWA, RDA, AP, and TDA), do the following: (a) Order one copy of letters testamentary or letters of administration (must be dated within sixty days of proposed date of sale or transfer) for each *company* whose securities are to be sold or transferred. Arrange for payment and 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.					
(b) Prepare and send by certified or registered mail Letter 43 to transfer agent for each security to be sold or transferred, together with original certificates, Irrevocable Stock Power (Form 24) or Irrevocable Bond Power (Form 25), Affidavit of Domicile (Form 26), IRS Form W-9, Request for Taxpayer Identification Number and Certification (FF 15), death certificate, and letters testamentary or letters of administration.					
(c) Attach mailing receipt to file copy of Letter 43.					
(d) Attach return receipt to file copy of Letter 43.					

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	NA	L	S	DATE	INITIALS
w. On receipt of transferred securities, do the following:					
(1) Verify that correct number of shares has been transferred to each transferee.					
(2) Verify that name of transferee has been properly spelled.					
(3) Verify that transferee's correct Social Security or employer identification number appears on certificate.					
(4) Verify that CUSIP number is the same as for the transferred securities.					
(5) Make a record of the new certificate number(s).					
(6) Prepare and send by certified or registered mail Letter 44 and new certificate(s) to each transferee to forward certificates (or let transferee pick up at office).					
(7) If mailed, attach mailing receipt to file copy of Letter 44.					
(8) If mailed, attach return receipt to copy of Letter 44 signed and returned by transferee.					
(9) When signed copy of Letter 44 is received, substitute for file copy.					
x. As responses are received and other steps are completed, be sure to enter that information on Worksheet 5.					
86. If D owned **closely held securities**, do the following:					
a. See Special Instruction 28—Stocks, Bonds, and Other Securities.					
b. Complete Section 10.0 of MIL.					
c. Obtain actual certificates for shares of stock and bonds issued by closely held corporations for which the name of D or D's spouse appears as one or more of the registered owners and place in file folder entitled "Securities."					
d. Determine whether to exercise options, puts, and calls.					
e. Prepare Worksheet 5 and place in file folder entitled "Securities."					
f. Determine if there is accrued interest as of the date of D's death or if there are dividends declared before but payable after date of D's death.					
g. Determine whether each security was community property or D's separate property.					
h. Consider transferring community interest in securities to D's surviving spouse.					

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	NA	L	S	DATE	INITIALS
i. If D owned an interest in a closely held corporation, determine if D's estate is eligible under IRC Section 303 for **redemption** and special treatment (see Special Instruction 40—Section 303 Redemption).					
j. If D's estate is likely to exceed the federal exclusion amount (Item 26.21 of MIL) (see Special Instruction 80—Federal Estate Tax), obtain values on alternate valuation date (Item 26.22 of MIL). When obtained, place in file folder entitled "Securities."					
k. Determine whether each security will be sold, transferred to D's estate, or transferred directly to the beneficiaries under D's will and codicil(s) or to D's heirs or distributees.					
l. Prepare Irrevocable Stock Power (Form 24) for each stock certificate and Irrevocable Bond Power (Form 25) for each bond certificate registered in D's name.					
m. Prepare Affidavit of Domicile (Form 26) for each security registered in D's name.					
n. Prepare IRS Form W-9, Request for Taxpayer Identification Number and Certification (FF 15), for each transferee of each security registered in D's name.					
o. Prepare and send Letter 42 to executor, administrator, heir, devisee, or distributee, together with all IRS Forms W-9, Request for Taxpayer Identification Number and Certification (FF 15), that are to be signed by that person, original Irrevocable Stock Power (Form 24) and/or Irrevocable Bond Power (Form 25), and Affidavit of Domicile (Form 26), to have signature guaranteed.					
p. Obtain appropriate documents from clerk of court: (1) If MT, do the following: (a) Order one certified copy of D's will and codicil(s) and Order Admitting Will to Probate As a Muniment of Title (Form 32) for each *company* whose securities are to be sold or transferred. Arrange for payment and charge to client's account. If ordering by mail, determine appropriate number of copies and the correct charge, arrange for payment, charge to client's account, and prepare and send Letter 69.					

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	NA	L	S	DATE	INITIALS
(b) Prepare and send by certified or registered mail Letter 68 to transfer agent for each security to be sold or transferred, together with original certificates, certified copies of D's will and codicil(s) and Order Admitting Will to Probate As a Muniment of Title (Form 32), Irrevocable Stock Power (Form 24) or Irrevocable Bond Power (Form 25), Affidavit of Domicile (Form 26), death certificate, and IRS Form W-9, Request for Taxpayer Identification Number and Certification (FF 15).					
(c) Attach mailing receipt to file copy of Letter 68.					
(d) Attach return receipt to file copy of Letter 68.					
(2) If PDH, do the following:					
(a) Order one certified copy of Judgment Declaring Heirship (Form 81) for each *company* whose securities are to be sold or transferred. Arrange for payment and charge to client's account. If ordering by mail, determine correct charge, arrange for payment, charge to client's account, and prepare and send Letter 86.					
(b) Prepare and send by certified or registered mail Letter 43 to transfer agent for each security to be sold or transferred, together with original certificates, Irrevocable Stock Power (Form 24) or Irrevocable Bond Power (Form 25), Affidavit of Domicile (Form 26), death certificate, IRS Form W-9, Request for Taxpayer Identification Number and Certification (FF 15), and Judgment Declaring Heirship (Form 81).					
(c) Attach mailing receipt to file copy of Letter 43.					
(d) Attach return receipt to file copy of Letter 43.					
(3) If SE, do the following:					
(a) Order one certified copy of Small Estate Affidavit and Order (Form 82) for each *company* whose securities are to be sold or transferred. Arrange for payment and charge to client's account. If ordering by mail, determine correct charge, arrange for payment, charge to client's account, and prepare and send Letter 89.					

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	NA	L	S	DATE	INITIALS
(b) Prepare and send by certified or registered mail Letter 88 to transfer agent for each security to be sold or transferred, together with original certificates, Irrevocable Stock Power (Form 24) or Irrevocable Bond Power (Form 25), Affidavit of Domicile (Form 26), death certificate, IRS Form W-9, Request for Taxpayer Identification Number and Certification (FF 15), and Small Estate Affidavit and Order (Form 82).					
(c) Attach mailing receipt to file copy of Letter 88.					
(d) Attach return receipt to file copy of Letter 88.					
(4) In all other proceedings (IA, TBA, IBA, ADE, AWA, RDA, AP, and TDA), do the following:					
(a) Order one copy of letters testamentary or letters of administration (must be dated within sixty days of proposed date of sale or transfer) for each *company* whose securities are to be sold or transferred. Arrange for payment and 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.					
(b) Prepare and send by certified or registered mail Letter 43 to transfer agent for each security to be sold or transferred, together with original certificates, Irrevocable Stock Power (Form 24) or Irrevocable Bond Power (Form 25), Affidavit of Domicile (Form 26), death certificate, IRS Form W-9, Request for Taxpayer Identification Number and Certification (FF 15), and letters testamentary or letters of administration.					
(c) Attach mailing receipt to file copy of Letter 43.					
(d) Attach return receipt to file copy of Letter 43.					
q. On receipt of transferred securities, do the following:					
(1) Verify that correct number of shares have been transferred to each transferee.					
(2) Verify that name of transferee has been properly spelled.					
(3) Verify that transferee's correct Social Security or employer identification number appears on certificate.					
(4) Make a record of the new certificate number(s).					
(5) Prepare and send by certified or registered mail Letter 44 and new certificate(s) to each transferee to forward certificates (or let transferee pick up at office).					

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	NA	L	S	DATE	INITIALS
(6) If mailed, attach mailing receipt to file copy of Letter 44.					
(7) If mailed, attach return receipt to copy of Letter 44 signed and returned by transferee.					
(8) When signed copy of Letter 44 is received, substitute for file copy.					
r. As responses are received and other steps are completed, be sure to enter that information on Worksheet 5.					
s. See Special Instruction 98—Corporate Transparency Act and determine whether a report should be made to Financial Crimes Enforcement Network.					
87. If **securities** are to be **sold by private sale** during administration, and if Inventory, Appraisement, and List of Claims (Form 22) has been filed and approved by court, but power of sale of securities is not specified in D's will or granted by court order, or if this is TDA, AWA, ADE, RDA, or AP (dependent), do the following:					
a. See Special Instruction 48—Sale of Personal Property during Administration.					
b. Prepare an Application for Sale of Personal Property under Section 356.101 of the Estates Code (Form 47), Verified Exhibit Showing Condition of the Estate (Form 40), and Order of Sale of Personal Property under Section 356.101 of the Estates Code (Form 48).					
c. Determine amount of filing fee, arrange for payment, and charge to client's account.					
d. File Application for Sale of Personal Property under Section 356.101 of the Estates Code (Form 47), Verified Exhibit Showing Condition of the Estate (Form 40), and Order of Sale of Personal Property under Section 356.101 of the Estates Code (Form 48) with clerk of court.					
e. Determine if court hearing is required and, if so, do the following: (1) Obtain a date and time for hearing and enter in office reminder system. 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).					
(2) Notify executor or administrator of time and date of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					

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	NA	L	S	DATE	INITIALS
(3) Attend hearing, present proof necessary for court's approval, and have Order of Sale of Personal Property under Section 356.101 of the Estates Code (Form 48) signed by judge.					
f. If hearing will not be required, determine date judge signed Order of Sale of Personal Property under Section 356.101 of the Estates Code (Form 48) and obtain certified copy of order.					
g. Enter date Order of Sale of Personal Property under Section 356.101 of the Estates Code (Form 48) was signed as Item 64b of SDL and Item 6.91 of MIL.					
h. Conclude sale or finalize contract for sale and enter date as Item 64c of SDL and Item 6.92 of MIL.					
i. Prepare Report of [Successful Bid or Contract for] Sale of Personal Property (Form 49) and arrange for signature and verification by executor or administrator.					
j. File Report of [Successful Bid or Contract for] Sale of Personal Property (Form 49) with clerk of court.					
k. Determine date of filing Report of [Successful Bid or Contract for] Sale of Personal Property (Form 49), enter as Item 64d of SDL and Item 6.98 of MIL, and complete Items 64e and 64f of SDL.					
l. Prepare Order [Confirming/Approving] Sale of Personal Property (Form 50).					
m. File Order [Confirming/Approving] Sale of Personal Property (Form 50) with clerk of court.					
n. Determine date judge signed Order [Confirming/Approving] Sale of Personal Property (Form 50) and enter as Item 64g of SDL and Item 6.99 of MIL.					
o. Deliver or mail copies of Application for Sale of Personal Property under Section 356.101 of the Estates Code (Form 47), Verified Exhibit Showing Condition of the Estate (Form 40), Order of Sale of Personal Property under Section 356.101 of the Estates Code (Form 48), Report of [Successful Bid or Contract for] Sale of Personal Property (Form 49), and Order [Confirming/Approving] Sale of Personal Property (Form 50) to attorney representing purchaser.					
p. Deliver evidence of title properly endorsed for transfer, along with any other certificate, obtain receipt, and collect proceeds.					

Note: Public sales are not covered by this System.

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NA	L	S	DATE	INITIALS

88. If D owned U.S. **savings bonds** (see Special Instruction 33—U.S. Government Savings Bonds), complete Section 8.0 of MIL. Place in file folder entitled "Securities." Further coverage is beyond the scope of this System.

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INSURANCE ON LIFE OF ANOTHER

	NA	L	S	DATE	INITIALS
89. If D owned an interest in a policy of **insurance on the life of another** (e.g., community property interest owned by deceased husband on life of surviving wife), do the following:					
a. See Special Instruction 30—Insurance Owned by Decedent on Life of Another.					
b. Obtain and review all such policies, especially policies insuring life of D's spouse and D's children. Place in file folder entitled "Life Insurance."					
c. Prepare and send Letter 45 to each insurance company that issued a policy on life of another as indicated in Item 14.07 of MIL.					
d. On receipt of IRS Form 712, Life Insurance Statement (FF 2), from company, complete Section 14.0 of MIL. Place form in file folder entitled "Life Insurance."					
e. See that premiums are promptly paid so that policies will not lapse.					
f. Determine whether each policy was community property or D's separate property.					
g. Transfer ownership of policies to persons entitled to them.					
h. Change beneficiary if desired.					

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JUDGMENTS, NOTES, ACCOUNTS RECEIVABLE, AND CONTRACTS FOR DEED

	NA	L	S	DATE	INITIALS
90. If D owned **judgments, notes, accounts receivable, or contracts for deed**, do the following:					
a. See Special Instruction 31—Notes and Accounts Receivable.					
b. Obtain and review all such judgments, notes, and accounts receivable and complete Section 12.0 of MIL. Place in file folder entitled "Judgments, Notes, Accounts Receivable, and Contracts for Deed."					
c. Determine maturity dates and dates on which claims are barred by applicable statutes of limitations and enter in office reminder system.					
d. Determine whether each item was community property or D's separate property.					
e. Determine whether each judgment, note, and account receivable is to be collected or transferred.					
(1) If judgments, notes, and accounts receivable are to be collected, take appropriate action.					
(2) If judgments are to be transferred, prepare appropriate documents.					
(3) If notes are to be transferred, prepare appropriate endorsements.					
(4) If accounts receivable are to be transferred, prepare appropriate assignments.					
f. If D or D's spouse was selling any real estate pursuant to a contract for deed, complete Items 12.30 through 12.45 and Items 12.22 through 12.26 of MIL and place a copy of the contract in file folder entitled "Judgments, Notes, Accounts Receivable, and Contracts for Deed." If contract is to be assigned, prepare appropriate assignment.					
g. Prepare and send Letter 46 to each debtor to notify of place to make future payments.					

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TRANSPORTATION EQUIPMENT

	NA	L	S	DATE	INITIALS
91. If D owned **automobiles** or other transportation equipment, do the following:					
a. See Special Instruction 32—Motor Vehicles.					
b. Obtain and review each title and description of vehicle and complete Section 17.0 of MIL. Place in file folder entitled "Transportation Equipment."					
c. Determine whether each vehicle was community property or D's separate property.					
d. For each vehicle, determine if disposition of ownership is controlled by a right of survivorship set forth on the certificate of title or other agreement. For any such vehicle, skip the remainder of this Item 91.					
e. Determine whether each vehicle is to be sold or transferred to D's beneficiaries.					
f. For each vehicle do the following:					
(1) Prepare assignment of each vehicle title (form not provided in this System).					
(2) Arrange to have each vehicle title and assignment signed by the executor, administrator, or person who inherits the vehicle.					
(3) If IA, TBA, IBA, ADE, AWA, RDA, AP, or TDA, obtain one certified copy of letters testamentary or letters of administration for each vehicle to be sold. 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.					
(4) Deliver all documents to transferee.					

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DISPOSITION OR TRANSFER OF PERSONAL PROPERTY

	NA	L	S	DATE	INITIALS
92. If **personal property** is **to be sold** by private sale during administration, and if Inventory, Appraisement, and List of Claims (Form 22) has been filed and approved by the court, but power of sale of personal property is not specified in D's will or granted by court order, or if this is TDA, AWA, ADE, RDA, or AP (dependent), do the following: a. See Special Instruction 48—Sale of Personal Property during Administration.					
b. Prepare Application for Sale of Personal Property under Section 356.101 of the Estates Code (Form 47), Verified Exhibit Showing Condition of the Estate (Form 40), and Order of Sale of Personal Property under Section 356.101 of the Estates Code (Form 48).					
c. Determine amount of filing fee, arrange for payment, and charge to client's account.					
d. File Application for Sale of Personal Property under Section 356.101 of the Estates Code (Form 47), Verified Exhibit Showing Condition of the Estate (Form 40), and Order of Sale of Personal Property under Section 356.101 of the Estates Code (Form 48) with clerk of court.					
e. Determine if court hearing is required and, if so, do the following: (1) Obtain a date and time for hearing and enter in office reminder system. 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).					
(2) Notify executor or administrator of time and date of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
(3) Attend hearing, present proof necessary for court's approval, and have Order of Sale of Personal Property under Section 356.101 of the Estates Code (Form 48) signed by judge.					
f. If hearing will not be required, determine date judge signed Order of Sale of Personal Property under Section 356.101 of the Estates Code (Form 48) and obtain certified copy of order.					

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	NA	L	S	DATE	INITIALS
g. Enter date Order of Sale of Personal Property under Section 356.101 of the Estates Code (Form 48) was signed as Item 64b of SDL and Item 6.91 of MIL.					
h. Conclude sale or finalize contract for sale and enter date as Item 64c of SDL and Item 6.92 of MIL.					
i. Prepare Report of [Successful Bid or Contract for] Sale of Personal Property (Form 49) and arrange for signature and verification by executor or administrator. If mailing, prepare and send Letter 48 to executor or administrator, together with original and one copy of Report of [Successful Bid or Contract for] Sale of Personal Property (Form 49).					
j. File Report of [Successful Bid or Contract for] Sale of Personal Property (Form 49) with clerk of court.					
k. Determine date of filing Report of [Successful Bid or Contract for] Sale of Personal Property (Form 49), enter as Item 64d of SDL and Item 6.98 of MIL, and complete Items 64e and 64f of SDL.					
l. Prepare Order [Confirming/Approving] Sale of Personal Property (Form 50).					
m. File Order [Confirming/Approving] Sale of Personal Property (Form 50) with clerk of court.					
n. Determine date judge signed Order [Confirming/Approving] Sale of Personal Property (Form 50) and enter as Item 64g of SDL and Item 6.99 of MIL.					
o. Deliver or mail copies of Application for Sale of Personal Property under Section 356.101 of the Estates Code (Form 47), Verified Exhibit Showing Condition of the Estate (Form 40), Order of Sale of Personal Property under Section 356.101 of the Estates Code (Form 48), Report of [Successful Bid or Contract for] Sale of Personal Property (Form 49), and Order [Confirming/Approving] Sale of Personal Property (Form 50) to attorney representing purchaser.					
p. Deliver property and evidence of title, obtain receipt, and collect proceeds. *Note:* Estates Code, Section 356.105(c), permits D's executor or administrator to issue a bill of sale without warranty as evidence of title, but the expense thereof must be borne by the purchaser. *Note:* Public sales are not covered by this System.					

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	NA	L	S	DATE	INITIALS
93. If D owned **personal property** that is **not wanted** by family members and that has **no commercial value**, and if Inventory, Appraisement, and List of Claims (Form 22) has been filed and approved by the court, but power to dispose of such property is not specified in D's will or granted by court order, or if this is TDA, AWA, ADE, RDA, or AP (dependent), do the following:					
a. If such property is to be disposed of before termination of administration, prepare Application to Dispose of Personal Effects and Order thereon (Form 51).					
b. Determine amount of filing fee, arrange for payment, and charge to client's account.					
c. File Application to Dispose of Personal Effects and Order thereon (Form 51) with clerk of court.					
d. Determine if court hearing will be required and, if so, do the following:					
(1) Obtain a date and time for hearing and enter in office reminder system. 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).					
(2) Notify executor or administrator of time and date of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
(3) Attend hearing, present proof necessary for court's approval, have order signed by judge approving Application to Dispose of Personal Effects (Form 51), and complete Item 62 of SDL and Item 6.91 of MIL.					
e. If hearing will not be required, determine date judge signed order approving Application to Dispose of Personal Effects (Form 51) and complete Item 62 of SDL and Item 6.91 of MIL.					
f. When judge has signed order approving Application to Dispose of Personal Effects (Form 51), have executor or administrator deliver property to proper parties and obtain receipt.					
Note: Public sales are not covered by this System.					

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	NA	L	S	DATE	INITIALS
94. If D owned **personal property** that is **likely to perish**, waste or deteriorate or to be an unnecessary expense or disadvantage to D's estate, and if Inventory, Appraisement, and List of Claims (Form 22) has been filed and approved by the court, but power to dispose of such property is not specified in D's will or granted by court order, or if this is TDA, AWA, ADE, RDA, or AP (dependent), do the following: a. See Special Instruction 50—Sale of Personal Property Likely to Perish, Waste, Etc.					
b. Prepare Application for Sale of Personal Property under Section 356.051 of the Estates Code and Order thereon (Form 52).					
c. Determine amount of filing fee, arrange for payment, and charge to client's account.					
d. File Application for Sale of Personal Property under Section 356.051 of the Estates Code and Order thereon (Form 52) with clerk of court.					
e. Determine if court hearing is required and, if so, do the following: (1) Obtain a date and time for hearing and enter in office reminder system. 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).					
(2) Notify executor or administrator of time and date of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
(3) Attend hearing, present proof necessary for court's approval, have order signed by judge approving Application for Sale of Personal Property under Section 356.051 of the Estates Code (Form 52), and complete Item 63 of SDL.					
f. If hearing will not be required, determine date judge signed order approving Application for Sale of Personal Property under Section 356.051 of the Estates Code (Form 52) and complete Item 63 of SDL.					
g. When judge has signed order approving Application for Sale of Personal Property under Section 356.051 of the Estates Code (Form 52), have executor or administrator deliver property and evidence of title to proper parties, obtain receipt, and collect proceeds. *Note:* Public sales are not covered by this System.					

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OTHER MATTERS

	NA	L	S	DATE	INITIALS
95. Handling other assets and matters:					
a. Determine whether each other asset was community property or was D's separate property.					
b. Other **tangible personal property** (see Special Instruction 34—Personal Property). *Note:* If D's estate will be subject to federal estate tax and if sale or disposition is desired before IRS audit of the estate tax return, furnish appropriate statement contemplated in Treasury Regulations, Section 20.2031–6 (form not provided in this System).					
(1) Arrange for distribution of D's personal property.					
(2) If sale is contemplated, determine whether to request release of estate tax lien on IRS Form 4422 (form not provided in this System).					
c. Determine if D owned **other assets**. See Special Instruction 35—Valuing and Describing Other Assets and complete Sections 16.0 and 18.0 of MIL. Place valuations and descriptions in the separate file folders entitled "Partnerships, Trusts, and Other Unincorporated Business" and "Personal Property" as appropriate.					
(1) Arrange for adequate funds to provide for payment of household salaries and expenses and for salaries and other expenses of D's sole proprietorships and other closely held businesses.					
(2) Obtain realistic valuations of all interests in unincorporated businesses, including those subject to redemption or buy-sell agreements.					
d. If D owned any **partnership interests**, do the following:					
(1) Determine if D's death terminates any partnerships. *Note:* The taxable year of a partnership shall close with respect to a partner whose entire interest in the partnership terminates by reason of death.					
(2) Determine whether D's executors, administrator, heirs, or beneficiaries are entitled to and do elect to adjust the basis in D's partnership interests.					
(3) Determine whether executor, administrator, heir, beneficiary, or distributee can or should elect to become a substituted partner.					

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	NA	L	S	DATE	INITIALS
e. Attempt to terminate any **guaranty agreement** made by D and to obtain a release of liability on any loans guaranteed by D.					
f. If D was a Texas lawyer and no one will be appointed under Texas Rules of Disciplinary Procedure, Rule 13.02, to close D's law practice, see Special Instruction 78—Death of a Lawyer and do the following:					
(1) Check D's calendar and active files to determine deadlines and due dates.					
(2) Contact courts and opposing counsel regarding matters involving pressing deadlines.					
(3) Contact clients to advise of D's death and need for prompt action.					
(4) Open and review all unopened mail.					
(5) Review all unfiled documents and match to files.					
(6) Review files to determine which are open and which are closed and the extent to which copies or other materials should be retained.					
(7) Review all undeposited checks and either return them to payor or deposit them into firm account. If D was a solo, those checks should be deposited into estate account.					
(8) Send final bills to clients. When paid, deposit checks into firm account. If D was a solo, those checks should be deposited into estate account.					
(9) Analyze funds in trust account and return unearned portion to clients.					
(10) Notify bar associations of D's death.					
(11) Notify malpractice carrier of D's death. If D was a solo, consider purchase of extended reporting ("tail") coverage.					
(12) Arrange for disposition of client files.					
(a) Advise clients of D's death and procedure for obtaining their files.					
(b) If client obtains new counsel, do the following:					
(i) Obtain written authorization from client to deliver files to new counsel.					
(ii) Make file copies of original documents that are returned to clients.					

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	NA	L	S	DATE	INITIALS
(iii) Arrange for substitution of counsel in litigation matters and be sure of filing and court approval.					
(iv) Deliver files and obtain receipts for each.					
(13) Determine if D was resident agent for any executor or administrator or was registered agent for any corporation or other business entity and, if so, arrange for substitution of new agent.					
(14) If a client, a member of D's family, or D's executor or administrator wishes for you to undertake representation or dispose of D's practice, read Special Instruction 78—Death of a Lawyer again, paying particular attention to Part XIII of the rules of disciplinary procedure and to disciplinary rules and ethics opinions.					
g. If D was engaged in another type of **professional practice**, consider purchase of "tail coverage" for errors and omissions.					
h. Determine if there is any **pending litigation**. If so, take appropriate action.					
i. Review all of D's **other claims** and causes of action.					
(1) Determine dates on which claims are barred by applicable statutes of limitations and enter into office reminder system. See Special Instruction 99—Limitations.					
(2) Determine whether to abandon or pursue such claims and take appropriate action. *Note:* Under Section 16.062 of the Texas Civil Practice and Remedies Code, the statutes of limitation for suits by or against D are suspended for one year after date of D's death or until date of qualification of D's executor or administrator, whichever is earlier.					
j. If D was a **custodian under the Uniform Gifts to Minors Act**: (1) Obtain appointment of a successor custodian.					
(2) Determine if D made gift(s) of all or part of the custodial property. If so, its entire value must be included in D's estate for federal estate tax purposes.					
k. Investigate **club memberships** to determine if surviving spouse and other family members receive special benefits, if memberships can be sold, and whether to cancel memberships and collect unearned dues.					
l. If will establishes one or more **testamentary trusts**, do the following: (1) Determine when to fund each trust.					

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	NA	L	S	DATE	INITIALS
(2) Obtain an employer identification number for each trust (see Item 57 of this Checkplan).					
m. If D owned **copyrights**, determine if a right of renewal exists. If so, take appropriate action. *Note:* D's spouse and children may have this right if D dies during the initial term.					
n. Determine if other items will be taxable in D's estate (see and complete Section 20.0 of MIL).					
o. Determine if D was entitled to **unclaimed property** held by the Comptroller of Public Accounts and, if so, take appropriate action. See Special Instruction 20—Cash Items.					
p. Determine if D's spouse, child, or parent has a cause of action for D's **wrongful death**. If so, do the following: (1) Refer to Item 7A of SDL to ensure their timely filing of petition.					
(2) If not filed timely by them, take appropriate action to bring such a suit (Civil Practice & Remedies Code, Section 71.004).					

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INVENTORY

	NA	L	S	DATE	INITIALS
Note: If SE, omit Items 96 through 99 of this Checkplan. 96. Prepare Inventory, Appraisement, and List of Claims (Form 22) (see Special Instruction 23—Inventory, Appraisement, and List of Claims and Special Instruction 24—General Rules for Valuation of Assets). Place in file folder entitled "Inventory." *Note:* In many counties an inventory is not required. We recommend that one be prepared and filed to provide evidence of the assets owned by D and to assist future title examinations.					
Note: If PDH, or if MT unless court requires filing inventory, omit Items 97 through 99 of this Checkplan. 97. Unless Inventory, Appraisement, and List of Claims (Form 22) can be completed and filed within ninety days from date of qualification (Item 6.39 of MIL and Item 39 of SDL) or from date of admission of D's will to probate as a muniment of title (Item 6.26 of MIL and Item 28 of SDL), do the following: a. Prepare Application for Extension of Time in Which to File Inventory, Appraisement, and List of Claims and Order thereon (Form 27). *Note:* In Harris County, the application must be designated as first application, second application, and so forth, and must show the date the executor or administrator qualified, the date the inventory would have been due, and the date on which the inventory will be due if the extension is granted. Determine local practice and make necessary modifications.					
b. File Application for Extension of Time in Which to File Inventory, Appraisement, and List of Claims and Order thereon (Form 27) with clerk of court.					
c. On approval of order, complete Item 6.86 of MIL and Item 32a(1) or 46a of SDL as appropriate.					
98. If Inventory, Appraisement, and List of Claims (Form 22) cannot be completed within the extended time, repeat the procedure described in Item 97 of this Checkplan until the inventory is actually filed, and complete Item 32a or 46 of SDL as appropriate. *Note:* Application for Extension of Time in Which to File Inventory, Appraisement, and List of Claims and Order thereon (Form 27) will have to be modified for the length of time and basis for this additional request.					

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	NA	L	S	DATE	INITIALS
99. When Inventory, Appraisement, and List of Claims (Form 22) has been completed, do the following: a. Arrange for executor, administrator, heir, or beneficiary to sign and swear to Inventory, Appraisement, and List of Claims (Form 22). If mailing, prepare and send Letter 48 to executor, administrator, heir, or beneficiary, together with original and a copy of Inventory, Appraisement, and List of Claims (Form 22), and repeat for each executor, administrator, heir, or beneficiary until the original has been signed and sworn to by all parties.					
b. If this is IA, TBA, IBA, or AP (independent) *and* there are no unpaid debts except for secured debts, taxes, and administrative expenses *and* you do not want the inventory to become a public record, do the following: (1) When Inventory, Appraisement, and List of Claims (Form 22) has been properly signed and sworn to by all independent executors or administrators, prepare and send Letter 104, together with a copy of the inventory, to all beneficiaries except those who have signed waivers (Form 122) or as otherwise provided by Estates Code, Section 309.056(b–1).					
(2) Prepare Affidavit in Lieu of Inventory, Appraisement, and List of Claims (Form 103), have it signed by the independent executor(s) or administrator(s), and file with clerk of court. Enter date of filing as Item 61 of SDL and Item 6.89 of MIL.					
c. If this is not IA, TBA, IBA, or AP (independent), or if Affidavit in Lieu of Inventory, Appraisement, and List of Claims (Form 103) will not be used, when Inventory, Appraisement, and List of Claims (Form 22) has been properly signed and sworn to by all executors, administrators, heirs, or beneficiaries, file Inventory, Appraisement, and List of Claims (Form 22) with clerk of court.					
d. When Inventory, Appraisement, and List of Claims (Form 22) has been signed by the judge, enter the date as Item 61 of SDL and Item 6.88 of MIL. *Note:* After order approving inventory has been signed, newly discovered assets are shown by a Supplemental Inventory (Form 36) and errors are corrected by an Amended Inventory (forms not provided in this System). If Affidavit in Lieu of Inventory, Appraisement, and List of Claims (Form 103) was filed, provide all beneficiaries with copies of the Supplemental Inventory (Form 36) and then file a Supplemental Affidavit in Lieu of Inventory (form not provided in this System) with the court.					

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FAMILY ALLOWANCE

	NA	L	S	DATE	INITIALS
100. After Inventory, Appraisement, and List of Claims (Form 22) has been filed and approved by the court or Affidavit in Lieu of Inventory, Appraisement, and List of Claims (Form 103) has been filed, review financial situation of family and determine if a **family allowance** should be requested. If so, do the following:					
a. See Special Instruction 51—Family Allowance.					
b. Prepare Application for Family Allowance and Order thereon (Form 53).					
c. Determine amount of filing fee, arrange for payment, and charge to client's account.					
d. File Application for Family Allowance and Order thereon (Form 53) with clerk of court.					
e. Determine if court hearing is required and, if so, do the following:					
(1) Obtain a date and time for hearing and enter in office reminder system. 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).					
(2) Notify executor or administrator of time and date of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
(3) Attend hearing, present proof necessary for court's approval, and have order signed by judge approving Application for Family Allowance (Form 53).					
f. If hearing will not be required, determine date judge signed order approving Application for Family Allowance (Form 53).					
g. When judge has signed order approving Application for Family Allowance (Form 53), have executor or administrator pay allowance in accordance with order of the court.					

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SETTING ASIDE EXEMPT PROPERTY

	NA	L	S	DATE	INITIALS
101. After Inventory, Appraisement, and List of Claims (Form 22) has been filed and approved by the court or Affidavit in Lieu of Inventory, Appraisement, and List of Claims (Form 103) has been filed, review financial situation of family and determine if **exempt property** should be **set aside**. If so, do the following:					
a. See Special Instruction 52—Exempt Property, Setting Aside Exempt Property, and Allowance in Lieu of Exempt Property.					
b. Prepare Application to Set Aside Exempt Property and Order thereon (Form 54).					
c. Determine amount of filing fee, arrange for payment, and charge to client's account.					
d. File Application to Set Aside Exempt Property and Order thereon (Form 54) with clerk of court.					
e. Determine if court hearing will be required and, if so, do the following: (1) Obtain a date and time for hearing and enter in office reminder system. 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).					
(2) Notify executor or administrator of time and date of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
(3) Attend hearing, present proof necessary for court's approval, and have order signed by judge approving Application to Set Aside Exempt Property (Form 54).					
f. If hearing will not be required, determine date judge signed order approving Application to Set Aside Exempt Property (Form 54).					
g. When judge has signed order approving Application to Set Aside Exempt Property (Form 54), have executor or administrator deliver exempt property to proper parties.					

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	NA	L	S	DATE	INITIALS
102. After Inventory, Appraisement, and List of Claims (Form 22) has been filed and approved by the court or Affidavit in Lieu of Inventory, Appraisement, and List of Claims (Form 103) has been filed, review financial situation of family and determine whether to seek an **allowance in lieu of exempt property**. If so, do the following:					
a. See Special Instruction 52—Exempt Property, Setting Aside Exempt Property, and Allowance in Lieu of Exempt Property.					
b. Prepare Application for Allowance in Lieu of Exempt Property and Order thereon (Form 55). *Note:* This form contemplates payment to D's surviving spouse when no homestead was owned. In other situations, appropriate revisions must be made.					
c. Determine amount of filing fee, arrange for payment, and charge to client's account.					
d. File Application for Allowance in Lieu of Exempt Property and Order thereon (Form 55) with clerk of court.					
e. Determine if court hearing will be required, and if so, do the following:					
(1) Obtain a date and time for hearing and enter in office reminder system. 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).					
(2) Notify executor or administrator of time and date of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
(3) Attend hearing, present proof necessary for court's approval, and have order signed by judge approving Application for Allowance in Lieu of Exempt Property (Form 55).					
f. If hearing will not be required, determine date judge signed order approving Application for Allowance in Lieu of Exempt Property (Form 55).					
g. When judge has signed order approving Application in Lieu of Exempt Property (Form 55), have executor or administrator pay allowance in accordance with order of the court.					

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FEDERAL ESTATE TAX

	NA	L	S	DATE	INITIALS
Note: If total value of all of D's assets including insurance on D's life and D's retirement benefits is less than the applicable exclusion amount (Item 26.21 of MIL) and D had no history of making taxable gifts, a federal estate tax return is probably unnecessary. Regardless, the surviving spouse may file an estate tax return, even if the estate is nontaxable, to elect portability of the Deceased Spousal Unused Exclusion (DSUE) amount. See Special Instruction 80—Federal Estate Tax. **WARNING:** Sections 2701 through 2704 of the Internal Revenue Code were enacted in an attempt to halt the use of "estate freezes." Not surprisingly, the changes are broadly worded and vague, and there are many uncertainties. All intrafamily transactions must be scrutinized in light of those provisions. There are too many variables for coverage in this System. Pursuant to Pub. L. No. 115-97, 131 Stat. 2054 (2017), popularly known as the Tax Cuts and Jobs Act of 2017, (1) the gift and estate tax exemption doubles to $10 million and remains indexed for inflation after 2011 and (2) the Act's gift and estate tax provisions apply to estates of decedents who die after December 31, 2017, and before January 1, 2026. 103. Complete Worksheet 6 to determine if IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, must be filed for D's estate.					
104. If IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return is not mandatory, determine whether the executor desires to file the return to elect portability of the Deceased Spousal Unused Exclusion (DSUE) amount. a. If the executor is the surviving spouse, prepare and send Letter 122.					
b. If the executor is *not* the surviving spouse, prepare and send Letter 123.					
c. On receipt of the client's initialed copy indicating whether to elect portability, place in file folder entitled "Federal Estate Tax."					
105. If IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return is neither required nor desired, skip to Item 198 of this Checkplan.					
106. If a return is to be filed, take appropriate action. No Checkplan, Furnished Forms, or specific instructions for preparing IRS Form 706 are included in this System.					

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NA	L	S	DATE	INITIALS

107. If a return is filed and IRS closing letter is received, file it with clerk of court.

108. - 197. (Reserved)

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COURT AUTHORIZATION TO ENGAGE OR EMPLOY

	NA	L	S	DATE	INITIALS
Note: Items 198 and 199 of this Checkplan do not apply to IA, TBA, IBA, MT, SE, PDH, and AP (independent).					
198. If the specific power to engage or employ is not granted by D's will, if any, or court order, or if this is TDA, AWA, ADE, RDA, or AP (dependent) and executor or administrator desires to obtain authority to **engage or employ**, do the following:					
a. Prepare Application for Authority to [Engage/Employ] and Order Granting Application for Authority to [Engage/Employ] (Form 136).					
b. File Application for Authority to [Engage/Employ] and Order Granting Application for Authority to [Engage/Employ] (Form 136) with clerk of court.					
c. Determine if court hearing will be required and, if so, do the following:					
(1) Obtain a date and time for hearing and enter in office reminder system. Determine method of appearance for the proceeding. For remote appearances, prepare Notice of Court Proceeding (Form 150), Motion for Remote Proceeding (Form 151), and Certificate of Service (Form 152).					
(2) Notify executor or administrator of date and time of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
(3) Attend hearing, present proof necessary for court's approval, and have order signed by judge approving Application for Authority to [Engage/Employ] (Form 136).					
d. If hearing will not be required, determine date judge signed order approving Application for Authority to [Engage/Employ] (Form 136).					
e. When judge has signed order approving Application for Authority to [Engage/Employ] (Form 136), have executor or administrator engage or employ the person or company and execute the engagement or employment agreement as specified in the Application for Authority to [Engage/Employ] and Order Granting Application for Authority to [Engage/Employ] (Form 136).					

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	NA	L	S	DATE	INITIALS
199. If the specific power to engage or employ for the particular purpose for which executor or administrator has already personally advanced payment is not granted by D's will, if any, or court order, or if this is TDA, AWA, ADE, RDA, or AP (dependent), and the executor or administrator desires to be **reimbursed** at a time other than in connection with an annual account or the final account, do the following:					
a. Prepare Application for Reimbursement and Order Granting Application for Reimbursement (Form 60).					
b. Arrange for signature by executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with original and one copy of Application for Reimbursement and Order Granting Application for Reimbursement (Form 60).					
c. File Application for Reimbursement and Order Granting Application for Reimbursement (Form 60) with clerk of court.					
d. Determine if court hearing will be required and, if so, do the following: (1) Obtain a date and time for hearing and enter in office reminder system. Determine method of appearance for the proceeding. For remote appearances, prepare Notice of Court Proceeding (Form 150), Motion for Remote Proceeding (Form 151), and Certificate of Service (Form 152).					
(2) Notify executor or administrator of time and date of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
(3) Attend hearing, present proof necessary for court's approval, and have order signed by judge approving Application for Reimbursement (Form 60).					
e. If hearing will not be required, determine date judge signed order approving Application for Reimbursement (Form 60).					
f. When judge has signed order approving Application for Reimbursement (Form 60), reimburse executor or administrator from funds of D's estate in the amounts specified in the Application for Reimbursement and Order Granting Application for Reimbursement (Form 60).					

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TEXAS REAL ESTATE *NOT* IN COUNTY OF PROBATE

	NA	L	S	DATE	INITIALS
200. Only if D owned **real estate** or a **mineral** or **royalty interest** in a Texas county other than in the county of probate, then after United States Estate (and Generation-Skipping Transfer) Tax Return has been audited or approved or a closing letter has been obtained, do the following: *Note:* This procedure is not applicable to a small estate proceeding (SE). If recording a will previously probated in another state or a foreign country, use the procedure in Item 45 of this Checkplan (RW). a. Obtain certified copies from clerk of court: *Note:* It is always correct to obtain and record certified copies of the *entire* probate proceedings, and in some situations this is the only safe procedure to follow. *Note:* It is sometimes possible to substitute an affidavit from the executor, the administrator, an heir, a beneficiary, or a distributee in lieu of any tax release. If using an affidavit regarding debts and taxes, prepare Affidavit Regarding Debts and Taxes (Form 37) and arrange for signature by executor, administrator, heir, beneficiary, or distributee.					
(1) If MT, order from clerk of court one certified copy of the Application for Probate of Will as a Muniment of Title (Form 6); D's will and codicil(s); Order Admitting Will to Probate as a Muniment of Title (Form 32); and the IRS closing letter, if any. Arrange for payment and charge to client's account. If ordering these copies by mail, prepare and send Letter 69 to clerk of court.					
(2) If PDH, order from clerk of court one certified copy of the Application to Declare Heirship (Form 77); Judgment Declaring Heirship (Form 81); the IRS closing letter, if any; and, if applicable, D's will and codicil(s) and order admitting will and codicil(s) to probate. Arrange for payment and charge to client's account. If ordering these copies by mail, prepare and send Letter 86 to clerk of court.					
(3) If RDA, order from clerk of court one certified copy of the Application to Declare Heirship (Form 77); Judgment Declaring Heirship (Form 81); Application for Letters of Administration (Form 73); Order Authorizing Letters of Administration (Form 76); and the IRS closing letter, if any. Arrange for payment and charge to client's account. If ordering these copies by mail, prepare and send Letter 91 to clerk.					

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	NA	L	S	DATE	INITIALS
(4) If AWA, order from clerk of court one certified copy of the Application for Probate of Will and Issuance of Letters of Administration with Will Annexed (Form 69); will and codicil(s); Order Admitting Will to Probate and Authorizing Letters of Administration with Will Annexed (Form 72); and the IRS closing letter, if any. Arrange for payment and charge to client's account. If ordering these copies by mail, prepare and send Letter 60 to clerk.					
(5) If IA or ADE, order from clerk of court one certified copy of the Application for Probate of Will and Issuance of Letters Testamentary (Form 5 or Form 28); will and codicil(s); each Distributee's Agreement to Power of Sale (Form 106), if any; Order Admitting Will to Probate and Authorizing Letters Testamentary (Form 17 or Form 33); and the IRS closing letter, if any. Arrange for payment and charge to client's account. If ordering these copies by mail, prepare and send Letter 60 to clerk.					
(6) If TBA, order from clerk of court one certified copy of the Application for Probate of Will, Independent Administration by Agreement, and Issuance of Letters [Testamentary/of Independent Administration] (Form 110); will and codicil(s); each Distributee's Agreement to Independent Administration and Power of Sale, with Waiver of Citation and Notice (Form 106), if any; Order Admitting Will to Probate and Authorizing Independent Administration and Letters [Testamentary/of Independent Administration] (Form 111); and the IRS closing letter, if any. Arrange for payment and charge to client's account. If ordering these copies by mail, prepare and send Letter 60 to clerk.					
(7) If IBA, order from clerk of court one certified copy of the Application to Declare Heirship (Form 77); Judgment Declaring Heirship (Form 81); Application for Independent Administration of Intestate Estate by Agreement and Letters of Independent Administration (Form 108); each Distributee's Agreement to Independent Administration and Power of Sale (Form 106); Order Authorizing Independent Administration and Letters of Independent Administration (Form 109); and the IRS closing letter, if any. Arrange for payment and charge to client's account. If ordering these copies by mail, prepare and send Letter 105 to clerk.					

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	NA	L	S	DATE	INITIALS
(8) If AP, order from clerk of court one certified copy of the Application for Ancillary Probate of Foreign Will and Issuance of Ancillary Letters Testamentary (Form 118); will and codicil(s); each Distributee's Agreement to Ancillary Independent Administration [and Power of Sale], with Waiver of Citation and Notice (Form 119), if any; Order Admitting Foreign Will to Ancillary Probate [, Authorizing Independent Administration,] and Authorizing Ancillary Letters Testamentary (Form 121); and the IRS closing letter, if any. Arrange for payment and charge to client's account. If ordering these copies by mail, prepare and send Letter 124 to clerk. *Note:* In a court-supervised administration (RDA, AWA, ADE, AP (dependent)), the better practice is not to record these documents until the estate is closed and the court has signed the Order Closing Estate and Discharging Personal Representative (Form 68). Once that order has been signed, obtain a certified copy to record with the other documents.					
b. Assemble all the foregoing documents, determine amount of recording charges, arrange for payment, charge to client's account, and enter amount as Item 25.08 of MIL.					
c. Prepare and send Letter 61 to county clerk to record these documents in the deed records of each county in which D owned real estate, mineral interests, or royalty interests, other than the county in which the probate proceedings are pending. When the documents have been recorded in one county and have been returned, repeat this procedure until the documents have been recorded in all counties.					

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COURT AUTHORIZATION TO SPEND FUNDS

	NA	L	S	DATE	INITIALS
Note: Items 201 through 205 of this Checkplan do not apply to IA, TBA, IBA, MT, SE, PDH, and AP (independent).					
201. If the specific power to spend funds of D's estate for the desired purpose is not granted by D's will, if any, or court order, or if this is TDA, AWA, ADE, RDA, or AP (dependent), and executor or administrator needs to spend estate funds **immediately due to an emergency** situation, do the following:					
a. Prepare Application to Ratify Expenditure and Order thereon (Form 138), specifying the purpose and amount of each such expenditure.					
b. Arrange for signature by executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with original and one copy of Application to Ratify Expenditure and Order thereon (Form 138).					
c. File Application to Ratify Expenditure and Order thereon (Form 138) with clerk of court.					
d. Determine if court hearing will be required and, if so, do the following:					
(1) Obtain a date and time for hearing and enter in office reminder system. 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).					
(2) Notify executor or administrator of time and date of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
(3) Attend hearing, present proof necessary for court's approval, and have order signed by judge approving Application to Ratify Expenditure (Form 138).					
e. If hearing will not be required, determine date judge signed order approving Application to Ratify Expenditure (Form 138).					

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	NA	L	S	DATE	INITIALS
202. If the specific power to spend funds of D's estate for the desired purpose is not granted by D's will, if any, or court order, or if this is TDA, AWA, ADE, RDA, or AP (dependent), and executor or administrator desires to obtain **authority to spend funds** belonging to D's estate at a time other than in connection with an annual account or the final account, do the following:					
a. Prepare Application for Authority to Expend Funds and Order thereon (Form 59).					
b. Arrange for signature by executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with original and one copy of Application for Authority to Expend Funds and Order thereon (Form 59).					
c. File Application for Authority to Expend Funds and Order thereon (Form 59) with clerk of court.					
d. Determine if court hearing will be required and, if so, do the following:					
(1) Obtain a date and time for hearing and enter in office reminder system. 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).					
(2) Notify executor or administrator of time and date of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
(3) Attend hearing, present proof necessary for court's approval, and have order signed by judge approving Application for Authority to Expend Funds (Form 59).					
e. If hearing will not be required, determine date judge signed order approving Application for Authority to Expend Funds (Form 59).					
f. When judge has signed order approving Application for Authority to Expend Funds (Form 59), have executor or administrator expend funds of D's estate for the purposes and in the amounts specified in the Application for Authority to Expend Funds and Order thereon (Form 59).					

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	NA	L	S	DATE	INITIALS
203. If the specific power to spend funds of D's estate for the particular purpose for which executor or administrator has already personally advanced payment is not granted by D's will, if any, or court order, or if this is TDA, AWA, ADE, RDA, or AP (dependent), and the executor or administrator desires to be **reimbursed** at a time other than in connection with an annual account or the final account, do the following: a. Prepare Application for Reimbursement and Order thereon (Form 60).					
b. Arrange for signature by executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with original and one copy of Application for Reimbursement and Order thereon (Form 60).					
c. File Application for Reimbursement and Order thereon (Form 60) with clerk of court.					
d. Determine if court hearing will be required and, if so, do the following:					
(1) Obtain a date and time for hearing and enter in office reminder system. 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).					
(2) Notify executor or administrator of time and date of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
(3) Attend hearing, present proof necessary for court's approval, and have order signed by judge approving Application for Reimbursement (Form 60).					
e. If hearing will not be required, determine date judge signed Order approving Application for Reimbursement (Form 60).					
f. When judge has signed order approving Application for Reimbursement (Form 60), reimburse executor or administrator from funds of D's estate in the amounts specified in the Application for Reimbursement and Order thereon (Form 60).					

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	NA	L	S	DATE	INITIALS
204. If the specific power to pay **attorney's fees** is not granted by D's will, if any, or court order, or if this is TDA, AWA, ADE, RDA, or AP (dependent), and D's executor or administrator desires to pay all or a part of the attorney's fees at a time other than in connection with an annual account or the final account, do the following: a. Prepare Application to Pay Attorney's Fees and Order thereon (Form 61). *Note:* The original and a copy of a detailed and itemized statement from the attorney is to be designated as Exhibit A and *must* be attached to this form. Attach the attorney's fee affidavit (Form 135) as Exhibit B.					
b. Arrange for signature by executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with original and one copy of Application to Pay Attorney's Fees and Order thereon (Form 61).					
c. File Application to Pay Attorney's Fees and Order thereon (Form 61) with clerk of court.					
d. Determine if court hearing will be required and, if so, do the following:					
(1) Obtain a date and time for hearing and enter in office reminder system. 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).					
(2) Notify executor or administrator of time and date of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
(3) Attend hearing, present proof necessary for court's approval, and have order signed by judge approving Application to Pay Attorney's Fees (Form 61).					
e. If hearing will not be required, determine date judge signed order approving Application to Pay Attorney's Fees (Form 61).					
f. When judge has signed order approving Application to Pay Attorney's Fees (Form 61), have executor or administrator expend funds of D's estate for the purposes and in the amounts specified in the Application to Pay Attorney's Fees and Order thereon (Form 61).					

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	NA	L	S	DATE	INITIALS
205. Determine if D's executor or administrator is entitled to and desires to claim a **commission**. If so, do the following:					
a. Review D's will to determine if D provided a method for determining compensation for D's executor or administrator and, if so, determine amount.					
b. If no will or if will does not provide a method for determining compensation, determine amount of compensation for executor or administrator in accordance with Estates Code, Chapter 352, Subchapter A.					
c. If ADE, AWA, RDA, or AP (dependent), prepare Application for Authority to Expend Funds and Order thereon (Form 59).					
d. Arrange for signature by executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with original and one copy of Application for Authority to Expend Funds and Order thereon (Form 59).					
e. File Application for Authority to Expend Funds and Order thereon (Form 59) with clerk of court.					
f. Determine if court hearing will be required and, if so, do the following:					
(1) Obtain a date and time for hearing and enter in office reminder system. 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).					
(2) Notify executor or administrator of time and date of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
(3) Attend hearing, present proof necessary for court's approval, and have order signed by judge approving Application for Authority to Expend Funds (Form 59).					
g. If hearing will not be required, determine date judge signed order approving Application for Authority to Expend Funds (Form 59).					
h. When judge has signed order approving Application for Authority to Expend Funds (Form 59), have executor or administrator pay the fees to all executors and administrators.					

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ANNUAL ACCOUNTS

	NA	L	S	DATE	INITIALS
Note: Items 206 through 208 of this Checkplan do not apply to IA, TBA, IBA, MT, SE, PDH, and AP (independent).					
206. **Annual account**. If D's estate is still open one year from date letters were first issued, as shown in Item 50 of SDL, an annual accounting will be required. If so, do the following:					
a. See Special Instruction 55—Annual Account.					
b. Prepare Annual Account and Order thereon (Form 62), Verification of Funds on Deposit (Form 63), and Confirmation of Safekeeping (Form 64). *Note:* If securities have not been deposited for safekeeping, see Special Instruction 55—Annual Account for alternative supporting documents.					
c. Prepare and send Letter 76 to each depository in which funds of D's estate are on deposit, together with the original and a copy of Verification of Funds on Deposit (Form 63).					
d. Prepare and send Letter 77 to each depository in which funds or other properties of D's estate are held in safekeeping, together with the original and a copy of Confirmation of Safekeeping (Form 64).					
e. When Verification of Funds on Deposit (Form 63) and Confirmation of Safekeeping (Form 64) have been properly signed and returned, attach the original of each Verification of Funds on Deposit (Form 63) and Confirmation of Safekeeping (Form 64) to Annual Account and Order thereon (Form 62).					
f. Arrange for executor or administrator to sign and swear to the Annual Account and Order thereon (Form 62). If mailing, prepare and send Letter 48 to executor or administrator, together with original and one copy of Annual Account and Order thereon (Form 62).					
g. File Annual Account and Order thereon (Form 62) with clerk of court.					
h. Determine date of filing first Annual Account and Order thereon (Form 62), enter as Item 78a of SDL, and complete Item 78b of SDL (complete Items 79a and 79b of SDL for second annual account or Items 80a and 80b of SDL for third annual account).					

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	NA	L	S	DATE	INITIALS
i. Determine if court hearing will be required and, if so, do the following: (1) Obtain a date and time for hearing and enter as Item 78c of SDL (Item 79c of SDL for second annual account or Item 80c of SDL for third annual account). 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)					
(2) Notify executor or administrator of time and date of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
(3) Attend hearing, present proof necessary for court's approval, have order signed by judge approving Annual Account (Form 62), and enter date of order as Item 78d of SDL (Item 79d of SDL for second annual account or Item 80d of SDL for third annual account).					
j. If hearing will not be required, determine date of approval of Annual Account (Form 62) and enter as Item 78d of SDL (Item 79d of SDL for second annual account or Item 80d of SDL for third annual account).					
k. When judge has signed order approving Annual Account (Form 62), have executor or administrator promptly pay all claims and expenses specified in the Annual Account and Order thereon (Form 62).					
l. Prepare and send Letter 78 to the surety, together with a copy of the Annual Account and Order thereon (Form 62).					
m. Conform file copies of all documents for dates and signatures.					
207. If D's estate is still open two years from date letters were first issued (Item 51 of SDL), repeat the procedure described in Item 206 of this Checkplan.					
208. If D's estate is still open three years from date letters were first issued (Item 52 of SDL), repeat the procedure described in Item 206 of this Checkplan.					

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DETERMINING HEIRSHIP

	NA	L	S	DATE	INITIALS
Note: Item 209 of this Checkplan is mandatory for RDA and IBA but also may be appropriate in those instances in which D has a will but there is a full or partial intestacy. 209. **Determining heirship**. To determine heirship, do the following: a. See Special Instruction 60—Proceedings to Declare Heirship (PDH).					
b. See Special Instruction 59—Determining Identity of Decedent's Heirs to identify D's heirs to whom D's estate is to be distributed.					
c. See Special Instruction 15—Jurisdiction and Venue and prepare Application to Declare Heirship (Form 77).					
d. Arrange for applicant to sign and swear to Application to Declare Heirship (Form 77). If mailing, prepare and send Letter 48 to applicant, together with Application to Declare Heirship (Form 77).					
e. When Application to Declare Heirship (Form 77) has been signed by applicant, place in file folder entitled "Court Proceedings."					
f. If court does not automatically appoint an attorney ad litem, prepare Motion to Appoint Attorney Ad Litem and Order thereon (Form 78) and place in file folder entitled "Court Proceedings."					
g. File Application to Declare Heirship (Form 77) and, if applicable, Motion to Appoint Attorney Ad Litem and Order thereon (Form 78) with clerk of court, have clerk of court issue proper citation, and enter date of filing Application to Declare Heirship (Form 77) as Item 6.124 of MIL and Item 81a of SDL.					
h. For citation by publication, see Special Instruction 16—Citation and Notice. If publishing in newspaper and if the clerk does not send the citation directly to the newspaper, do the following: (1) Select newspaper in which to publish citation.					
(2) Determine charge for publication, arrange for payment, and charge to client's account.					
(3) Prepare and send Letter 84 to newspaper, together with copy of citation and payment of charges for publication.					

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	NA	L	S	DATE	INITIALS
(4) When citation has been published and publisher's affidavit has been received, file with clerk of court.					
i. Calculate return date for the citation by posting and enter as Item 81b of SDL (see Special Instruction 16—Citation and Notice).					
j. Calculate return date for citation by publication by determining earlier of date of newspaper in which notice was published and date of publication on the public information Internet website and enter as Item 81c of SDL and complete Items 81d and 81e of SDL.					
k. Prepare [Distributee's/Defendant's] Waiver of Citation and Notice Regarding Proceeding to Declare Heirship (Form 107). Prepare and send Letter 48 to each distributee other than applicant and to any owner of a real property interest not a distributee ("Defendant"), together with two copies of [Distributee's/Defendant's] Waiver of Citation and Notice Regarding Proceeding to Declare Heirship (Form 107). Enclose one copy of the Application to Declare Heirship (Form 77).					
l. On receipt of all properly signed and sworn [Distributee's/Defendant's] Waiver of Citation and Notice Regarding Proceeding to Declare Heirship (Form 107), file with clerk of court.					
m. Review clerk's file to ensure that a copy of all citations required by Estates Code, Chapter 202, and proof of delivery have been filed. **If D died on or after January 1, 2014**, do the following:					
(1) Determine whether applicant will sign the Affidavit of Service of Citation (Form 104) or if attorney will sign the Certificate of Service of Citation (Form 105).					
(a) If applicant is to sign, prepare Affidavit of Service of Citation (Form 104). If mailing, prepare and send with Letter 48.					
(b) If attorney is to sign, prepare Certificate of Service of Citation (Form 105).					
(2) File signed Affidavit of Service of Citation (Form 104) or Certificate of Service of Citation (Form 105) with clerk of court.					
n. Coordinate schedules with client(s), other witnesses, and attorney ad litem. Arrange for date and time for hearing on Application to Declare Heirship (Form 77); 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). Provide notice to all affected parties, and complete Items 81f and 81g of SDL and Item 6.124A of MIL.					

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	NA	L	S	DATE	INITIALS
o. Determine the identity of **two** disinterested and credible witnesses who will testify as to D's death and other personal history and also determine if each witness will be available to testify in court. *Note:* Only one such witness will be required if it is shown that only one can be found after a diligent search. (1) For *both* of these witnesses who will testify in court, do the following: (a) Prepare Statement of Facts (Form 80) for each witness and place in file folder entitled "Court Proceedings."					
(b) Prepare and send Letter 13 to each witness, together with a copy of Statement of Facts (Form 80) for the witness, 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.					
(2) For each witness who cannot testify in court, determine an alternate method of proving these facts and take appropriate action.					
p. Prepare Judgment Declaring Heirship (Form 81) and place in file folder entitled "Court Proceedings."					
q. Prepare and send Letter 57 to attorney ad litem, together with copies of Application to Declare Heirship (Form 77), Motion to Appoint Attorney Ad Litem (if applicable) and Order thereon (Form 78), Statement of Facts (Form 80) for each witness, and Judgment Declaring Heirship (Form 81).					
r. If hearing must be rescheduled, enter rescheduled date as Item 81h of SDL, revise Item 81g of SDL, and notify administrator, attorney ad litem, and all witnesses of new date. If method of appearance is changed, notify administrator, attorney ad litem, and all witnesses and provide revised information.					
s. One business day before the hearing, call to remind administrator, attorney ad litem, and each witness of the time and date of hearing and the place of hearing or electronic access information.					
t. For the **hearing**, do the following: (1) Assemble the following documents and have available at hearing: (a) Original copy of Statement of Facts (Form 80) for each witness who will appear in court.					
(b) Original copy of Judgment Declaring Heirship (Form 81).					

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	NA	L	S	DATE	INITIALS
(2) Attend hearing and enter actual date of hearing as Item 81i of SDL.					
(3) Enter the date judgment was signed by judge as Item 81j of SDL.					
(4) Conform file copies of all documents for dates and signatures.					

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FINAL ACCOUNT

	NA	L	S	DATE	INITIALS
Note: Item 210 of this Checkplan does not apply to IA, TBA, IBA, MT, SE, PDH, or AP (independent). 210. **Final account**. When all assets have been assembled, all debts and claims have been paid, and there is no further need for administration, do the following: a. See Special Instruction 56—Final Account.					
b. Prepare Account for Final Settlement (Form 65), Verification of Funds on Deposit (Form 63), Confirmation of Safekeeping (Form 64), and Order Approving Account for Final Settlement and Authorizing Distribution of Estate (Form 66). *Note:* If securities have not been deposited for safekeeping, see Special Instruction 55—Annual Account for alternative supporting documents.					
c. Prepare and send Letter 76 to each depository in which funds of D's estate are on deposit, together with the original and a copy of Verification of Funds on Deposit (Form 63).					
d. Prepare and send Letter 77 to each depository in which funds or other properties are being held for safekeeping, together with the original and a copy of Confirmation of Safekeeping (Form 64).					
e. When Verification of Funds on Deposit (Form 63) and Confirmation of Safekeeping (Form 64) have been properly signed and returned, attach the original of each Verification of Funds on Deposit (Form 63) and Confirmation of Safekeeping (Form 64) to original of Account for Final Settlement (Form 65).					
f. Prepare final bill to describe legal services provided for D's estate. Determine if local practice requires a separate application, hearing, or the use of another attorney to testify as to the reasonableness of this fee. If so, refer to Item 204 of this Checkplan.					
g. Arrange for executor or administrator to sign and swear to the Account for Final Settlement (Form 65). If mailing, prepare and send Letter 48 to executor or administrator, together with original and one copy of Account for Final Settlement (Form 65). Do not send copies to anyone else at this time, but after it has been signed by executor or administrator, make one copy for each heir and distributee.					

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	NA	L	S	DATE	INITIALS
h. File Account for Final Settlement (Form 65), together with Order Approving Account for Final Settlement and Authorizing Distribution of Estate (Form 66), with clerk of court.					
i. Determine date of filing Account for Final Settlement (Form 65) and enter as Item 83a of SDL and Item 6.146 of MIL.					
j. Arrange to have citation issued by clerk of court. Calculate the return date for the citation (see Special Instruction 16—Citation and Notice) and enter as Item 83b of SDL.					
k. Obtain a date and time for hearing, enter date as Item 83c of SDL, and complete Items 6.147 and 6.148 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)					
l. Notify executor or administrator of time and date of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
m. Prepare and send Letter 93 by certified or registered mail or, in proceedings commenced on or after September 1, 2023, by any qualified delivery method (see Special Instruction 16—Citation and Notice) to each heir and distributee, enclosing a copy of Account for Final Settlement (Form 65).					
(1) Attach mailing receipt or proof of deposit to file copy of applicable Letter 93.					
(2) When received, attach return receipt or proof of delivery receipt to file copy of applicable Letter 93. *Note:* Judge may require another type of notice and may permit a waiver of notice.					
n. Review clerk's file to ensure that a copy of all citations required by Estates Code, Section 362.005, and proof of delivery have been filed.					
(1) Determine whether applicant will sign the Affidavit of Service of Citation (Form 113) or if attorney will sign the Certificate of Service of Citation (Form 114).					
(a) If applicant is to sign, prepare Affidavit of Service of Citation (Form 113). If mailing, prepare and send with Letter 48.					
(b) If attorney is to sign, prepare Certificate of Service of Citation (Form 114).					
(2) File signed Affidavit of Service of Citation (Form 113) or Certificate of Service of Citation (Form 114) with clerk of court.					

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	NA	L	S	DATE	INITIALS
o. Attend hearing, take file copy of each Letter 93 together with its return receipt, present proof necessary for court's approval, have judge sign Order Approving Account for Final Settlement and Authorizing Distribution of Estate (Form 66), enter date order was signed as Item 83d of SDL and Item 6.149 of MIL, and complete Item 83e of SDL.					
p. If hearing was not required, determine date Order Approving Account for Final Settlement and Authorizing Distribution of Estate (Form 66) was signed, enter date as Item 83d of SDL and Item 6.149 of MIL, and complete Item 83e of SDL.					
q. When judge has signed Order Approving Account for Final Settlement and Authorizing Distribution of Estate (Form 66), have executor or administrator promptly pay all claims and expenses authorized by Order Approving Account for Final Settlement and Authorizing Distribution of Estate (Form 66).					
r. Prepare and send Letter 78 to the surety, together with copies of the Account for Final Settlement (Form 65) and Order Approving Account for Final Settlement and Authorizing Distribution of Estate (Form 66).					
s. Conform file copies of all documents for dates and signatures.					

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DISTRIBUTING THE ESTATE

	NA	L	S	DATE	INITIALS
211. If it is advisable to make a **partial distribution** of the estate assets and this is IA, IBA, TBA, or AP (independent), do the following: a. Prepare Receipt and Refunding Agreement (Form 149) for each heir and beneficiary who is to receive the partial distribution.					
b. For each heir and beneficiary who is to receive the partial distribution, deliver assets and appropriate evidence of title in exchange for properly signed Receipt and Refunding Agreement (Form 149).					
c. If desired, file all original Receipts and Refunding Agreements (Form 149) with clerk of court.					
212. If it is advisable to make a **partial distribution** of the estate assets and this is ADE, AWA, RDA, or AP (dependent), do the following: a. Prepare Application to Make Partial Distribution of Estate Assets and Order Granting Application to Make Partial Distribution of Estate Assets (Form 137) for each heir and beneficiary who is to receive the partial distribution.					
b. Arrange for signature by executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with original and one copy of Application to Make Partial Distribution of Estate Assets and Order Granting Application to Make Partial Distribution of Estate Assets (Form 137).					
c. File Application to Make Partial Distribution of Estate Assets and Order Granting Application to Make Partial Distribution of Estate Assets (Form 137) with clerk of court and have clerk of court issue proper citation to all interested parties.					
d. Determine if court hearing will be required and, if so, do the following:					
(1) Obtain a date and time for hearing and enter in office reminder system. 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).					
(2) Notify executor or administrator of date and time of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					

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	NA	L	S	DATE	INITIALS
(3) Attend hearing, present proof necessary for court's approval, and have order signed by judge approving Application to Make Partial Distribution of Estate Assets and Order Granting Application to Make Partial Distribution of Estate Assets (Form 137).					
e. If hearing will not be required, determine date judge signed order approving Application to Make Partial Distribution of Estate Assets (Form 137).					
f. For each heir and beneficiary who is to receive the partial distribution, deliver assets and appropriate evidence of title in exchange for properly signed receipt.					
Note: Although Item 213 of this Checkplan does not apply technically to IA, TBA, IBA, MT, SE, PDH, or AP (independent), these are important steps to consider. 213. **Distributing the estate**. After the Account for Final Settlement (Form 65) has been approved by the court and the authorized expenses and claims have been paid, do the following: a. Ensure that all persons who paid D's debts and claims are repaid before distribution of D's estate.					
b. Plan time to close estate with particular consideration to income tax effects of making final distributions in the particular fiscal year.					
c. Arrange to have title to assets transferred to heirs and beneficiaries. If title companies, insurers, or others require more than probate proceedings to clear title to real property, see Special Instruction 66—Distribution Deeds and do the following for each such item of property: (1) Prepare Distribution Deed (Form 117).					
(2) If desired, obtain signature of grantee. If mailing, prepare and send Letter 48 with Distribution Deed (Form 117).					
(3) Obtain signature of grantor (when signed Distribution Deed (Form 117) has been received from grantee, if sent). If mailing, prepare and send Letter 48 with Distribution Deed (Form 117) (signed by grantee, if applicable).					
(4) When signed Distribution Deed (Form 117) has been received from grantor, determine amount of recording charges, arrange for payment, charge to client's account, and enter amount as Item 25.08 of MIL.					
(5) Prepare and send Letter 119 to county clerk to record the deed.					
d. Close estate savings accounts into estate checking account.					

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	NA	L	S	DATE	INITIALS
e. Redeem certificates of deposit and deposit proceeds into estate checking account.					
f. Prepare estate checks for distribution.					
g. Prepare a separate Receipt and Release (Form 30) for each heir and beneficiary of D's estate.					
h. Deliver assets and appropriate evidence of title to each heir and beneficiary in exchange for properly signed Receipt and Release (Form 30). If mailing, prepare and send Letter 110, together with two copies of Receipt and Release (Form 30).					
i. If desired, file all original Receipts and Releases (Form 30) with clerk of court.					
j. Conform file copies of all documents for dates and signatures.					
k. If any Letter 110 is returned unclaimed, attempt to locate the missing heir(s). If any cannot be located, see Special Instruction 90—Missing Heirs and do the following:					
(1) Prepare Application to Deposit Funds into Registry of Court with order thereon (Form 115).					
(2) Determine amount of filing fee, arrange for payment, and charge to client's account.					
(3) File Application to Deposit Funds into Registry of Court with order (Form 115).					
(4) Determine if court hearing is required and, if so, do the following:					
(a) Obtain a date and time for hearing and enter in office reminder system. 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).					
(b) Notify executor or administrator of time and date of hearing and method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
(c) Attend hearing and have order signed.					
(5) Deposit unclaimed funds with clerk of court and obtain receipt.					
l. If any funds remain unclaimed six months after date of order approving final account (Item 83e of SDL), do the following:					
(1) Prepare Application to Withdraw Funds from Registry of the Court for Payment to Comptroller with Order thereon (Form 116).					

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	NA	L	S	DATE	INITIALS
(2) Determine amount of filing fee, arrange for payment, and charge to client's account.					
(3) File Application to Withdraw Funds from Registry of the Court for Payment to Comptroller with Order thereon (Form 116) with clerk of court.					
(4) Determine if court hearing is required and, if so, do the following: (a) Obtain a date and time for hearing and enter in office reminder system. 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).					
(b) Notify executor or administrator of time and date of hearing and method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
(c) Attend hearing and have order signed. Enter date order is signed as Item 83Aa of SDL and complete Item 83Ab of SDL.					
(5) If hearing is not required, determine date on which order is signed, enter date as Item 83Aa of SDL, and complete Item 83Ab of SDL.					
(6) Withdraw funds from registry.					
(7) Deliver funds to Comptroller and obtain receipt. If mailing, prepare and send Letter 111.					
(8) File receipt from Comptroller with clerk of court before Item 83Ab of SDL. *Note:* Failure to pay the unclaimed funds to the Comptroller within thirty days after the date of the order to deliver the funds subjects the executor or administrator to significant penalties.					

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CLOSING THE ESTATE

	NA	L	S	DATE	INITIALS
Note: Item 214 of this Checkplan does not apply to MT, SE, or PDH. Most practitioners do not follow this procedure for IA, TBA, IBA, or AP (independent). Estates Code, Sections 405.004–.007, provide for closing an independent administration by closing report or notice of closing estate (which also cancels the letters issued to the personal representative). These procedures are not covered by this System.					
214. **Closing the estate**. After all property has been distributed and all receipts have been filed, do the following:					
a. Prepare Application to Close Estate and to Discharge Personal Representative (Form 67) and Order Closing Estate and Discharging Personal Representative (Form 68).					
b. File Application to Close Estate and to Discharge Personal Representative (Form 67) and Order Closing Estate and Discharging Personal Representative (Form 68) with clerk of court. Enter date of filing as Item 84a of SDL.					
c. Determine if court hearing will be required and, if so, do the following:					
(1) Obtain a date and time for hearing and enter date as Item 84b of SDL. 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)					
(2) Notify executor or administrator of time and date of hearing and the method of appearance before the court. If notifying by mail, prepare and send Letter 19 to executor or administrator.					
(3) Attend hearing, present proof necessary for court's approval, have Order Closing Estate and Discharging Personal Representative (Form 68) signed by judge closing estate, and enter date order signed as Item 84e of SDL.					
d. If hearing was not required, determine date Order Closing Estate and Discharging Personal Representative (Form 68) was signed and enter date as Item 84e of SDL.					
e. Prepare and send Letter 79 to the surety, together with a copy of the Order Closing Estate and Discharging Personal Representative (Form 68).					
f. Conform file copies of all documents for dates and signatures.					

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WINDING UP

	NA	L	S	DATE	INITIALS
215. **Distributing the estate and winding up**. After completing *all* the foregoing steps, do the following:					
a. See Special Instruction 45—When to Terminate Administration of Estate.					
b. Plan time to close estate with particular consideration to income tax effects of making final distributions in the particular fiscal year.					
c. Arrange for the payment of all outstanding debts and claims.					
d. Arrange to have title to assets transferred to the heirs and beneficiaries.					
e. If a distribution would be made to a minor beneficiary, determine if it can be made to a custodian for the benefit of the minor.					
f. Close estate savings accounts into estate checking account.					
g. Redeem certificates of deposit and deposit proceeds into estate checking account.					
h. Prepare final bill to describe your professional services provided for the estate.					
i. Collect the balance due for your fees and expenses.					
j. Pay all court costs, fees, and expenses.					
k. Arrange for appointment of guardian for minor distributees.					
l. Prepare estate checks for distributions.					
m. Prepare a separate Receipt and Release (Form 30) for each heir and beneficiary of the estate.					
n. Deliver assets and appropriate evidence of title to each heir and beneficiary in exchange for properly signed Receipt and Release (Form 30).					
o. If desired, file all original Receipts and Releases (Form 30) with clerk of court.					
p. On completion of administration and audit of federal tax returns, to give IRS notice of termination of fiduciary relationship, do the following: (1) Prepare a new IRS Form 56, Notice Concerning Fiduciary Relationship (FF 7), completing parts I and IV.					

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	NA	L	S	DATE	INITIALS
(2) Arrange for signature by executor or administrator. If mailing, prepare and send Letter 24 to executor or administrator, together with completed IRS Form 56, Notice Concerning Fiduciary Relationship (FF 7).					
(3) Prepare and send Letter 62 to IRS, together with signed IRS Form 56, Notice Concerning Fiduciary Relationship (FF 7).					
q. Review file and locate all original documents that you need not retain. For items furnished by persons other than the client, prepare and send Letter 63 to return all items to person who furnished them. When signed letter is returned, it should be substituted for your file copy.					
r. Prepare and send Letter 134 (IA, AWA, ADE, RDA, TBA, IBA, AP), Letter 135 (MT, PDH), or Letter 136 (SE) to client to advise of closing of file. When signed letter is returned, it should be substituted for your file copy. *Note:* Many lawyers do not file any documents with the clerk of the court to close an independent administration, because of the frequency with which additional assets are discovered. If in doubt, we advise against a formal closing.					
s. Determine whether to have independent administration terminated by court order and take appropriate action under Estates Code, Section 405.003 (forms not provided in this System).					
t. Indicate date on which all steps have been concluded as Item 85 of SDL.					
u. Close office file.					

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SPECIAL INSTRUCTION 1—PROBATE INFORMATION LIST

The Probate Information List provides the client with spaces to record important factual data and provides a listing of most of the documents and other items that may be required during the probate of the estate of a decedent. A copy is sent or given to the client at the earliest possible opportunity. Through its use, the lawyer is reminded of all items to request and the client has a listing of those items. When the client asks, "What will I need to bring with me?" this form provides the answer. The numbers in parentheses refer to the applicable sections of the Master Information List (MIL). The Probate Information List appears as Form 1 in this System.

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SPECIAL INSTRUCTION 2—ETHICS AND ATTORNEY'S FEES

Ethics Overview

Before conducting your initial interview, you should be familiar with general principles relating to conflicts of interest, because it may not be possible for you to represent "the estate" or "the family." Pay careful attention to the conflict-of-interest rules contained in the Disciplinary Rules. See particularly Texas Disciplinary Rules of Professional Conduct, Rules 1.06, 1.07, 1.08, and 1.09 and their comments. For an overview of some of the problems, see "Rules of Engagement: Applying the Disciplinary Rules to Your Probate and Estate Planning Practice" by R. Hal Moorman and Mark D. White, 2011 Advanced Estate Planning and Probate Course, State Bar of Texas (applying the Texas Disciplinary Rules to estate and probate practice; conflicts, fiduciary representation, billing, and sample letters); "Elder Abuse and Exploitation: the Ethical Duty of the Attorney" by Georgia Akers, 2015 Advanced Elder Law Course, State Bar of Texas (identifying and responding to elder abuse; mandatory reporting obligations, confidentiality tensions, and practical guidance for attorneys); and "Malpractice, Ethical and Fee Disputes" by Coyt Randal Johnston, 2004 Advanced Estate Planning and Probate Course, State Bar of Texas (intersection of malpractice claims, ethics violations, and fee disputes; fee forfeiture, civil liability, and risk management). Also see "Ethics and Probate Law" by Lauren Ross, Jason Panzer, and Chuck Herring, Jr., 2025 Handling Your First (or Next) Estate Administration Course, State Bar of Texas (case law survey of Texas attorney liability in probate: malpractice privity, fiduciary duty, disqualification, and key PEC opinions); "To Blab or Not to Blab" by Bernard E. Jones, 2024 Advanced Estate Planning and Probate Course, State Bar of Texas (scenario-based Q&A on attorney-client privilege and confidentiality in Texas estate planning, including postdeath disclosures).

Although not limited to or mandatory in Texas, the implementation of the Model Rules of Professional Conduct of the American Bar Association raises a number of issues affecting probate and trust lawyers and their practice. These model rules have been studied by committees of the State Bar of Texas, and the proposed rules were the subject of a 2011 referendum that was not approved. In 2017, the legislature created the Committee on Disciplinary Rules and Referenda (CDRR), establishing a new process for amending the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure. Successful referenda were conducted in 2021 and 2024, resulting in amendments to Texas Disciplinary Rules of Professional Conduct, Rules 1.08, 1.09, 3.09, 4.03, 5.01, and 5.05, and adoption of new Rules 1.10 (imputation of conflicts) and 1.18 (duties to prospective clients) and Texas Rules of Disciplinary Procedure, Rule 13.05 (termination of custodianship), all effective October 1, 2024. Practitioners should monitor the CDRR's ongoing work for future proposed amendments.

In February 2025, the Professional Ethics Committee for the State Bar of Texas issued Opinion 705, which was published in 88 *Texas Bar Journal* 310–12 (April 2025). The opinion addressed the use of generative artificial intelligence (AI) in the practice of law. The opinion addresses, among other issues, lawyers' ethical obligations to be proficient and competent in the practice of law, including understanding the benefits and risks of technology; issues of confidentiality of client information and the need to inform clients when using AI; the need to verify the accuracy of information generated by AI; the responsibility to understand individual courts' rules regarding the use of AI; and the effect that using AI to save time has on billing for legal services.

Attorneys should be aware when dealing with elderly clients and clients who may be suspected of having diminished capacity that actions taken by the client could be subject to litigation based on lack of mental capacity. Concerns may arise not only with general administrative actions taken by personal representatives of estates but also when signing instruments such as distribution deeds and other conveyances. *See* Texas Disciplinary Rules of Professional Conduct, Rule 1.17.

Real property located in jurisdictions other than Texas may raise issues of competent representation as well as unauthorized practice of law in those jurisdictions. Retaining local counsel is often advisable in interpreting foreign conveyance instruments, and instituting ancillary probate proceedings can be worth the extra expense to ensure proper title transfer.

Fees and Fee Agreements

Texas Disciplinary Rules of Professional Conduct, Rule 1.04, sets forth factors that may be considered in

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setting a reasonable fee and requires that the basis or rate of the fee shall be communicated to the client, preferably in writing at or shortly after the commencement of the representation.

There are several excellent articles dealing with fee agreements. Two of the most recent are "Don't Come to My Office with Suing Me on Your Mind—Ethical Engagement Letters" by R. Hal Moorman, 2022 Building Blocks of Wills, Estates and Probate Course, State Bar of Texas (drafting enforceable engagement letters for Texas estate planning and probate; sample forms, fee structures, and privacy notices), and "Elder Abuse and Exploitation: the Ethical Duty of the Attorney" by Georgia Akers, 2015 Advanced Elder Law Course, State Bar of Texas (identifying and responding to elder abuse; mandatory reporting obligations, confidentiality tensions, and practical guidance for attorneys); others are "Rules of Engagement: Applying the Disciplinary Rules to Your Probate and Estate Planning Practice" by R. Hal Moorman and Mark D. White, 2011 Advanced Estate Planning and Probate Course, State Bar of Texas (applying the Texas Disciplinary Rules of Professional Conduct to estate and probate practice; conflicts, fiduciary representation, billing, and sample letters), and "Negotiating Fee Contracts and Recovering Fees in Fiduciary Litigation" by Frank N. Ikard, Jr., 2003 Advanced Estate Planning and Probate Course, State Bar of Texas (fee arrangements and collection in contested probate; Rule 1.04 reasonableness, contingent fees, and court-awarded fees).

Notice of Grievance Procedure

Government Code, Section 81.079(b), requires each attorney practicing law in Texas to provide notice to each of the attorney's clients of the existence of a grievance procedure. The content of the notice is set forth in that section. Notice in compliance with that requirement is included in the text of the engagement letters that are included in this System.

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SPECIAL INSTRUCTION 3—INCOME TAX RETURNS CAN LEAD YOU TO ASSETS AND LIABILITIES

In every estate you should examine decedent's most recent income tax returns to determine if any assets have been overlooked. You should also consider requesting account and information return transcripts from the IRS, to identify assessments, adjustments, and payments made after each return was filed, as well as income not reported by decedent or decedent's spouse.

IRS Form 1040, U.S. Individual Income Tax Return, has been revised repeatedly in recent years. For more detailed discussion related to particular versions of the form and related schedules, see various editions of *The 1040 Handbook: A Guide to Income and Asset Discovery*, published by the American Bar Association's Section of Family Law, 321 North Clark Street, Chicago, IL 60654.

Entries on various lines of IRS Form 1040 and Schedule 1 for that form may lead to pensions; annuities; IRAs; a self-employed, SEP, SIMPLE, or qualified retirement plan; or foreign assets. Entries on those forms may also indicate that decedent was paying or receiving alimony under an agreement entered into on or before December 31, 2018, and not thereafter amended in relevant respects.

The itemized deductions on Schedule A (all references to schedules are to IRS Form 1040 unless otherwise noted) show whether decedent claimed deductions for real estate taxes and for interest expense. Deductions for real estate taxes or interest on a home mortgage indicate that decedent owned real estate during the year in question and, unless a sale was reported on Schedule D for that year or a later year, you should look for real estate. Investment interest deductions may lead to investment partnerships.

Schedule B lists income from interest and dividends. Interest income comes from notes and bonds, while dividends come from stocks and mutual funds. When such items are listed on this schedule, unless a sale was reported on Schedule D for that year or a later year, you should look for the underlying notes and securities. Answers on Schedule B could also lead to foreign assets.

Schedule C will let you know if decedent owned or operated a sole proprietorship.

Schedule D, IRS Form 4797, IRS Form 8949, and IRS Form 1040 will let you know if any assets have been sold. Any transaction reported as an installment sale on IRS Form 6252 or on Schedule D may indicate that decedent had a promissory note for the deferred part of the sales price.

Schedule E will show if decedent received any royalty or rental income and, if so, the payors thereof and will identify the real estate from which rents and royalties were derived. Income or losses from partnerships, estates, trusts, and Subchapter S corporations will also be reported on Schedule E, and that may lead you to additional assets. You should also try to locate a copy of the Schedule K-1 form furnished by each Subchapter S corporation, partnership, estate, and trust.

Schedule F and IRS Form 4835 will show if decedent received any farm income, may provide information relating to livestock, crops, or other commodities, and might identify real estate and other property used in farming and ranching operations. This information will be particularly useful in determining if any property qualifies for "special use" valuation.

IRS Form 3468 has been used to claim the investment tax credit for qualified investment in new or used property acquired during some tax years. This could have applied to a wide variety of assets, such as farm equipment, machinery, and automobiles.

IRS Form 4562 is used to report depreciation of assets that may be includible in decedent's estate.

IRS Form 5500-EZ would alert you to a pension or profit-sharing plan covering decedent or decedent's spouse.

IRS Form 6781 could lead to commodity contracts.

IRS Form 8886 might indicate investments in tax shelters. These are typically partnerships or Subchapter S corporations.

IRS Form 8815 could lead to Series EE or Series I U.S. Savings Bonds.

IRS Form 4506 may be used to request copies of tax returns. For a modest fee, the IRS will provide copies of Forms 1040, 1120, 941, and so forth and all attachments as originally submitted to the IRS, including Form(s) W-2, schedules, and amended returns. Copies

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of income tax returns are generally available for seven years from filing before they are destroyed by law.

Return transcripts, account transcripts, W-2 information, 1099 information, and verification of nonfiling may be requested, without charge, using IRS Form 4506-T. A return transcript includes most of the line items of a tax return, making it a free substitute for a copy of the original return. An account transcript reflects payments, assessments, and adjustments made after the return was filed. Information return transcripts collate data from Forms W-2, 1099, 1098, and 5498 submitted by third parties, which may lead to income and assets the taxpayer did not report.

Income tax accounts and transcripts may also be requested online. Visit **www.irs.gov/individuals/get-transcript**.

Information about Form 4506, its instructions, and any recent developments affecting Forms 4506, 4506-T, and 4506T-EZ are posted at **www.irs.gov/forms-pubs/about-form-4506**.

Letters testamentary or of administration are not always necessary to request tax information regarding a trust, an estate, or a deceased individual. IRC, Section 6103(e), authorizes disclosure to persons having a material interest, including trustees, trust beneficiaries, heirs at law, next of kin, and beneficiaries under the will. A copy of the will or trust or proof of a relationship may sometimes suffice. IRM 11.3.2.4.7, *Estates*; 11.3.2.4.8, *Trusts*; and 11.3.2.4.11, *Deceased Individuals*.

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SPECIAL INSTRUCTION 4—SAFE DEPOSIT BOXES

The death of one lessee of a jointly held safe deposit box does not affect the right of another lessee or other person designated in the lease agreement to have access to and to remove contents from the box. Finance Code, Section 59.106(a).

> *Note:* Regardless of statutory requirements, it is a good idea to conduct a detailed review and to prepare a complete listing of the contents of a safe deposit box to avoid claims of "missing" items.

In addition to the above-described contractual rights for access to the box, Estates Code, Sections 151.001 and 151.002, provide a procedure for a court order to permit entry into a safe deposit box by a person designated by the court, while Estates Code, Sections 151.003 and 151.004, permit examination of the box and delivery of documents without court order to certain people designated in the Code.

We recommend that the person entering the box make a detailed inventory of the contents and that the lawyer obtain a copy of the inventory of the contents of each safe deposit box regardless of the method of gaining entry.

All keys issued to a safe deposit box leased after September 1, 1992, must have the routing number of the financial institution imprinted either on the key or on a tag attached to the key. Finance Code, Section 59.110. In the long run, this may help locate a safe deposit box when a mysterious key or tag is found among decedent's effects.

Without Court Order

Decedent's safe deposit box may be examined in the presence of an officer of the bank or other institution by decedent's spouse, decedent's parent, a descendant of decedent who is at least eighteen years old, or a person named as an executor of decedent's estate in a copy of a document that the person has and that appears to be decedent's will. Estates Code, Section 151.003.

At the request of and on receipt from such person, the bank or other institution may make the following deliveries (Estates Code, Section 151.004):

1. Decedent's purported will to the clerk of the court having probate jurisdiction in the county of decedent's residence or to the person named as executor of decedent's estate in decedent's will. The institution must retain a copy for four years.
2. Deed to burial plot or burial instructions to person making the examination.
3. Life insurance policy to a beneficiary named in the policy.

With Court Order (Estates Code, Sections 151.001 and 151.002)

If there is no surviving co-renter and no executor or administrator at the time access is desired and if access is denied except with court order, follow the procedure outlined in Item 6 of the Checkplan.

The court will want the order to contain the name of the bank and also the name of an employee of the bank who is a supervisor in the relevant branch to be present when the box is opened and will usually designate the bank to take possession of any wills and deliver them to the clerk's office.

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SPECIAL INSTRUCTION 5—QUALIFICATION OF AND PRIORITY RIGHTS TO BE APPOINTED ADMINISTRATOR OR EXECUTOR

An executor named in a will, an administrator designated as authorized in a will, an independent administrator designated by all of decedent's distributees, or an interested person (including decedent's heirs, devisees, spouse, or creditors) may be the applicant for an order admitting the will to probate, for the appointment of the executor named in the will, or for the appointment of an administrator if there is no will or if an executor is not named or cannot qualify. Estates Code, Sections 22.018, 256.051, and 301.051.

The order or priority of appointment of qualified persons, as provided in Estates Code, Section 304.001, is as follows:

1. The person named executor in decedent's will
2. The person designated as administrator as authorized under section 254.006 of the Estates Code
3. Decedent's surviving spouse
4. The principal devisee under decedent's will
5. Any devisee under decedent's will
6. Decedent's next of kin in nearest order of descent, including a person who adopted decedent or who was adopted by decedent
7. A creditor of decedent
8. Any person of good character who applies to serve and resides in the county where the application is filed
9. Any other person not disqualified under section 304.003 of the Estates Code
10. Any appointed public probate administrator

If persons are equally entitled to letters testamentary or of administration, the court shall grant letters to the person who is most likely to administer decedent's estate advantageously or, in a proper case, to more than one of those persons. Estates Code, Section 304.001(c).

Only the executor named in a foreign will admitted to ancillary probate in Texas is entitled to receive ancillary letters testamentary. See Estates Code, Section 501.006.

Minors, incompetents, convicted felons who have not been pardoned or had civil rights restored, nonresidents of Texas who have not properly appointed a resident agent for service of process, corporations that are not authorized to act as fiduciaries in Texas, and persons found unsuitable by the court are disqualified to serve as executors or as administrators. Estates Code, Section 304.003(a). However, a felon is not disqualified from serving as an executor of decedent's estate if (1) the person is named as executor in decedent's will, (2) the person is otherwise qualified to serve as an executor, and (3) the court approves the person serving as an executor. Estates Code, Section 304.003(b).

If another person's priority is higher than the applicant's, it may be necessary to obtain and file a written renouncement from the person with the higher priority or have that person renounce in open court. Estates Code, Section 304.002. The exact method is governed by local practice.

In the case of a creditor, many courts will elect to appoint a neutral third party as administrator.

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SPECIAL INSTRUCTION 6—HANDLING FUNDS RECEIVED FROM CLIENT

Funds received from a client as a deposit for costs and expenses **must** be handled as provided by the Texas Disciplinary Rules of Professional Conduct, Opinions of the State Bar of Texas Ethics Committee, statutes, and court decisions. Texas Disciplinary Rules of Professional Conduct, Rule 1.14, and Texas Rules of Disciplinary Procedure, Rule 17.10, provide the "black letter" framework and should be reviewed on a regular basis. The clearest explanation of the required procedure is Ethics Opinion 391, issued under the Code of Professional Responsibility in February 1978 and published in 41 *Texas Bar Journal* 322–25 (April 1978), and reprinted in *Texas Ethics Opinions* presented by the Texas Center for Legal Ethics and Professionalism. This requirement is separate and distinct from Ethics Opinions 404 and 421, dealing with interest on lawyers' trust accounts. Retainers have been more recently addressed in Ethics Opinion 611, issued in 2011.

A recent discussion of these issues is found in "Handling Client Funds, Trust Accounts and IOLTA" by Bruce D. Bain, 2014 Advanced Family Law Course, State Bar of Texas.

Although Opinion 391 is more than thirty years old, it creates a useful guide for handling client funds. A 2011 proposal to amend the Disciplinary Rules, including current Rule 1.14, did not pass, but the potential for future amendments still exists. Be sure to check the Disciplinary Rules and the Rules of Disciplinary Procedure for updates. The text of Opinion 391 follows:

OPINION 391
February 1978
Handling of Funds Received by an Attorney
Disciplinary Rule 9-102

A Grievance Committee has requested an ethics opinion concerning the proper handling of funds received by an attorney. The Committee has provided five specific fact situations which seek an interpretation of DR 9-102 and other provisions of the Code of Professional Responsibility.

DR 9-102 is entitled "Preserving Identity of Funds and Property of a Client" and provides:

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

This provision creates a two-fold duty insofar as the handling of funds belonging to a client are concerned. DR 9-102 (A) creates the requirement that funds which belong in part to a client or clients at the time those funds come into the possession of the attorney must be placed into a "trust" account or accounts which are separate and apart from the attorney's personal

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accounts or the law firm's operating accounts; and DR 9-102 (B)(3) creates the requirement that an attorney must maintain complete records of those funds and render appropriate accounts to his client regarding them. Thus, an attorney must keep accurate bookkeeping records and must segregate those funds which belong in part to the client from those funds which belong entirely to the attorney.

The policy behind such a rule was stated succinctly in the recent case *Archer v. State*, 548 S.W. 2d 71 (Tex. App.—El Paso 1977, writ ref'd, n.r.e.) at 74, to wit:

> DR 9-102 recognizes that an attorney will be entrusted with the client's moneys in the course of handling his affairs. It guards against the dangers of commingling; the probability in some cases, the possibility in many cases, and the danger in all cases that such commingling will result in loss of the clients' funds. . . . It calls for a reasonable manner of handling the clients' funds; it is a simple directive as to the manner of handling, rather than a misappropriation, which is another matter; it avoids the appearance of impropriety, and assures that there will be no loss of the clients' funds despite "good intentions." To comply with it, all that is required is good office management.

Because the requirements created by DR 9-102 are imposed only upon funds which belong at least in part to the client, an initial determination must be made as to the nature and ownership of funds coming into the possession of an attorney. Often such a determination will involve the construction of a contract of employment and, thus, will involve questions of contract law as well as questions of ethics. However, the Code is not entirely silent on this matter. DR 2-110 (A)(3) provides: "A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned."

DR 2-110 (B)(3) provides that an attorney *must* [emphasis added] withdraw when the attorney has been discharged by the client. Therefore, when a fee has been paid in advance and when an attorney withdraws from the representation of a client, the attorney must return that portion of the fee which has not been earned. The client, then, continues to have an interest in those funds paid to an attorney which represent the advance payment of a fee which has not been earned.

The first fact situation proposed by the Grievance Committee deals with the advance payment of a fee. That situation provides:

1. An attorney agrees to represent a client in a legal matter for an hourly fee, to be billed monthly. The client is required to pay some amount in advance for the attorney's fee and for estimated costs and expenses. The attorney (a) deposits the entire amount received in his general operating account, (b) establishes an account payable on his firm's accounting records reflecting a credit to the client for the full amount, and (c) thereafter renders monthly billings to the client reflecting the amounts earned as fees and paid for costs and expenses, and charging the client's account payable.

In this fact situation the attorney receives an advanced payment for estimated costs and expenses and an advance fee which is not yet earned and which may presumably be returned if the monthly billing on an hourly basis for actual work done does not exceed the advance payment of the fee. In this situation the client continues to have an interest in that portion of the fee which is not yet earned. Because the funds in question do belong, in part, to the client, the handling of such funds must conform to the requirements imposed by DR 9-102 (A) and (B)(3).

The attorney in the first fact situation does, apparently, maintain accurate records and renders appropriate accounts; however, he fails to segregate these funds which belong in part to the client from those funds which belong entirely to the attorney. The funds representing the advanced payment of a fee in this fact situation must be placed into a separate "trust" account.

DR 9-102 (A) does specifically exclude advances for costs and expenses from this requirement that funds belonging to the client be placed into the trust account. This, of course, tends to support the proposition that other advances (such as for payment of fees) belong in the trust account. Although the attorney may deposit advances for costs and expenses in his general operating account, the safer practice probably would be to place all of the funds into the trust account when costs and expenses are merely estimated and to make the necessary disbursements from that account. See Ethics Opinion 245 (1961) which states that the additional bookkeeping required by the ban on commingling is a necessary burden of the profession.

2. An attorney agrees to represent a client in a legal matter on the same basis as 1 except that a portion of the advance fee is a non-refundable retainer, which, while it will be applied to the hourly work done on the case, is not to be refunded in the event it exceeds the hourly work done. The entire advance fee was depos-

ited by the attorney to his general operating account, and an account payable was establish[ed] on the attorney's books reflecting a credit to the client of only that portion which is refundable.

A non-refundable retainer belongs entirely to the attorney at the time it is received in that the fee is earned at the time the fee is received; therefore, it may be placed into the attorney's general operating account. However, that portion of the advance fee which represents payment for services not yet rendered and which is refundable belongs in part to the client at the time the funds come into the possession of the attorney and, therefore, must be deposited into a separate "trust" account.

When a client produces one check which represents a non-refundable retainer and a refundable advance payment, the entire check should be deposited into the 9-102 trust account. Because the attorney may withdraw those funds which are due and owing to the attorney pursuant to 9-102 (A)(2), the attorney may then transfer the funds which represent the non-refundable retainer into his general operating account.

3. An attorney agrees to represent a client in a legal matter for a reasonable fee to be determined and billed at the conclusion of the matter. A retainer is required which is to be applied to the total fee shown to be due by the final bill. The attorney deposits the amount received in his general operating account.

The retainer in this fact situation is to be applied toward payment of the final bill and would appear to be nothing more than an advance payment similar to that payment described in the first fact situation. If the payment is not earned at the time it is made to the attorney, the funds do belong in part to the client and must be placed into the trust account. In such a case the client would be entitled to a return of the unearned fee and should have that return protected by the rule against commingling just as the client who deposits property with the attorney for its safekeeping. If, of course, the retainer is non-refundable regardless of the work done and is owned entirely by the attorney at the time he comes into possession of those funds, they need not be placed into the trust account.

In this third fact situation it appears that the retainer is refundable and does not belong entirely to the attorney at the time it comes into his possession; therefore, these funds must be deposited into the 9-102 trust account.

4. Does it make a difference in 3 if the retainer received is only a small portion of the attorney's estimate of the total fee, *[e.g.]*, is [a] $100.00 [retainer] on what is estimated to be about [a] $1,000.00 [fee]?

Regardless of the estimated size of the retainer in relation to the total fee, the retainer does not belong entirely to the attorney until it is earned. As long as the client retains an interest in the funds, those funds must be deposited in the trust account. When the retainer is earned and belongs entirely to the attorney, the funds representing the earned portion of the payment may be withdrawn pursuant to DR 9-102 (A)(2).

5. An attorney agrees to represent a client in a legal matter for a flat fee payable in advance. There is no further understanding concerning the refundability of the fee either in whole or in part. Upon receipt of the money from the client, the attorney deposits the funds in his firm's general operating account.

Although the determination of the nature or ownership of funds coming into the possession of an attorney may involve the construction of the employment contract and, thus, questions of contracts law, the general rule as to the proper handling of such funds is that, when the client owns a portion of these funds that portion belonging to the client must be placed in the 9-102 trust account and must be segregated from funds belonging entirely to the attorney. If it should be determined subsequently by a court that this advance fee is refundable unless and until fully earned by the attorney, the attorney will have violated DR 9-102 if he fails to place those funds in the trust account.

The better practice, then, would obviously be to place all funds whose nature or ownership is questioned or disputed into the 9-102 trust account. This practice has been recognized in a long line of New York County Lawyers' Association ethics opinions dealing with the handling of disputed funds which are reproduced as Opinions numbers 1681, 1945, 1999, and 7081 in *Digest of Bar Association Ethics Opinions* and *1970 Supplement to the Digest of Bar Association Ethics Opinions* edited by Olavi Maru.

This practice of placing advanced fees into the 9-102 trust account and this self-restraint as to the use of fees until they are earned would not impose significant burdens upon attorneys in light of DR 9-102 (A)(2) which provides that those portions of funds so deposited may be withdrawn by the attorney when due unless the right to receive those funds is disputed by the client. The only real burden imposed upon the attorney in such a case involves some additional bookkeeping. As

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Ethics Opinion [245] (1961) has noted, additional bookkeeping is a necessary burden of the profession. In light of the harm to the profession and the public caused by the loss of clients' funds and by the mere appearance of impropriety, it is a relatively small burden for the profession to bear.

The attorney in such a situation as this should have a thorough understanding with his client as to the ownership of the flat fee paid and whether any part would be refundable in event of discharge. Some attorneys do not have a clear understanding with their client regarding the ownership of a flat fee payable in advance and whether any part would be refundable in event of discharge of the attorney and this should be avoided by a proper understanding and agreement between the attorney and client.

In response to this specific fact situation, the attorney is not entitled to the full use of the fee until that fee has been earned. DR 2-110 (A)(3). There *might* [emphasis added] be some question as to whether the attorney can be required to return an unearned portion of a fee when the client has discharged the attorney without sufficient cause. See, for example, *White v. Burch*, 33 S.W.2d 512 (Tex. App.—Fort Worth 1930, writ ref'd), and *Howell v. Kelly*, 534 S.W.2d 737 (Tex. App.—Houston [1st Dist.] 1976, no writ) which deal with contingent fee contracts. Regardless of the resolution of the legal question concerning the ownership of the full fee in such a situation, the fact remains that DR 2-110 (A)(3) would require the return of an unearned fee in certain situations and, thus, creates a continuing obligation on the part of an attorney to ensure that any unearned portion of a fee be protected and available for recovery by the client.

At the time the advance fee is paid to the attorney in this situation, there is no guarantee that the attorney will be entitled to the full amount. Therefore, the attorney must place those funds into the 9-102 trust account and may withdraw portions of those funds pursuant to DR 9-102 (A)(2) when that portion of the fee is due (earned) and not before.

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SPECIAL INSTRUCTION 7—INSURANCE ON DECEDENT'S LIFE

Insurance includes death benefits paid by fraternal beneficiary societies operating under the lodge system and certain death benefits payable under no-fault automobile insurance policies. Other possibilities include credit card agreements, mortgage cancellation insurance, and other credit life policies.

If decedent possessed incidents of ownership in a policy on decedent's life, the policy value must be included in determining the taxable value of decedent's estate. IRC, Section 2042. Incidents of ownership include the power to change the beneficiary, surrender or cancel the policy, assign or revoke an assignment of the policy, and pledge the policy for a loan. If proceeds of a policy on decedent's life are payable to decedent's executor, administrator, or estate, they are included in decedent's inventory and decedent's estate tax return, but if payable to a named beneficiary, the proceeds are not included in the inventory. All policies insuring decedent's life must be listed in decedent's estate tax return even though their value might not be includible for purposes of taxation.

The value of insurance for estate tax purposes is the amount received by the estate or by a beneficiary as shown by IRS Form 712, Life Insurance Statement (see FF 2 for sample), and is reported on Schedule D of IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for decedent's estate ("the Return"). IRS Form 712 is completed and furnished by the insurance company and should be obtained for *every* policy insuring decedent's life regardless of ownership.

If alternate valuation is selected for the estate tax return, the valuation of these policies is the same as on date of death.

If policy proceeds are paid in one sum, the amount shown on IRS Form 712, Part I, Line 24, is the value to be used for date of death as well as alternate valuation purposes. If the proceeds are not paid in one sum, the amount shown on Line 25 is used.

National Service Life Insurance on decedent's life (so-called GI Life Insurance) is always decedent's separate property.

Only one-half of the proceeds from community property life insurance policies will be included in decedent's estate, regardless of whether they are payable to decedent's estate, decedent's spouse, or a third party.

Policies acquired during marriage in Texas are presumed to have been acquired as community property. Since Texas applies the inception-of-title doctrine, a policy that was originally acquired as a person's separate property remains that person's separate property even though later premiums were paid from community funds, and the reverse is also true. Because proceeds from those policies retain the same characteristics, it is extremely important to keep these rules in mind when determining if the value of a policy insuring decedent's life should be excluded from decedent's taxable estate. Note that when the community estate pays premiums on decedent's separate property life insurance policies, the community is entitled to reimbursement for those premiums, and this claim should be reported on Schedule F of the Return.

If a community property life insurance policy insuring decedent's life is payable to anyone other than decedent's surviving spouse, the surviving spouse will be deemed to have made a gift of his or her one-half of the proceeds.

If decedent made a gift of a life insurance policy insuring decedent's life and decedent died within three years of making that gift, the entire proceeds are included in decedent's gross estate for federal estate tax purposes, regardless of the value of the policy on the date of the gift (IRC, Section 2035) or the identity of a beneficiary other than decedent's spouse. In this case, these policies are reported on Schedule G (not Schedule D) of the Return. If decedent survives the three years and has no incidents of ownership in the policy, the policy is reported on Schedule D of the Return even though it may not be taxable and is given a value of zero.

Policy loans are not deducted on Schedule K of the federal estate tax return but reduce the value of the policy to be reported on Schedule D.

If decedent's spouse was named as a beneficiary of a policy insuring decedent's life and thereafter was divorced from decedent, the provisions favoring decedent's former spouse may no longer be effective. In this situation, review the provisions of Family Code, Section 9.301, to determine if the beneficiary designation is effective. If the policy is offered by an employer, see Special Instruction 13—Employee Benefit Plans. The Employee Retirement Income Security Act of 1974 (ERISA) may preempt the Family Code.

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If you suspect that a life insurance policy was in force when decedent died but you cannot locate the policy or the name of the company, consider using the policy locator service from **www.mib.com/lost_life_insurance.html** to search its database of inquiries submitted on individually underwritten life insurance applications processed during the last eleven years. The charge is $75 per search. An additional policy locator service may be found at the National Association of Insurance Commissioners website at **https://content.naic.org/consumer_life_co_locator.htm**.

Life insurance trusts are used with some frequency as a device for providing insurance proceeds not subject to taxation in the estate of the insured. In this situation, it is necessary to obtain IRS Form 712 for each policy owned by the trust and to include appropriate details on Schedule D of the Return. Sample description number 4 is used in this situation.

Further coverage is beyond the scope of this System. For additional information see "Planning with Employer Funded Life Insurance" by Alan K. Davis, 2014 Advanced Estate Planning and Probate Course, State Bar of Texas; "Insurance: The Illusive Asset" by Robert H. Kroney, 1990 Advanced Estate Planning and Probate Course, State Bar of Texas; "What Do We Do about Split Dollar and about Annuities" by Philip M. Lindquist, 2001 Advanced Estate Planning and Probate Course, State Bar of Texas; and "Irrevocable Life Insurance Trusts" by Santo Bisigmano, Jr., 1997 Advanced Estate Planning and Probate Course, State Bar of Texas.

Sample Descriptions

1. U.S. Government Veterans Affairs, 20-payment life insurance policy number XXXXX1998 insuring life of Decedent; beneficiary Mary L. Green; face amount $5,000; post-mortem dividends $48. (See IRS Form 712 attached.) Net proceeds $5,048

2. Provident Life and Accident Insurance Company, group life insurance policy number X-888-L insuring life of Decedent; beneficiary Hugh E. Miller; face amount $50,000. (See IRS Form 712 attached.) Net proceeds $50,000

3. Northwest Mutual Life Insurance Company, ordinary life insurance policy number XXX5585 insuring life of Decedent; beneficiary Mary L. Green; face amount $100,000 less policy loan $35,622. (See IRS Form 712 attached.) Net proceeds $64,378

4. Policy not to be included in decedent's estate:

   Phoenix Mutual Life Insurance Company, policy number 2,736,731. This policy was owned by the trustees under trust agreement dated December 30, 1988, entered into by Decedent as grantor. Decedent had no incidents of ownership in this policy after the inception of the trust. (See IRS Form 712 attached.) $0

5. American General Life Insurance Company, ordinary life insurance policy number XX4322 insuring life of Decedent; beneficiary Estate of Harry D. Green; face amount $75,000. Net proceeds $75,000

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SPECIAL INSTRUCTION 8—DEATH, BIRTH, MARRIAGE, AND DIVORCE RECORDS

When a death, birth, marriage, or divorce has occurred in Texas, a record may be available from the Department of State Health Services, Central Vital Statistics Office, 1100 West 49th Street, Austin, Texas 78756 (888-963-7111). Detailed instructions for ordering records are available at **www.dshs.state.tx.us/vs/**. Statewide birth and death records have been maintained since 1903, marriage records since 1966, and divorce records since 1968. Texas marriage records are maintained by the county clerk in the county where the license was issued, and divorce records are maintained by the clerk of the district court for the county where the divorce was granted. Marriage and death record searches across all Texas counties at once are available at **www.courthousedirect.com**.

Texas Vital Statistics issues "verification letters," indicating whether a marriage or divorce was recorded with the state of Texas based on the application for marriage or divorce sent by local clerks. Visit **www.dshs.texas.gov/vs/marr-div/default.aspx**. Although not a substitute for marriage licenses or divorce decrees, they are accepted as evidence that no such record exists—for example, for a MERP claim. If nothing else, a verification letter can narrow the search from all 254 Texas counties to the one or two relevant ones revealed by the typical verification letter.

Addresses of other agencies for all states and a listing of their fees may be obtained from the National Center for Health Statistics at **www.cdc.gov/nchs/w2w/index.htm**. Another excellent website is **www.vitalchek.com** for birth, death, and divorce records from all states.

If decedent died in a foreign country, in lieu of a death certificate you will need to obtain a Report of Death of an American Citizen Abroad. Instructions for obtaining the report are available at **https://travel.state.gov/content/travel/en/international-travel/while-abroad/death-abroad1/consular-report-of-death-of-a-u-s--citizen-abroad.html**.

For country-specific information about gathering evidence and authenticating documents abroad, see the State Department's Judicial Assistance Country Information at **https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information.html** and Visa Reciprocity and Civil Documents by Country at **https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country.html**.

Texas adoption records are sealed and related vital statistics are confidential, except for good cause shown. Family Code, Section 108.003(b). To seek an order unsealing adoption records, first ask the district clerk to identify the court and cause number of the adoption, which will not be found in the usual public index. Next, seek an order from the court granting the adoption to open the sealed case. Harris County's suggested form Order Requesting Sealed Case Be Opened is available at **www.hcdistrictclerk.com/Common/Forms/forms.aspx**.

Since January 1, 2019, diacritical marks used in a person's name are included in Texas driver's licenses and vital statistics. Health & Safety Code, Sections 191.009 and 191.010; Transportation Code, Sections 521.127 and 522.030. These marks include accents, tildes, graves, umlauts, and cedillas (for example, á, ñ, è, ü, and ç). Persons born before then may have records both with and without diacritical marks.

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SPECIAL INSTRUCTION 9—SURVIVING SPOUSE'S FEDERAL INCOME TAX ELECTIONS

The *unremarried* surviving spouse may elect to file a joint federal income tax return for the year of decedent's death and for the two years after the year of decedent's death, if decedent's surviving spouse (1) was not a nonresident alien at any time during the year and (2) maintains an abode that is also the principal abode of a dependent child or stepchild. Then the surviving spouse's income is taxed at the lower rates for those who are married and filing joint returns, rather than at the higher rates for heads of households or unmarried individuals. IRC, Sections 1(a) and 2(a). There is a special rule if the deceased spouse was in a missing status as a result of service in a combat zone. The surviving spouse should be advised of the desirability of realizing capital gains in the year of decedent's death to offset decedent's unused capital losses.

If decedent's executor or administrator waives the right to claim decedent's medical expenses paid after decedent's death as an estate tax deduction, the surviving spouse may take these deductions on decedent's year-of-death income tax return. IRC, Section 213(c). All such expenses paid out of decedent's estate within one year after decedent's death may be treated as paid by decedent at the time incurred and deducted on decedent's final-year return.

If decedent's surviving spouse selects a deferred-payment option under life insurance on decedent's life, the interest on the deferred payments is taxable. IRC, Section 101(d).

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SPECIAL INSTRUCTION 10—SOCIAL SECURITY BENEFITS

The procedure for determining or collecting Social Security benefits is beyond the scope of this System.

For information on or assistance in applying for benefits, contact any local Social Security office. Claims also may be processed through any of these offices. Some offices, such as the one in Houston, have arranged to permit the beneficiary to file claims by telephone. The Social Security Administration's phone number is 800-772-1213, and its website is **www.ssa.gov**.

If you do not know whether decedent or decedent's spouse was covered under Social Security, you should contact the local Social Security office to determine the address or phone number of the office to contact for this information and, when doing so, should furnish decedent's name, Social Security number, and date of death. The request may be simply, "Please check decedent's account to see if there are any Social Security benefits available to decedent's estate or surviving family and, if so, please send the necessary forms."

If decedent was receiving monthly payments and checks are received or payments are credited to decedent's bank account after the date of decedent's death, such checks must be returned or payments must be refunded. Uncashed checks for earlier months may be retained. Note that all federal government checks are void after one year from the dates shown on those checks.

To obtain Social Security benefits, including a lump-sum death benefit, it may be necessary to locate and furnish birth certificates for decedent and decedent's surviving spouse, marriage license, and adoption and divorce documents. If unable to locate these documents, see Special Instruction 8—Death, Birth, Marriage, and Divorce Records.

> *Note:* The maximum death benefit is $255 and is payable to only (1) a surviving spouse who was residing in the same residence as decedent or was eligible for Social Security benefits on decedent's earnings record at the time of decedent's death or (2) if there is no surviving spouse, a child who was eligible for benefits on decedent's earnings record. The deduction for funeral expenses for federal estate tax purposes must be reduced by the amount of lump-sum death benefit. See IRS instructions to Schedule J of IRS Form 706. For Form 706 instructions, visit the IRS at **www.irs.gov/forms-instructions**. Funeral homes are no longer eligible to receive direct payment of this benefit.

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SPECIAL INSTRUCTION 11—RAILROAD RETIREMENT BENEFITS

The procedure for determining or collecting railroad retirement benefits is beyond the scope of this System.

For information or assistance in applying for benefits, contact the appropriate Railroad Retirement Board office. The two Texas offices are in Houston and in Fort Worth. The website, **www.rrb.gov**, provides a field office locator where a zip code can be submitted to determine which office is appropriate, or you may obtain that information by calling the twenty-four-hour automated help line at 877-772-5772.

If you do not know whether decedent was covered or if benefits will be payable, contact that office. You will need to know decedent's name and Social Security number. The request may be simply, "Please check decedent's account to see if there are any railroad retirement benefits available to decedent's estate or surviving family and, if so, please send the necessary forms."

To obtain these benefits, it may be necessary to locate and furnish decedent's birth certificate, marriage license, and adoption and divorce documents. If unable to locate these documents, see Special Instruction 8—Death, Birth, Marriage, and Divorce Records.

If decedent was receiving monthly payments and checks are received or payments are credited to decedent's bank account after the date of decedent's death, such checks must be returned or payments must be refunded. Uncashed checks for earlier months may be retained. Note that all federal government checks are void after one year from the dates shown on those checks.

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SPECIAL INSTRUCTION 12—VETERANS (VA) BENEFITS

The procedure for determining the existence of or collecting benefits available to a veteran is beyond the scope of this System.

For information on or assistance in applying for veterans benefits, contact one of the regional offices of the Department of Veterans Affairs (VA) (Houston or Waco) or any other VA office. The website, **www.va.gov**, provides a VA location finder where a state or zip code may be entered to find the nearest office. The toll-free phone number is 800-827-1000. Claims related to nonservice-connected deaths must be made within two years of interment or cremation.

Burial benefits are applied for on VA Form 21P-530EZ. Deceased veterans may also be entitled to a United States flag for burial purposes (VA Form 27-2008) and a headstone or grave marker (VA Form 40-1330). These forms may be found at **www.va.gov/SURVIVORS/docs/PlanningYourLegacyFinal.pdf**.

An excellent publication that outlines the benefits available is entitled *Federal Benefits for Veterans, Dependents, Survivors, and Caregivers*, available at **https://department.va.gov/wp-content/uploads/2024/12/2025-Federal-Benefits-for-Veterans-Dependents-and-Survivors.pdf**.

If decedent was receiving monthly payments and checks are received or payments are credited to decedent's bank account after the date of decedent's death, such checks must be returned or payments must be refunded. Uncashed checks for earlier months may be retained. Note that all federal government checks are void after one year from the dates shown on those checks.

To obtain these benefits, it may be necessary to locate and furnish decedent's birth certificate, marriage license, adoption and divorce documents, and military honorable discharge certificate. If unable to locate these documents, see Special Instruction 8—Death, Birth, Marriage, and Divorce Records.

The basic burial allowance is provided for deceased veterans who died in a VA hospital, in a VA-contracted nursing home, or while in an approved state nursing home or who, at the time of death, were receiving or entitled to receive a VA pension or compensation. The allowance is up to $1,002 for a non–service-related death. If decedent was not buried in a national cemetery, an additional $1,002 may be paid as a plot or interment allowance. Grave space in the VA system is free. If decedent's death was service connected, payment of up to $2,000 is authorized in lieu of the foregoing allowances. Payment may be made to a funeral director or to the person who bore the expenses. Consult **www.va.gov/burials-memorials/veterans-burial-allowance** for current information.

> *Note:* The deduction for funeral expenses for federal estate tax purposes must be reduced by the amount of the lump-sum death benefit regardless of the identity of the recipient. See IRS instructions to Schedule J of IRS Form 706. For Form 706 instructions, visit the IRS at **www.irs.gov/forms-instructions**.

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SPECIAL INSTRUCTION 13—EMPLOYEE BENEFIT PLANS

Normally death benefits from employee benefit plans are paid pursuant to the designation of the beneficiary made by decedent before death. When this is the case, the administrator of the plan ordinarily does not require anything other than the death certificate and completed forms, and the procedure is practically identical to obtaining the proceeds from a life insurance policy payable to a named beneficiary. Generally, the beneficiary may elect to receive the death benefits in a lump sum in a single year or to receive them in installments. Since there are significant tax differences in these elections, care must be exercised when so electing.

If decedent was a federal employee or retiree, contact Office of Personnel Management (888-767-6738) to report the death. The website is **www.opm.gov**. A claim for Federal Employee Group Life benefits can begin with that call.

If unable to locate a lost pension benefit, visit **www.pbgc.gov/wr/find-unclaimed-retirement-benefits/tips** or contact the Pension Benefit Guaranty Corporation (PBGC). If decedent purported to establish his or her own defined benefit pension but no record is found aside from the bank or investment account, submit a Freedom of Information Act request to the PBGC. A no-records response can support collection of the account and disregard of the plan.

If decedent's estate, executor, or administrator was designated as a beneficiary, the death benefits will pass according to decedent's will or, if decedent did not have a will, then pursuant to the laws of descent and distribution. Regardless, the benefits will be fully includible in decedent's inventory and in decedent's federal gross estate.

Plans vary widely in the distribution of assets when the primary beneficiary does not survive. Most distribute to secondary beneficiaries, but some give priority to the primary beneficiary's descendants. Absent any surviving beneficiary, some distribute to decedent's heirs while others default to a contractually defined set of family that may or may not conform to the laws of intestacy.

Complications abound when a former spouse was designated beneficiary before divorce. Family Code, Sections 9.301 and 9.302, may render ineffective a former spouse's designation as beneficiary of life insurance or employment benefits. A patchwork of Texas statutes applies to these and other assets, and to the former spouse's power over them under decedent's power of attorney, revocable trust, and will. The results following divorce can differ greatly, and each asset should be reviewed to determine whether state law purports to revoke a death benefit. For more information, see "Breaking Up Is Hard to Do: Estate Planning for a Divorce" by Gary V. Post, 2011 Estate Planning and Probate Drafting Course, State Bar of Texas.

Federal law may preempt all manner of revocations, including those by agreement, judicial decree, or operation of law.

For example, most pension benefits are paid by plans that are subject to the provisions of the federal Employee Retirement Income Security Act of 1974 (ERISA), which preempts state law, including Family Code, Sections 9.301 and 9.302. Under ERISA, plan administrators have a duty to make distributions to former spouses who remain designated beneficiaries, absent a qualified domestic relations order (QDRO) that is approved both by the state court and by the plan administrator. As a result, a divorce decree and a property settlement agreement, without more, are insufficient to compel a plan administrator to deliver ERISA benefits to decedent's estate rather than to the former spouse, notwithstanding Family Code, Sections 9.301 and 9.302.

The early litigation in this area—for example, *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001), and *Barnett v. Barnett*, 67 S.W.3d 107 (Tex. 2001)—led many to conclude that ERISA, absent a QDRO, excused both the plan administrator and the former spouse from the terms of any decree or property settlement agreement.

Some Texas courts recognized a cause of action against the former spouse to recover benefits awarded to decedent under a decree or waived by the former spouse in a property settlement agreement, even where the plan administrator was protected by federal law from liability for distributions to the named beneficiary. *See, e.g., Smalley v. Smalley*, 399 S.W.3d 631 (Tex. App.—Houston [14th Dist.] 2013, no pet.) (post-distribution suit by administrator of ex-husband's estate to enforce agreed divorce decree).

The prospect of recovery from the named beneficiary of an ERISA plan or any other federally regulated ben-

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efit is now doubtful. In *Hillman v. Maretta*, 133 S. Ct. 1943 (2013), the Supreme Court considered an estate's claim against the beneficiary under a Federal Employees' Group Life Insurance Act plan and concluded that federal preemption of state law protected both the plan administrator and the named beneficiary.

No IRA is subject to ERISA. Not every life insurance policy or employment benefit is federally regulated. When in doubt, review the documents.

Qualified employee death benefits payable under a qualified plan are includible in decedent's gross estate. If the surviving spouse is the beneficiary, the estate is entitled to a marital deduction. IRC, Section 2056.

Distributions from qualified plans may be rolled over to an individual retirement account (IRA) by decedent's surviving spouse, but other distributees are not entitled to roll over their distributions to their IRAs. IRC, Section 408(d)(3)(C).

Distributions made directly from a retirement plan to the recipient will subject the recipient to 20 percent withholding for federal income taxes even though the full amount of the distribution is rolled over into another qualified retirement plan or IRA within the allotted sixty days. The important thing is to be sure that it is a transfer of funds from the custodian of the old plan or IRA to the custodian of the new plan or IRA so that the recipient never handles the proceeds. This appears to be the ultimate triumph of form over substance and a vicious trap for the unwary. See IRC, Section 3405(c). Taxation of other distributions is beyond the scope of this System.

Before 1987, under IRC, Section 2039(c), when decedent was the nonemployee spouse of an employee covered under a qualified pension or profit-sharing plan or an annuity, decedent's interest was specifically excluded from estate taxation under that section, although under normal community property rules it would have been an asset includible in the estate of the nonemployee spouse. That section was repealed by the Tax Reform Act of 1986. This repeal raised issues of valuation and federal preemption.

Before the repeal of IRC, Section 2039(c), the community property interest of a nonemployee spouse in a retirement plan was not includible in the estate of that spouse. With the repeal, effective for estates of decedents dying after October 22, 1986, the result is that the nonemployee spouse's one-half community property interest is includible if that spouse predeceases the employee spouse. Valuation problems abound, and due to federal preemption of most plans there is a real question as to whether the nonemployee spouse had any rights or interest and, if so, the nature and extent of that interest.

To further complicate and confuse the issue, the Texas Supreme Court held in *Allard v. Frech*, 754 S.W.2d 111 (Tex. 1988), that the nonemployee spouse can have a community property interest in the retirement benefits of the employee spouse, that such benefits belong to the estate of the deceased nonemployee spouse, and that the disposition of those benefits is controlled by the will of the deceased nonemployee spouse or by laws of intestacy.

Just when we thought that result was confusing enough, on June 2, 1997, the United States Supreme Court held in *Boggs v. Boggs*, 520 U.S. 833 (1997), that in a community property state (Louisiana) a wife's community property interest in her husband's pension plan is subject to the nonalienability provisions of ERISA and those provisions preempt state law. This probably has the practical effect of making such a plan the separate property of the employee spouse and not including any portion in the nonparticipant spouse's gross estate. We have not heard the last of the problems in this area.

Excellent discussions of these problems appear in "Qualified Plans and IRAs: Top Ten List" by Karen S. Gerstner, 2010 Advanced Estate Planning and Probate Course, State Bar of Texas, and "It Should Not Be This Hard: A Look at Trusts as Beneficiaries of Retirement Benefits" by Alvin J. Golden, 2009 Advanced Estate Planning and Probate Course, State Bar of Texas.

In summary, each plan is different and must be carefully reviewed. Beginning points include a review of (1) the plan documents, (2) the beneficiary designations, (3) the assets in the account, and (4) the form of settlement.

Further coverage is beyond the scope of this System.

Sample Descriptions

1.	25 shares, Texas Western Corporation, common, NYSE, held as Employee's contribution in Employee Account in the Texas Western Employee Stock Purchase Plan. Unit value $30.	$750
2.	1,951 shares, Texas Western Corporation, common, NYSE, held as Employer's contribution in Employee Account in the Texas Western Employee Stock Purchase plan. Unit value $30.	$58,530

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SPECIAL INSTRUCTION 14—INDIVIDUAL RETIREMENT ARRANGEMENTS (IRA)

Detailed coverage of this subject is beyond the scope of this System. More information can be obtained from IRS Publications 590-A, *Contributions to Individual Retirement Arrangements (IRAs)*, and 590-B, *Distributions from Individual Retirement Arrangements (IRAs)*.

Individual retirement arrangements include individual retirement accounts (the most common), Roth IRAs, individual retirement annuities, individual retirement bonds (issued before May 1, 1982), simplified employee pensions, and employer and employee association trust accounts. An individual retirement account is not a qualified plan and is not subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA).

The fair market value of the IRA is included in the value of decedent's gross estate.

If decedent's spouse was named as a beneficiary of an individual retirement account or other employer plan or financial plan of an employee or a participant and was thereafter divorced from decedent, the provisions favoring decedent's former spouse may no longer be effective. In this situation, review the provisions of Family Code, Section 9.302, to determine if the beneficiary designation is effective.

Decedent's surviving spouse is eligible to roll over any amount received from decedent's IRA into an IRA for the surviving spouse, but other beneficiaries do not have this right. IRC, Section 408(d)(3)(C).

Distributions made directly from a retirement plan to the recipient will subject the recipient to 20 percent withholding for federal income taxes even though the full amount of the distribution is rolled over into another qualified retirement plan or IRA within the allotted sixty days. The important thing is to be sure that it is a transfer of funds from the custodian of the old plan or IRA to the custodian of the new plan or IRA (referred to as a "trustee-to-trustee transfer") so that the recipient never handles the proceeds. The 20-percent withholding requirement does not apply if the recipient chooses a direct, trustee-to-trustee transfer of the funds to another eligible retirement plan or IRA. See IRC, Section 3405(c). This appears to be the ultimate triumph of form over substance and a vicious trap for the unwary.

If the benefits are payable to decedent's estate, the account balance is included on decedent's Inventory, Appraisement, and List of Claims (Form 22) and on Schedule F of IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for decedent's estate ("the Return"). If the benefits are payable to a named beneficiary, the balance is reported on Schedule F of the Return but is not reported on the Inventory, Appraisement, and List of Claims.

Minimum required distributions (MRDs) after the participant's death depend on the identity of the participant's beneficiary, which is usually determined as of the date of the participant's death. However, the application of the MRD rules may be modified *after* the participant's death, by removing beneficiaries or by dividing the benefit into separate accounts for multiple beneficiaries. September 30 of the year following the participant's death is the deadline for finalizing beneficiaries. For payment of retirement funds to the trustee in decedent's will to qualify for tax deferral, the executor must give the plan administrator or IRS custodian a copy of decedent's will before October 31 of the year following the year of death. December 31 of the year following the participant's death is the deadline for creating separate accounts. Applicable dates should be calendared. Revocable trusts and other inter vivos trust agreements are equally subject to these rules.

Further coverage is beyond the scope of this System. Detailed coverage is provided in "Estate Planning for Retirement Assets in View of the Secure Act, the Proposed Regulations, and Secure 2.0" by Karen S. Gerstner, 2024 Intermediate Estate Planning and Probate Course, State Bar of Texas, and Natalie B. Choate, *Life and Death Planning for Retirement Benefits* (8th ed. 2019 & Supp. 2020), available at **https://retirementbenefitsplanning.us/**.

Sample Descriptions

1. Paid to named beneficiary

   IRA Account XX9324, Prudent Bank of Houston, Texas, in the name of Harry D. Green. Beneficiary is Decedent's surviving spouse. $13,206

2. Paid to D's estate

   IRA Account XX9325, Prudent Bank of Houston, Texas, in the name of Harry D. Green. Beneficiary is Decedent's Estate. $13,206

3. IRA of surviving spouse

   IRA Account XX6325, Prudent Bank of Houston, Texas, in the name of Mary L. Green. Beneficiary is Harry D. Green, Decedent. $4,337

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SPECIAL INSTRUCTION 15—JURISDICTION AND VENUE

In probate matters, jurisdiction and venue are generally synonymous. The statutory provisions regarding venue for admitting a will to probate or granting letters testamentary or letters of administration may be found in Estates Code, Section 33.001.

In a metropolitan area such as Houston, decedent's residence might have been in Fort Bend, Montgomery, Waller, Galveston, Brazoria, or Liberty County rather than in Harris County, and the filing and proceedings should be in the county of actual residence and not in Harris County.

The heirship and administration application forms in this System assume decedent's domicile and customary place of residence to be in the county in which the application is filed. See Special Instruction 60—Proceedings to Declare Heirship (PDH) regarding heirship venue. Alternate administration jurisdiction exists, and, in those instances in which it does, the attorney should determine the venue base and select one of the following paragraphs for use in the application and in the proof of death to be signed by the witnesses. Suggested alternative paragraphs for administration applications follow:

> This Court has jurisdiction and venue even though Decedent had no domicile or fixed place of residence in Texas, because Decedent died in this county.
>
> This Court has jurisdiction and venue even though Decedent had no domicile or fixed place of residence in Texas, because Decedent died in Texas and Decedent's principal estate was located in this county at the time of Decedent's death.
>
> This Court has jurisdiction and venue even though Decedent had no domicile or fixed place of residence in and did not die in Texas, because this is the county of residence of Decedent's nearest of kin.
>
> This Court has jurisdiction and venue even though Decedent had no domicile or fixed place of residence in and did not die in or have kindred in Texas, because this is the county in which Decedent's principal estate was located at the time of Decedent's death.

For venue purposes, next of kin means surviving spouse or, if there is no surviving spouse, other relatives within the third degree of consanguinity, including a person who legally adopted decedent or has been legally adopted by decedent and that person's descendants. Nearest of kin is determined in accordance with order of descent, with the next of kin who is nearest in order of descent first, and so on. Estates Code, Section 33.001(b).

Original Probate of Foreign Will

If decedent was not domiciled in Texas, original probate may be authorized if the will is valid under Texas law and would operate on any property in Texas. Estates Code, Section 502.001(a).

Probate of the so-called foreign will proceeds in the same manner as other wills. Estates Code, Section 502.001(b). Because the same procedures apply—for example, Independent Administration (IA) and Independent Administration by Agreement Where D Left a Will (TBA)—this System makes no special provision for original probate of the foreign will.

Original probate is precluded if the will was rejected from probate in the jurisdiction in which decedent died domiciled on grounds recognized in Texas. Estates Code, Section 502.001(b). Thus, the application for probate must allege that the will has not been rejected in decedent's domiciliary jurisdiction or has been rejected there solely for a cause that is not a ground for rejection of the will of a decedent who died domiciled in Texas. This fact should also be reflected in the proof of death and other facts and in the order admitting the will to probate.

The requirements of Estates Code, Section 251.051, concerning signature and attestation do not apply to foreign wills that were executed in compliance with the law of the foreign jurisdiction (1) where the will was executed, as the law existed when the will was executed, or (2) where the decedent was domiciled or had a place of residence, as the law existed when the will was executed or the decedent died. Estates Code, Section 251.053.

Original probate is authorized only if the will affects property in Texas. Estates Code, Section 502.001(a)(1). This requirement should also be addressed in the application, proof, and order.

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Other alterations to the forms provided in this System may be necessary in certain circumstances.

The Texas court may hold an application pending resolution of a foreign application or contest in decedent's domiciliary jurisdiction. Estates Code, Section 502.001(c). Production of the original will may be excused. Estates Code, Section 502.002(c),

Wills Previously Probated Elsewhere

At least two scenarios call for original probate of a will previously probated elsewhere. First, the named executor is unavailable to apply for ancillary probate. Only the executor named in a foreign will is entitled to receive ancillary letters testamentary. Estates Code, Section 501.006(a).

Second, the will was originally probated in a nondomiciliary jurisdiction and there is an immediate necessity for administration. The clerk may let the two-year contest period expire before recording the ancillary probate of a will originally probated in a nondomiciliary jurisdiction. *Cf.* Estates Code, Sections 256.204(a), 501.004(b), 504.003(a) (two-year contest period applies to ancillary probate of a will originally probated in a nondomiciliary jurisdiction, and the clerk's duty to record the will in the judge's probate docket does not attach while a contest may be filed).

The Estates Code does not address whether original probate is available for a foreign will that has been previously probated in another jurisdiction. Glenn Davis argues that it is. See "Administration of the Estate with Cross Border Issues" by R. Glenn Davis, 2014 Advanced Estate Planning and Probate Course, State Bar of Texas. Other commentators differ in their interpretations.

Original probate in Texas of a will that has already been probated elsewhere is beyond the scope of this System. Coordination with the other personal representative will be necessary, and both this System's engagement letters and letters advising of duties and actions to follow probate should be modified accordingly.

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SPECIAL INSTRUCTION 16—CITATION AND NOTICE

Citation is generally by posting. Estates Code, Sections 258.001 and 303.001. Since the clerk of the court prepares the actual citation form and delivers it to the sheriff or constable for posting, it is not necessary for the attorney to prepare the form of citation. Estates Code, Section 51.001(c).

When citation is by posting, it must be posted for ten full days before the Monday of the week in which a hearing is desired. Estates Code, Section 51.053(b). This Monday is the return date. Estates Code, Section 51.104. In some counties, such as Harris, the hearing cannot be held on the return date but must be delayed at least until the next day. Of course, the hearing may be held later, as not all hearings are held at the earliest possible moment.

The attorney must also examine the local practice regarding uncontested matters to determine if there is a regular docket or if the hearing will be by appointment made with the court.

There are certain situations in which citation by publication is required in addition to citation by posting. One example is the citation directed to unknown heirs made in proceedings to declare heirship. Estates Code, Section 202.052. See also Estates Code, Section 51.057 (regarding citation or notice for a person who survived the decedent but is now also deceased for proceedings commencing on or after September 1, 2025).

If citation is to be by publication, it is to be published one time on the public information Internet website maintained under Government Code, Section 72.034, and in a newspaper of general circulation in the county in which the proceeding is pending. The earlier of the date of publication on the public information Internet website or the date printed on the newspaper in which the notice is printed is the date of service on these unknown heirs. Estates Code, Section 51.054(a), (b). Publication in the newspaper may be waived in favor of website publication only on an affidavit of inability to pay, if the cost exceeds certain limits, or if no local newspaper is available. Civil Practice & Remedies Code, Section 17.032.

The return date for citation by publication is the first Monday following ten days from the date of publication, exclusive of the date of publication. Estates Code, Sections 51.054(a) and 51.104.

If citation is both by posting and by publication, the court hearing cannot be held until after the later of the two return dates. In both situations, proof of service must be filed before the hearing. Estates Code, Section 51.103(a).

A legally competent person may give written waiver of notice of a hearing either personally or through an attorney. Estates Code, Section 51.201. Notice is also waived by submitting to the court's jurisdiction—for example, by appearing at the hearing. Estates Code, Section 51.201(d).

Although no other statutory requirements exist for prehearing notice for the typical probate proceeding, it seems reasonable to anticipate that some form of actual notice to certain family members and testamentary beneficiaries will be required. Already, some prehearing notices are required in certain guardianship proceedings. Several posthearing notices are required for heirs, devisees, and legatees, as well as for special creditors and to certain governmental beneficiaries and agencies. The giving of notice can only help to lift the veil of suspicion in the minds of faraway relatives.

Notice by Qualified Delivery Method

Estates Code, Section 22.0295, effective for actions filed or proceedings commenced on or after September 1, 2023, defines "qualified delivery method" to include (1) hand delivery by courier, (2) certified or registered mail, and (3) a private delivery service designated by the IRS under IRC, Section 7502(f)(2). In each case, some delivery receipt is required. Previously, courier and private delivery were not authorized, for example, in Estates Code, Sections 51.052 (formerly "Service by Mail"), 202.051 (formerly "Service of Citation by Mail . . . ," for proceedings to declare heirship), and 308.054 ("Permissive Notice to Unsecured Creditor," formerly restricted to "notice by certified or registered mail, return receipt requested"). The IRS website designates three private delivery companies and includes some (but not all) DHL Express, FedEx, and UPS services. Go to **www.irs.gov/filing/private-delivery-services-pds** for the latest list.

These 2023 amendments to the Estates Code extend private delivery service to a dozen or more Estates Code sections that previously were limited to registered or certified mail. When the notice is mandatory,

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a proof of service must be filed of record, for example, with notices to secured creditors, discussed below. When permissive, for example, to an unsecured creditor, proof need not be recorded. Consider filing a proof anyway, since creditors may assert claims before and after limitations have extinguished them, long after the client's file has been closed.

Estates Code, Section 51.052, sets out requirements common to those sections that mandate notice by a qualified delivery method, for example, for a notice to a secured creditor under Estates Code, Section 308.053. When an executor or administrator is required to give notice by a qualified delivery method, the carrier must be instructed to deliver notice to the addressee only. The envelope containing the notice must be addressed to the attorney of record if there is one or, if there's not, to the person entitled to the notice. Estates Code, Section 51.052(d). If the notice is returned undelivered, a new notice must be issued and service made by posting. Estates Code, Section 51.052(g). If the notice returned was to the attorney of record, in addition to posting, the new notice must be issued and service attempted by a qualified delivery method on the person entitled to the notice (the unreachable attorney's client). If successful, the date of service is the date of mailing, the date of deposit with the private delivery service, or the date of delivery by the courier, as applicable. Estates Code, Section 51.052(e). Thus, the mailbox rule is extended to a "private delivery service," that is, FedEx or any other designated by the IRS (but not to other couriers). The sender must file a proof of service that recites the date of service and attaches both the notice and proof of delivery. Estates Code, Section 51.052(f).

Remote Proceeding

Zoom hearings were the rule rather than the exception during the COVID-19 pandemic. New Rule 21d and amendments to Rule 21(b) of the Texas Rules of Civil Procedure reaffirm the return to the default rule of in-person appearances but formalize the process for requesting or opposing remote hearings. Texas Rules of Civil Procedure, Rules 21b and 21d. It is not immediately apparent to the casual reader, but the burden is now on the applicant to give notice of a proceeding, whether remote or in-person, and any other party may oppose remote appearances, including by the applicant. Contested hearings are generally beyond the scope of this System and outside the experience of most practitioners in this practice area.

Notwithstanding Rule 21d, the impact of the changes will be minimal, at least in uncontested matters, as the clear convenience and cost savings of remote appearances have resulted in some courts continuing to make Zoom appearances available alongside in-person appearances. The attorney should check local procedures for availability and rules for remote appearances.

Unless required otherwise, notice of court proceeding must be served on all other parties not less than three days before the date of the proceeding and must include information needed for participants to participate in the proceeding, including the location of the proceeding or instructions for joining the proceeding electronically, the court's designated contact information, and instructions for submitting evidence. Texas Rules of Civil Procedure, Rule 21(b). This requirement applies to any appearance before the court, such as a hearing or trial. Texas Rules of Civil Procedure, Rule 21d(a)(1).

Under the new Rule 21d, the default method of appearance is by physical presence in the courtroom unless the court requires or allows a participant to appear remotely, including by videoconference, teleconference, or other available electronic means. Texas Rules of Civil Procedure, Rule 21d(b)(1). If a party has good cause to request that a participant appear remotely, the party may file a motion with the court within reasonable time before the setting in which the remote appearance is sought. Texas Rules of Civil Procedure, Rule 21d(b)(1). The factors that the court should consider in determining good cause include (1) case type, (2) court proceeding type, (3) the number of parties and witnesses, (4) the complexity of the legal and factual issues, (5) the type of evidence to be submitted, if any, (6) technological restrictions, (7) travel restrictions, (8) whether a method of appearance is best suited to provide necessary language access services for a person with limited English proficiency or accommodations for a person with disability, and (9) any previous abuse of a method of appearance. Texas Rules of Civil Procedure, Rule 21d(e). The court must not, however, require a party or a lawyer to appear electronically for a court proceeding in which oral testimony will be heard without good cause or agreement of the parties. Likewise, the court may not require a lawyer, party, or juror to appear electronically for a jury trial without the agreement of the parties. Texas Rules of Civil Procedure, Rule 21d(b)(2). Therefore, as a practical matter, the attorney should seek agreement to remote appearance from all parties or be prepared to overcome any objection by any other party. A party may object to any method of appearance, both in-person and remote. Texas Rules of Civil Procedure, Rule 21d(d). If a party objects, the party must state good reason for objection and file the objection within reasonable time after receiving notice of

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appearance. Texas Rules of Civil Procedure, Rule 21d(d). As the court must rule on the objection before proceeding by the objected-to method of appearance, the party should check local procedures to determine whether to request a hearing on the objection or whether the objection may be considered on the court's submission docket.

Proceedings to Declare Heirship

Service of citation by a qualified delivery method is generally required on distributees in an heirship determination. Estates Code, Section 202.051. The court has discretion to order personal service, in which case absent and nonresident distributees may be served by any disinterested person competent to make an oath that citation was served. Estates Code, Section 202.054. The prudent applicant may request personal service—for example, on a real property owner of record that is not a distributee. Service of citation is not required on the applicant for an heirship determination or on a party who has entered an appearance or waived citation. Estates Code, Section 202.055.

Special rules apply to minor distributees. Service of citation by a qualified delivery method is required on those twelve or older. For those younger than twelve, service on the minor's parent, conservator, guardian, or ad litem is the rule. For proceedings to declare heirship commenced on or after September 1, 2023, minors who are sixteen or older may waive citation; adults, managing conservators, guardians, and ad litems of younger minors may also waive. The former rule, which remains in effect for proceedings to declare heirship commenced before then, extended these waiver rules to minors as young as twelve. Estates Code, Sections 202.051 and 202.056. When a representative waives citation on behalf of a minor, the affidavit or citation must also state the name and capacity of the representative. Estates Code, Section 202.057(a)(2)(C).

For decedents dying on or after January 1, 2014, proceedings to declare heirship require that an affidavit or certificate of service of citation be filed before the court may enter an order. In addition, a copy of any citation required by Estates Code, Chapter 202, and proof of delivery must be filed. If a proof of delivery does not name the person served—for example, a return mail receipt—the affidavit or certificate must state, by name, that the person was served. The affidavit or certificate must state the name of each person who waived citation under Estates Code, Section 202.056. Estates Code, Section 202.057.

Estates Code, Section 202.053, requires citation by posting (on all heirs) absent citation by publication under Estates Code, Section 202.052 (on heirs whose names or addresses are unknown). However, for decedents dying on or after January 1, 2014, citation by posting is not required and citation by publication will always be required, because heirs whose names or locations are unknown will always be parties, thanks to the obligatory appointment of an ad litem for them under Estates Code, Section 202.009(a).

Owners of record of any share or interest in real property described in the application are necessary parties, although their inclusion in the affidavit or certificate of service is not required. Estates Code, Sections 202.008 and 202.057. Mail service is not authorized on them.

Application for Probate of Will Not Produced

The clerk must issue citation unique to the application for probate of will not produced, and personal service on decedent's resident heirs is required. Estates Code, Section 258.002. The will may not be probated before the required service, so the clerk's file should be reviewed to confirm compliance. Estates Code, Section 258.003.

For applications for probate of will not produced filed on or after September 1, 2023, minors who are sixteen or older may waive citation; adults, managing conservators, guardians, guardians ad litem, and attorneys ad litem of younger minors may also waive. Estates Code, Section 258.002.

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SPECIAL INSTRUCTION 17—TESTATE AND INTESTATE DEPENDENT ADMINISTRATION

There are two categories of testate dependent administration. One is administration with will annexed, and the other is administration with a dependent executor.

Administration with will annexed (AWA) is the procedure used if an administration is necessary for the estate of a person with a will that does not name an executor; that names an executor who is dead or is unable to act and no alternate or successor executor is named; or that names an executor who, while acting as such, dies, resigns, or is removed before completion of the administration. The first two situations are included in this System, but the third is not. The person appointed by the court is an administrator and will receive letters of administration.

Administration with a dependent executor (ADE) is the procedure used if an administration is necessary for the estate of a person with a will that does not name an *independent* executor or does not provide for an independent administration of the estate, even though the person named in the will as executor is able to qualify as such. The person appointed by the court is an executor and will receive letters testamentary.

In both categories, following the admission of the will to probate and the appointment of the administrator or executor, the administration proceeds in the same manner as in a regular dependent administration and the general procedures governing administration apply except when the provisions of the will permit action without court approval.

Detailed instructions on these procedures are in Special Instruction 67—Administration with Will Annexed (AWA) and Special Instruction 65—Administration with Dependent Executor (ADE).

There are two other categories of dependent administration. One is regular dependent administration, and the other is temporary dependent administration.

Regular dependent administration (RDA) is the procedure used if a person died without a will and there are unpaid debts owed by that person's estate other than those secured by liens on real property.

Temporary dependent administration (TDA) is the procedure used when there is a will contest, as well as when there is an urgent and immediate need for someone to take action for an estate before the court can act to appoint an executor or an administrator.

Detailed instructions on these procedures are in Special Instruction 69—Regular Dependent Administration (RDA) and Special Instruction 57—Temporary Dependent Administration (TDA).

Estates Code, Section 401.002, provides that an independent administration of an estate may be created if all the distributees of decedent agree on the advisability of an independent administration with a court-appointed independent administrator or independent executor in situations normally calling for administration with will annexed or administration with a dependent executor. See Special Instruction 88—Independent Administration by Agreement Where Decedent Left a Will (TBA). Section 401.003 similarly provides for creation of an independent administration on agreement of the distributees of an intestate decedent. Estates Code, Section 401.003. See Special Instruction 89—Independent Administration by Agreement Where There Is No Will (IBA).

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SPECIAL INSTRUCTION 18—WHAT TO DO AT HEARING

Will contests are beyond the scope of this System. If there is no contest, you can follow the general procedure outlined in this Special Instruction. In larger counties, such as Harris County, hearings are normally held in the courtroom on regularly scheduled days or held via virtual conferencing system. In smaller counties, hearings are frequently set by appointment and may be in the judge's office.

In some counties a deputy clerk will have the file in the courtroom, and all you need to do is to show up with your witnesses and wait until your case is called (the clerk or the judge saying "The Jones Estate" or "Are you ready, Lawyer Smith?" or words to that effect). In other counties you will need to go to the probate division of the county clerk's office to request the clerk's file. In some counties you will take the file with you to the courtroom (or other place of the hearing), and in other counties the clerk will take it for you. If in doubt, ask the clerk which procedure you should follow.

You should investigate local practice because, although it is not required by the Estates Code, at least two probate judges (Travis and Fort Bend Counties) also require the filing of a death certificate at or before the hearing, and the court may request an applicant to produce other identifying information. This information is to be held by the court and not filed with the clerk. Estates Code, Section 351.355.

Allowing for those local variations, the remainder of the proceedings are substantially the same in all counties. After your case has been called, have all your witnesses stand (and come forward before the bench if that is where the hearing will be conducted) and be sworn in. The clerk will usually administer the necessary oath, but sometimes the judge will do so.

Steps concerning testimony are discussed below in "What to Do If Decedent Had a Will" and "What to Do If Decedent Had No Will." Important steps that should be taken after the basic evidentiary part of the hearing are then covered in "What to Do before You Leave."

What to Do If Decedent Had a Will

You should hand your proposed Order (Form 17 for independent administration, Form 32 for muniment of title proceeding, Form 33 for administration with dependent executor, Form 72 for administration with will annexed, or Form 111 for independent administration of testate estate by agreement) to the judge before you begin.

Begin with the witness who is to testify as to death and other facts (that is, the one for whom the Proof of Death and Other Facts—Form 7 (IA), Form 31 (MT), Form 29 (ADE), Form 71 (AWA), or Form 112 (TBA) was prepared). The testimony closely follows the statements contained in that form. An example of the oral testimony follows:

Q. Please state your name for the court.

A. Marvin T. Phillips.

Q. Were you acquainted with Harry D. Green, the decedent?

A. Yes.

Q. Did Mr. Green die on January 2, 2016, in Houston, Harris County, Texas, at the age of seventy-three?

A. Yes.

Q. Was the date of Mr. Green's death less than four years ago?

A. Yes.

Q. Was Mr. Green a resident of this county at the time of his death?

A. Yes.

(At this point, you should get Mr. Green's original will from the clerk's file. In most counties the judge will hand it to you or, if the hearing is held virtually, present it on your screen. When you have it, proceed as follows.)

(If the hearing is held virtually, once the will is presented on the screen, you should request the judge to take judicial notice that the original will is on file with the court.)

Q. I now show you a document dated July 10, 2007, which purports to be Mr. Green's will. To the best of your knowledge, did Mr. Green ever revoke this will?

A. No.

Q. Is there a necessity for an administration?

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A. Yes ("No," if this is a muniment of title proceeding).

Q. After the date of the will (July 10, 2007), were any children born to or adopted by Mr. Green?

A. No (or "Yes," if there were; if so, ask for name and date of birth of each and be prepared to deal with provisions relating to after-born and after-adopted children in Estates Code, Sections 255.051 through 255.056).

Q. Was a marriage of Mr. Green dissolved after the date of the will?

A. No (or "Yes," if it was; if it was, ask from whom and the approximate date and place).

(Although not required by the Estates Code, in some courts it is necessary for the witness to state whether the will provided for gifts to the State of Texas, a political subdivision thereof, or any charity. If you are in such a court, ask the following question. If this hearing is for a muniment of title proceeding, skip to the last question.)

Q. Did Mr. Green's will provide for gifts to the State of Texas, a political subdivision thereof, or any charity?

A. No (or "Yes," if it did; if it did, ask the witness to describe all such gifts).

(After the witness answers, if this hearing is for the appointment of an executor, ask the next question. If this hearing is for the appointment of an administrator with will annexed, skip the next question. If this hearing is for a muniment of title proceeding, skip to the last question.)

Q. The will appoints Carl P. Wilkins executor. As far as you know, is Mr. Wilkins qualified to serve as such and to accept letters testamentary?

A. Yes. (Remember, a person who has been convicted of a felony generally is not qualified to serve, subject to exceptions at Estates Code, Section 304.003(b), and occasionally some courts run background checks to verify this information.)

(The following question is used only for appointment of an administrator with will annexed.)

Q. Carl P. Wilkins has requested the court to appoint him administrator with will annexed for this estate. As far as you know, is Mr. Wilkins qualified to serve as such and to accept letters of administration?

A. Yes.

(The following question is used only for muniment of title proceedings.)

Q. Did Mr. Green apply for and receive Medicaid benefits on or after March 1, 2005?

A. No.

You have now made a prima facie case that Mr. Green is dead, that the court has jurisdiction and venue, and that the applicant, Carl P. Wilkins, is qualified to be appointed executor or administrator or, if this is a muniment of title proceeding, that no administration is necessary.

Additional proof required for probate of will

If the will was made self-proved by the appropriate affidavit, you simply call that fact to the attention of the judge, and the evidentiary part of the hearing is over. Estates Code, Section 256.152(b), (c). If not, see Special Instruction 93—Proof of Execution of Will (Not Self-Proved), which discusses several alternate methods of proof, including the possibility of presenting testimony by oral or written deposition, depending on the availability of witnesses.

Testimony of subscribing witness—Estates Code, Section 256.153(b)

If the will was not made self-proved but was attested by two or more witnesses, you will turn to one or both of those subscribing witnesses (that is, witnesses for whom the Proof by Subscribing Witness—Form 8 was prepared). The testimony will closely follow the statements in that form. An example of the oral testimony follows:

Q. Please state your name for the court.

A. Sue R. Woodson.

Q. I now show you a document dated July 10, 2007, which purports to be Mr. Green's will. On that date, were you present, and did you see Mr. Green sign that document?

A. Yes.

Q. Did Mr. Green declare to you and to (state the names of all other witnesses) that it was his will and that he wanted each of you to be an attesting witness?

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A. Yes.

Q. Did all the witnesses sign that will in his presence and in the presence of each other?

A. Yes.

Q. On that date, was Mr. Green at least eighteen years of age and of sound mind?

A. Yes.

Q. Was each of the witnesses above the age of fourteen?

A. Yes.

Testimony of witness to decedent's handwriting to prove holographic will—Estates Code, Section 256.154

If decedent's will was holographic and was not attested or made self-proved, you will need *two* handwriting witnesses, each of whom will testify substantially in accordance with the statements contained in the Proof of Decedent's Handwriting and Signature—Form 14 prepared for that witness. An example of the oral testimony follows:

Q. Please state your name for the court.

A. Elizabeth H. Perkins.

Q. Were you personally acquainted with Mr. Green, and were you well acquainted with his handwriting and signature?

A. Yes.

Q. How did you become familiar with Decedent's handwriting and signature?

A. We worked together for several years.

Q. I now show you a document dated July 10, 2007, which purports to be Mr. Green's will. Is it wholly in his handwriting, and is his signature subscribed thereto?

A. Yes.

Q. On that date, was Mr. Green at least eighteen years of age and of sound mind?

A. Yes.

(Now call the second witness and repeat these questions for that second witness.)

Testimony of witness to decedent's handwriting—Estates Code, Section 256.153(c)(2)(B), (d)(1)

If decedent's will was attested but not made self-proved and the subscribing witnesses are unavailable, two witnesses may testify as to decedent's signature or the signatures of one or both subscribing witnesses. The testimony for a witness who is testifying as to decedent's signature should substantially follow the statements contained in the Proof of Decedent's Signature—Form 133. An example of the oral testimony follows:

Q. Please state your name for the court.

A. Jill Brown.

Q. Were you personally acquainted with Mr. Green, and were you well acquainted with his signature?

A. Yes.

Q. How did you become familiar with Mr. Green's signature?

A. We went out to dinner once a week and I watched him sign the credit card receipt.

Q. I now show you a document dated July 10, 2007, which purports to be Mr. Green's will. Do you recognize Mr. Green's signature on this document?

A. Yes.

Q. On the date of the will, was Mr. Green at least eighteen years of age and of sound mind?

A. Yes.

(Now call the second witness and repeat these questions for that second witness.)

Testimony of witness to subscribing witness's handwriting—Estates Code, Section 256.153(c)(2)(A), (d)(1)

As noted in the preceding example, if decedent's will was attested by two witnesses but was not made self-proved, two witnesses may testify as to decedent's signature or the signatures of one or both subscribing witnesses. The testimony of a witness who is testifying as to the signatures of one or both subscribing witnesses should follow the statements contained in the Proof of Subscribing Witness's Signature—Form 134. An example of the oral testimony follows:

Q. Please state your name for the court.

A. Kevin Jones.

Q. Were you personally acquainted with Sue R. Woodson (witness to the will), and were you well acquainted with her signature?

A. Yes.

Q. How well do you know Ms. Woodson's signature?

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A. Very well.

Q. How did you become familiar with Ms. Woodson's signature?

A. Christmas and birthday cards over the years, signing receipts at restaurants.

Q. How long were you acquainted with Ms. Woodson?

A. Five years.

Q. During your acquaintance, how many times did you see Ms. Woodson's signature.

A. About twenty times.

Q. On the date of the will, was Ms. Woodson at least fourteen years of age?

A. Yes.

(Now call the second witness and repeat these questions for that second witness.)

Note: If the original will is not available, see Special Instruction 85—Wills Not Produced for additional questions.

What to Do If Decedent Had No Will

You should hand your proposed Order (Form 76 for regular dependent administration or Form 109 for independent administration of intestate estate by agreement) to the judge before you begin if the order was not previously filed electronically pursuant to local court policies.

A proceeding to declare heirship is mandatory for independent administration by agreement (Estates Code, Section 401.003(b)) and two witnesses must testify on decedent's family history. Two disinterested and credible witnesses must testify on decedent's heirs and family history (Estates Code, Section 202.151(b)). If it is shown to the court's satisfaction that only one disinterested and credible witness can be found, the court may allow testimony of only one witness (Estates Code, Section 202.151(c)). The court must appoint an attorney ad litem for the heirs whose names or locations are unknown (Estates Code, Section 202.009). The Estates Code does not require a proceeding to declare heirship for regular dependent administrations, but some courts require it before distribution or sooner. The testimony for heirship witnesses in an RDA are the same as in an IBA proceeding. The heirship witnesses should testify first and closely follow the statements in Statement of Facts—Form 80. An example of the oral testimony follows:

Q. Please state your name for the court.

A. Phil Johnson.

Q. Were you well acquainted with the family history of Harry D. Green?

A. Yes.

Q. How well and how long did you know Mr. Green?

A. We were close friends for about ten years.

Q. When was the last time you saw or spoke with Mr. Green?

A. About a week before he passed away.

Q. Was Mr. Green married at the time of his passing?

A. Yes.

Q. Were any children born to or adopted by Mr. Green?

A. No.

Q. To your knowledge, did Mr. Green have a will?

A. No.

Q. Do you have a financial interest in this estate?

A. No.

Q. Pass the witness.

(After each heirship witness, pass the witness to the attorney ad litem for any additional questions.)

(Now call the second witness and repeat these questions for that second witness.)

If a proceeding to declare heirship is held at the same time as the hearing for administration, the last witness should testify as to death and other facts (that is, the witness for whom the Proof of Death and Other Facts—Form 75 (RDA, IBA) was prepared). This witness ordinarily will be the person applying to be appointed as administrator. The testimony closely follows the statements contained in that form. An example of the oral testimony follows:

Q. Please state your name for the court.

A. Carl P. Wilkins.

Q. Were you well acquainted with Harry D. Green, the decedent?

A. Yes.

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Q. Did Mr. Green die on January 2, 2016, in Houston, Harris County, Texas, at the age of seventy-three?

A. Yes.

Q. Was the date of Mr. Green's death less than four years ago?

A. Yes.

Q. Was Mr. Green a resident of this county at the time of his death?

A. Yes.

Q. To the best of your knowledge, did Mr. Green have a will?

A. No.

Q. Is there a necessity for an administration?

A. Yes.

Q. Was Mr. Green ever divorced?

A. No (or "Yes," if he was; if he was, ask from whom and the approximate date and place).

Q. You have requested the Court to appoint you as administrator of this estate. Are you qualified to serve as such and to accept letters of administration?

A. Yes.

You have now made a prima facie case that Mr. Green is dead, that all of his heirs are named in the application, that the court has jurisdiction and venue, and that the applicant, Carl P. Wilkins, is qualified to be appointed administrator.

What to Do before You Leave

You have now concluded the basic evidentiary portion of the hearing. The judge will ask you whether decedent's estate is taxable and to describe the nature and extent of decedent's property to determine the amount of the bond in situations in which decedent had no will, decedent's will named minor beneficiaries, or decedent's will does not waive a bond and whether to appoint appraisers. We recommend that you ask the judge to waive the appointment of appraisers. Except in those instances in which the judges persist in requiring this form of patronage, your request will ordinarily be granted.

By now the judge has set the amount of any required bond (see Special Instruction 46—Bond), has signed the order, has said a few words of encouragement to you and your witnesses, and is ready to move on to the next case. Before you leave the scene, be sure that each of the witnesses signs the appropriate form of the proof or statement of facts that commits the testimony of that witness to writing (Estates Code, Sections 202.151(a) and 256.157(a)) and file the form(s) with the clerk. If the hearing was held virtually, have all witnesses sign their proofs or statements of facts and return the executed documents to your office for electronic filing.

If an executor or administrator appointed by the court is with you, be sure to (1) have that executor or administrator have the oath of office administered by the clerk; (2) have that executor or administrator sign the Oath (Form 18 for an individual executor or administrator in IA, ADE, AWA, or TBA; Form 19 for a corporate executor or administrator in IA, ADE, AWA, or TBA; Form 86 for an administrator in RDA or IBA); and (3) file the Oath with the clerk. In some counties this is done in the courtroom, and in other counties you will have this done in the clerk's office.

If the hearing was held virtually, once the proofs and statements of facts (if required) are filed and the judge has signed the order, the applicant must execute the oath. The oath must be signed after the date of the order. The oath must be filed with the court within twenty days of the date of the order.

If a bond has been required, refer to Special Instruction 46—Bond and take appropriate action. Note that the bond must be approved and signed by the judge to be effective.

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SPECIAL INSTRUCTION 19—FISCAL YEARS

A fiscal year is not applicable in the muniment of title situation or any other situation not involving the appointment of an executor or administrator for the administration of an estate.

The first day of the first fiscal year is the date of decedent's death, regardless of when an executor or administrator qualifies. The first fiscal year may end on the last day of any month thereafter, provided that not more than twelve separate months are involved. For example, if decedent died on April 10, the end of the fiscal year may be the last day of any month thereafter, but not later than March 31 of the next calendar year. IRC, Sections 441 and 443(a). Unless decedent's executor or administrator specifically elects a different fiscal year, the fiscal year of decedent's estate will be the calendar year.

All other fiscal years except for the final fiscal year begin on the first day of the month following the end of the first fiscal year and end on the anniversary of the ending date of the first fiscal year.

The final fiscal year begins on the first date of the regular fiscal year and ends on the last day of any month, even though not as many as twelve months may be involved. IRC, Section 443.

Selection of the fiscal year is made by filing the initial fiduciary income tax return (IRS Form 1041) for decedent's estate. A return is due if the gross income of the estate exceeds $600 for the taxable year. IRC, Section 6012(a)(3). Since the return is not due until three and one-half months after the end of the fiscal year, there is some opportunity for hindsight in the first year. If the fiscal year is cut off just before the receipt of substantial amounts of income, the tax can be deferred for almost a year.

The federal income tax return (IRS Form 1041) for decedent's estate is due on the fifteenth day of the fourth month following the close of the fiscal year or on April 15 for calendar-year estates. IRC, Section 6072(a).

The facts to consider in determining the fiscal year of an estate include the amount of ordinary income; nature and amount of deductions; amount of capital gains (which can be affected by the use of the alternate valuation); and needs of the heirs, legatees, or devisees. Without well-maintained accounting records, a calendar year is recommended for a married decedent because it will be difficult to segregate income and deductions of decedent's estate from those of decedent's surviving spouse. This is particularly true if IRS Forms 1099 report the entire amount of dividends or interest in the name of just one of the spouses.

The objectives in selecting a fiscal year other than a calendar year should be to reduce income taxes by equalizing tax rates for the years in which decedent's estate is being administered; to defer payment of income taxes; to secure a maximum number of income tax exemptions for individuals, trusts, and decedent's estate; and to reduce income taxes by spreading the income of decedent's estate over a maximum number of years.

The techniques include postponing income tax; retaining income in decedent's estate and allowing it to be taxed there; distributing income to the heirs, legatees, and devisees and having them pay the income tax; funding trusts early to create other taxpaying entities; and remembering that principal distributions, other than specific bequests, may carry income tax liabilities to the recipients to the extent of the "distributable net income" (DNI) of the estate.

Although these tax considerations apply to all estates, as a practical matter, most of them are of the greatest benefit to the larger estate. There is not much advantage in retaining income in an estate and having it income-taxed there rather than distributing it to the beneficiaries and having it taxed to them. The 2025 income tax rates for an estate reached 37 percent at only $15,650, while that rate did not apply until a single taxpayer had taxable income of $626,350.

A beneficiary is taxed on DNI of the estate properly paid, credited, or required to be distributed to the beneficiary for any taxable year of the estate that ends with or within the taxable year of the beneficiary. Treasury Regulations, Section 1.662(c)–1.

The executor or administrator may elect to treat distributions made within the first sixty-five days of a fiscal year as having been made during the previous fiscal year. IRC, Section 663(b).

Estates are required to make estimated tax payments for any tax years ending two or more years after decedent's death. IRC, Section 6654(*l*).

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A trust *must* adopt a calendar year. IRC, Section 644(a). See IRS Publication 538, *Accounting Periods and Methods*, for detailed information.

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SPECIAL INSTRUCTION 20—CASH ITEMS

Insured Accounts

With the rash of failures of banks, savings and loan associations, and other financial institutions, it cannot be overemphasized that all funds of decedent's estate should be covered by FDIC or other government insurance. Further coverage of this subject is beyond the scope of this System.

Locating Accounts

If you believe that decedent may have had an account in another community, it might be possible to locate it at **www.missingmoney.com**, with links to most other states' unclaimed funds offices. Texas unclaimed property and recovery procedures are posted at **https://claimittexas.org**.

Many banks have merged or changed names, and if you can't locate the bank in question, try **www.dob.texas.gov/banks-trust-companies/bank-history** or **https://banks.data.fdic.gov/bankfind-suite/bankfind**.

Access to Certain Account Information

If no petition for appointment of a personal representative is pending and no letters have been granted for the estate of an intestate decedent, ninety days after decedent's death a person with a property right in or a claim against the estate may obtain an order requiring a financial institution to release information about the balance of each of decedent's accounts at the institution. Estates Code, Section 153.003. This provision does not apply to an account with a beneficiary designation, a P.O.D. account, a trust account, or an account that provides for a right of survivorship. Estates Code, Section 153.002.

Valuation and Reporting

1. Cash items are reported on Schedule C of decedent's IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.
2. Although only the amount of the net balance is included for valuation purposes, checking accounts are to be listed at the gross balances shown by the bank but reduced by the total amount of the outstanding checks given in discharge of bona fide legal obligations and subsequently honored by the bank. Treasury Regulations, Section 20.2031–5. Unless accrued interest is available to decedent at the date of death, the fair market value of interest-bearing accounts and nonnegotiable certificates of deposit is the principal amount.
3. It may be possible to avoid the penalty for early surrender of a certificate of deposit standing solely in decedent's name issued by a national bank or by a federal savings and loan association.
4. Decedent's interest in most money market accounts and funds is to be reported on Schedule B of the death tax return. Uncashed checks payable to decedent are to be reported on Schedule F of the death tax return. Gold, silver, and foreign currencies should be reported on Schedule F rather than on Schedule C of the death tax return. Report foreign bank deposits on Schedule C. Historical precious metal prices can be found at **www.lbma.org.uk/prices-and-data/precious-metal-prices#/**. Historical currency exchange rates can be found at **www.oanda.com/fx-for-business/historical-rates**. Report cryptocurrencies on Schedule F. Foreign currencies and cryptocurrency values can be found at EVP Estate Valuations & Pricing Systems, Inc., discussed in Special Instruction 28—Stocks, Bonds, and Other Securities.
5. The IRS requires that silver coins and other coins having a numismatic value greater than their face value are to be valued at numismatic value rather than face amount and reported on Schedule F of the death tax return.

Adjusting the Bank Balance

6. To adjust decedent's account balance, you will need decedent's checkbook or check register and the bank statement for the month of decedent's death (and perhaps for the previous or following month if decedent's death occurred at or near the statement date). These items must be obtained for each checking account.
7. The starting point is to look at the bank statement to determine the balance in the account on the date of death (or next earlier date if a balance is not shown for the date of death). Enter that amount as Item 11.27 of MIL and on Line 1 of

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Worksheet 4. This should be the same balance reported by the bank in response to Letter 28 or Letter 29.

8. Review the checkbook to determine which of the checks written before decedent died had not been deducted from that balance on or before the date of decedent's death. Do this even though the checks may have been deducted at a later time.

9. List each of those checks under Item 2 of Worksheet 4, add the amounts listed under Item 2, enter the total on Line 3 and as Item 11.28 of MIL, and subtract the amount on Line 3 from the amount on Line 1. This is the net adjusted balance. Enter this amount on Line 4 and as Item 11.29 of MIL.

Escrow, Client Trust, or IOLTA Account

10. If decedent was a lawyer and maintained an escrow account, client trust account, or IOLTA account, see Special Instruction 78—Death of a Lawyer.

Contracts by Decedent to Sell Land

11. Contracts by decedent to sell land are reported with cash on Schedule C. The Form 706 instructions direct the reader to list the name of purchaser, contract date, property description, sale price, initial payment, amounts of installment payment, unpaid balance of principal, and interest rate, which is consistent with an owner-financed sale. For the more common third-party financing transaction, where the seller receives cash at closing, see the sample below.

Sample Descriptions

1. U.S. currency and coins $48

2. Checking account number XX3-333 styled "Harry D. or Mary L. Green" at First National Bank of Bellaire, Texas. Balance per bank on date of death $1,202.95 less outstanding checks totaling $362.15. Adjusted balance $841

3. Savings account number X-X3702 styled "Mary L. Green" at Dallas Federal Savings Association, Dallas, Texas. Balance per association on date of death including accrued interest of $12 $7,462

4. Certificate of deposit number XX1559 in the name of "Harry David Green" issued by Champions Bank, Austin, Texas. Face amount $10,000.00. Accrued interest to date of death $663.65. Total $10,664

5. Uncashed check from National Oil Company. (*Note:* Report this on Schedule F.) $860

6. Cash held in brokerage account number XX-X7334 in the name of "Harry D. Green" at Merrill Hutton & Co., Galveston, Texas $763

7. American Express traveler's checks issued in the name of "Harry D. Green" $200

8. Checking account number XX1-234 styled "Anne-Marie Fischer" at Deutsche Bank AG of Bad Honeff, Germany. Balance per bank on date of death €1,202.95 less outstanding checks totaling €362.15. Adjusted balance (€840.80 × $1.1340) $953

9. September 19, 2021, contract for sale of house and lot, 6544 Valley, Houston, Texas, residence of Decedent, described as Lot 6, Block 7, Champions West, an addition in Harris County, Texas, to Ward Cleaver and June Cleaver for $245,000 cash at closing. $2,000 earnest money receipted by title company September 21, 2021. $250 termination fee, to be applied to sales price, received by Decedent and surviving spouse September 22, 2021. See attached contract for contingencies and expense allocation. $2,000

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SPECIAL INSTRUCTION 21—HELPFUL PUBLICATIONS RELATING TO FEDERAL TAX MATTERS

Many basic publications are available from the Internal Revenue Service at its website, **www.irs.gov**. Once there, proceed to Forms and Publications. Perhaps the most useful of these publications is *Survivors, Executors, and Administrators* (IRS Publication 559). This publication appears to be published annually. Other helpful publications include the following:

IRS Publication 17	*Your Federal Income Tax*
IRS Publication 225	*Farmer's Tax Guide*
IRS Publication 334	*Tax Guide for Small Business*
IRS Publication 538	*Accounting Periods and Methods*
IRS Publication 555	*Community Property*
IRS Publication 575	*Pension and Annuity Income*
IRS Publication 590	*Individual Retirement Arrangements (IRAs)*
IRS Publication 910	*IRS Guide to Free Tax Services*

You can call the IRS for answers to your tax questions (800-829-1040).

You can also call the IRS to hear prerecorded information on income tax filing requirements for decedents, estate tax, how to get a copy of your tax return, and a wide variety of other income tax subjects (800-829-4477). Although that information is basic and general, it can prove to be helpful. Forms and publications also may be ordered by calling the IRS at 800-829-3676, and most can be downloaded at **www.irs.gov**.

Actuarial values are available at **www.irs.gov** as follows:

Actuarial Valuations Version 3A (Rev. 5-2009) (remainder, income, and annuity examples), IRS Publication 1457.

Actuarial Valuations Version 3B (Rev. 5-2009) (unitrust remainder and life estate examples), IRS Publication 1458.

Actuarial Valuations Version 3C (Rev. 5-2009) (depreciation adjustment factors), IRS Publication 1459.

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SPECIAL INSTRUCTION 22—FEDERAL TAX ELECTIONS AND DEDUCTIONS

Every personal representative should retain a CPA; those with larger estates should confirm the CPA's familiarity with fiduciary income principles and IRS Form 1041, U.S. Income Tax Return for Estates and Trusts.

A number of elections or options are available to decedent's surviving spouse and to decedent's executor or administrator. A proper election can save overall taxes, but in doing so it may shift tax burdens and benefits among the beneficiaries. When elections are made by decedent's executor or administrator, it is prudent to recommend that the affected beneficiaries obtain advice of independent counsel.

The **surviving spouse** may make the following **independent elections**:

1. To file a joint income tax return with decedent for the year of decedent's death.
2. To use the rates for married filing jointly for two years following the year of decedent's death, provided that the surviving spouse (a) was entitled to file a joint return with decedent for the year of decedent's death, (b) has not remarried, and (c) maintains and provides more than one-half of the cost of a home that is the principal abode of a child or stepchild for whom the surviving spouse is entitled to a dependency exemption for the year in question. IRC, Sections 1(a) and 2(a).
3. To waive the commission if serving as decedent's executor or administrator. The amount of the commission will be either ordinary income subject to income taxes or an inheritance free of income taxes. The decision depends on a comparison of the effective rate of the federal estate tax imposed on decedent's estate and the surviving spouse's marginal federal income tax rate. If appropriate, commissions should be waived promptly to prevent constructive receipt.
4. To disclaim benefits under decedent's will or otherwise so as to effectively transfer assets free of federal gift taxes.
5. To roll over any amount received from decedent's individual retirement account (IRA) into an IRA for the surviving spouse.
6. To roll over any amount received from decedent's qualified plan into an IRA for the surviving spouse.
7. To claim a deceased spouse's unused exemption under IRC, Section 2010(c)(5)(A), provided the executor of the deceased spouse filed a timely estate tax return making the portability election.

Decedent's **executor or administrator** may make the following **independent elections**:

1. To elect either the cash or the accrual method of accounting for the estate.
2. To select the fiscal year for decedent's estate. IRC, Sections 441(e) and 443(a)(2). See also Special Instruction 19—Fiscal Years. Note that if decedent's estate will not be closed before two years after decedent's death, estimated income tax payments will be required. IRC, Section 6654(*l*).
3. To elect to treat distributions made within the first sixty-five days of a fiscal year as having been made during the preceding fiscal year. IRC, Section 663(b).
4. To claim a deduction for medical expenses on decedent's year-of-death income tax return (subject to percentage-of-income limitations) if taken on a separate income tax return or to claim them in full as debts on the estate tax return. IRC, Section 213(c).
5. To accrue interest on U.S. Series E and EE bonds on a separate income tax return and thereby subject the interest to income taxation. IRC, Section 454(a). This can be helpful if other income reported on decedent's final return is minimal.
6. To elect to value decedent's estate as of six months after the date of death rather than as of the date of death, but only if (a) the election will decrease both the value of the gross estate *and* the total of estate and generation-skipping

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transfer taxes and (b) the return is filed within one year following its due date. IRC, Section 2032(a), (c), (d)(2). Once made, the election is irrevocable. IRC, Section 2032(d)(1).

7. To claim a deduction for administration expenses and losses during administration on either the fiduciary income tax return of decedent's estate or the estate tax return or a portion on each return and to select the time for paying those expenses. IRC, Section 642(g). A comparison of the effective rates of the federal estate tax and the fiduciary income tax must be made to determine the most advantageous method.
8. To extend the time for payment of the federal estate tax under IRC, Sections 6161, 6163, and/or 6166.
9. To make a portability election so that a surviving spouse can use the deceased spouse's unused exemption under IRC, Section 2010(c)(5)(A), on an estate tax return.

Decedent's surviving spouse and decedent's executor or administrator may make the following **mutual elections**:

1. To file either a joint income tax return (if the surviving spouse has not remarried) or two separate income tax returns for the year of decedent's death. IRC, Section 6013(a). Although death ends decedent's tax year, decedent's surviving spouse's tax year continues through December 31 of the calendar year of decedent's death, and their incomes and expenses are combined on a joint return. The joint return will be especially advantageous if decedent had a net operating loss or a capital loss carryover because, otherwise, these losses would die with decedent. These losses should be offset with capital gains from sales of the separate property of the surviving spouse. If a joint return is not elected, each is treated as a married individual filing separately.
2. To claim a deduction on the joint income tax return for the year of death for unpaid medical expenses in excess of 7.5 percent of decedent's adjusted gross income if the expenses are paid within one year of death or to claim the full amount of the expenses as debts on decedent's estate tax return. IRC, Section 213(a), (c).

   Note: If the estate is taxable for estate tax purposes, it almost always will be beneficial to elect to deduct these medical expenses for estate tax purposes. If any of these expenses are deducted on the income tax return, decedent's estate cannot deduct the portion that would not be deductible because of the percentage limitation.
3. To elect to accrue interest on U.S. Series E and EE bonds on a joint income tax return and thereby subject it to income taxation, but the first election must include all accrued interest. IRC, Section 454(a).

It may be *possible* to obtain deductions for certain items on both federal estate tax return and federal fiduciary income tax return and thereby get a "**double deduction**."

All unpaid expenses incurred before death are allowed as deductions from decedent's gross estate for determining the federal estate tax, and, depending on their nature, they also may be allowed as income tax deductions. These are sometimes called "deductions in respect of a decedent." Examples include the following:

1. Trade or business expenses. IRC, Section 162.
2. Real property taxes. IRC, Section 164.
3. Depletion. IRC, Sections 611 through 613.
4. Interest. IRC, Section 163.
5. Expenses incurred for the production or collection of income. IRC, Section 212(1).
6. Expenses incurred for the management, conservation, or maintenance of property held for the production of income. IRC, Section 212(2).
7. Expenses incurred in connection with the determination, collection, or refund of any tax. IRC, Section 212(3).

   Note: Not all interest is deductible for income tax purposes, and certain other expenses may not be deductible for income tax purposes unless they exceed a certain percentage of decedent's adjusted gross income.

Items of gross income earned by decedent but not collected before decedent's death are called "**income in respect of a decedent**" and are includible in decedent's gross federal estate for estate tax purposes *and* in the income tax returns filed for the year of actual receipt. Such income could be reported on decedent's final income tax return, on the fiduciary income tax return for decedent's estate, or on the individual

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income tax returns of decedent's beneficiaries. See IRC, Section 691.

If total income in respect of a decedent exceeds total deductions in respect of a decedent, the recipient is entitled to deduct the federal estate tax attributable to the excess. IRC, Section 691(c). The amount of the attributable estate tax is determined by calculating the estate tax payable by decedent's estate without the inclusion of that income and subtracting that amount from the actual amount payable. This difference qualifies for the deduction. To the extent that the income was ordinary income, the deduction must be deducted as an itemized deduction. If the deduction would arise from long-term capital gains, the amount of the deduction is added to the basis of the assets. If income with respect to a decedent is distributed to a beneficiary, that beneficiary should be advised of this opportunity.

Certain military and civilian employees of the United States who die as a result of wounds or injuries incurred in a terroristic or military action are granted relief from income taxes on income in respect of a decedent. IRC, Section 692.

Further coverage is beyond the scope of this System. Additional coverage is provided in "Income Tax Issues Every 'Estate Planner' Should Know" by Jason R. Mahon, 2013 Intermediate Estate Planning and Probate Course, State Bar of Texas, and "Portability in the New Age of Estate Planning" by Brian D. Cororve, 2014 Advanced Estate Planning and Probate Course, State Bar of Texas.

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SPECIAL INSTRUCTION 23—INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

Decedent's executor or administrator (and in some counties, parties inheriting property in a muniment of title proceeding) must prepare and file a full, complete, and verified inventory, appraisement, and list of claims (Estates Code, Sections 309.051 and 309.052) of decedent's estate as of the date of decedent's death (alternate valuation date does not apply) within ninety days following qualification (date of admission of decedent's will to probate in a muniment of title proceeding) unless the court grants an extension of time for filing. Failure to file an inventory is a ground for removal of an executor or administrator. Estates Code, Sections 309.055, 361.051, and 404.0035.

The inventory must include all real estate located in Texas and all personal property regardless of where located. The assets must be identified as separate or community property, and their appraised values on the date of death must be stated. The inventory must state whether decedent was married at the time of death, and if decedent was married, the inventory must specify which portion of property is separate and which is community. Estates Code, Section 309.051(a).

The entire community estate is subject to the jurisdiction of the probate court, and not just the decedent's one-half. *Cain v. Church*, 131 S.W.2d 400, 402 (Tex. App.—Dallas 1939, no writ). Thus, the inventory should include all community assets. The personal representative generally cannot administer sole management community property of the surviving spouse. Estates Code, Section 453.009.

Nonprobate assets, which do not pass by will or intestacy, may be omitted from the inventory. See "The Estate Administration Guide" by Sarah Patel Pacheco and Patrick J. Pacheco, 2017 Building Blocks of Wills, Estates and Probate Course, State Bar of Texas.

As a practical matter, whether an asset is nonprobate is seldom questioned. If collected with a death certificate alone, it is reasonable to assume an asset is not a probate asset and should not be included on the inventory. If a probate asset is later discovered, the personal representative has a duty to update and correct the inventory. In any case, creditors and remaindermen have rights that are not extinguished against assets that avoid probate in error. Nonprobate arrangements are statutorily authorized and may be tested against specific requirements discussed below. Also, whether an asset is probate or nonprobate has implications for allocation of taxes and other expenses, among other administrative issues. See the section titled "Liability of Nonprobate Assets" in Special Instruction 54—Claims of Creditors.

The list of claims required by the statute is a list of claims owed to, not by, the estate. The list should include the name and address of each person so indebted; the nature of the debt (note, account, oral contract, and so forth); the amount; date incurred and date due; the rate of interest and time for which interest runs; and if decedent was married at the time of death, whether the claim is separate or community. Estates Code, Section 309.052.

For an independent administration, the filing (but not the preparation) of an inventory may be avoided under certain conditions: (1) all debts except those secured by liens, taxes, and administration expenses have been paid; (2) all of those entitled to receive property under the will or as heirs (except those entitled to aggregate devises of $2,000 or less, those who have already received their devises, and those who have waived the right to receive the inventory and appraisement) have received a copy of a verified, full, and detailed inventory and appraisement; (3) the independent executor files an affidavit stating the above items under oath; and (4) there is no provision in decedent's will specifically prohibiting the filing of an affidavit in lieu of the inventory. Any person interested in the estate is also entitled to receive a copy of the inventory, appraisement, and list of claims on written request or court order. The independent executor is not liable for choosing to file an affidavit in lieu of filing the inventory or the inventory in lieu of filing the affidavit. An extension granted by the court of the time in which to file an inventory is considered an extension of time in which to file an affidavit in lieu of the inventory. Estates Code, Section 309.056.

The executor or administrator may be liable for a fine, damages, and costs for failure to timely file an inventory or an affidavit in lieu thereof. Estates Code, Section 309.057. The executor or administrator may also be liable for a fine, damages, and costs for misrepresenting in an affidavit in lieu of inventory that all those

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entitled have received the required copies of the inventory. Estates Code, Section 309.0575.

You should not request the court to appoint appraisers under Estates Code, Section 309.001, as their valuations are not binding or conclusive for death tax purposes. Many judges do not require them unless decedent's estate will be taxable. Fortunately, this patronage system has been eliminated in almost all Texas counties.

If appraisers are appointed, the best practice is for the assets to be fully described and for the proposed values to be established by the client or personal representative before submitting the inventory to the appraisers that will be used. Supporting data should be sent to the appraisers to indicate the method of valuation of the assets.

Assets discovered after the inventory or affidavit has been filed are disclosed by a supplemental inventory (and affidavit, if applicable) (Estates Code, Section 309.101), while errors are corrected by filing an amended inventory.

In an independent administration, many lawyers regard the court's approval of the inventory or filing of the affidavit in lieu of the inventory as the final step in the procedures involving the filing of documents with the court. Since the court has not supervised decedent's estate, it will not approve a voluntarily filed accounting but will simply enter an order permitting it to be filed. In most cases it is not desirable to give such publicity to decedent's financial affairs, and the filing of an accounting is not recommended. Estates Code, Sections 405.004 through 405.007, provide for closing an independent administration by closing report or notice of closing estate (which terminates the power and authority of the independent executor, including the independent administrator, and cancels the letters issued to the personal representative, but does not relieve the independent executor or administrator, as applicable, from liability for any mismanagement of the estate or from liability for any false statements contained in the report or notice). This procedure is neither recommended nor covered by this System.

You will notice that the Inventory (Form 22) illustrates two formats for setting out the required information. The first version contemplates that the assets will be described on separate schedules. The lettering of these schedules coincides with the lettering of the schedules for IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return ("the Return"). If a Form 706 is prepared, using identical copies of the schedules for the Inventory (Form 22) and for the Return dramatically reduces typing and the chance of errors. In those instances where alternate valuation will be used for the tax return, if the inventory has not already been filed, we recommend copying the schedules before the alternate valuations have been inserted and attaching them to the inventory. Even if a Form 706 is not prepared, the information may be typed on separate pages to be attached to the Inventory (Form 22). Alternatively, particularly if there are few assets and claims, it may be preferable to use the second version shown in the Inventory (Form 22), where the assets are listed in the body of the form itself. Local rules may require the information to be included in the body of the form.

General information concerning valuation is included in the different Special Instructions for asset valuations. More detailed and specific information may be found in the instructions for the estate tax return.

Certain items are properly included in the estate tax return but not in the inventory. Although their inclusion in the inventory might not be harmful, it might make an insolvent estate appear to be solvent and thus involve you and your client in much additional discussion and perhaps additional hearings. Items not to be listed in the inventory include real estate outside Texas, property disposed of before decedent's death, contingent property interests, property held in an express trust, insurance payable to named beneficiaries, annuities, payments by fraternal benefit societies, tort claims surviving to the next of kin, property claimed by another, property subject to a right of survivorship in a third person, payable-on-death (POD or P.O.D.) bonds, real property subject to a transfer on death deed, and individual retirement accounts (IRAs) payable to a named beneficiary.

Nonprobate Assets

Nonprobate assets are not controlled by a decedent's will or heirship statutes unless such assets are specifically directed to the decedent's estate. For example, a life insurance policy's death benefit is normally controlled by beneficiary designation on file with the life insurance company and not governed by the will. If, however, a decedent failed to name a beneficiary of a life insurance policy, the life insurance contract may very well provide that the decedent's estate is a default beneficiary, and therefore the policy would be a probate asset properly reported on an inventory. Normally, nonprobate assets are not part of the probate estate and should not be listed on a decedent's probate inventory; however, such assets are likely to be included in the decedent's gross estate for estate tax purposes. *See* I.R.C., Section 2031. Nonprobate arrangements are authorized by different statutes. The

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requirements to create, revoke, and prove nontestamentary transfers vary, as do the rights of creditors, survivors, and personal representatives to reach those assets. Statutes authorizing and explaining nonprobate transfers include the following:

Survivorship Agreement between Joint Tenants—Estates Code, Sections 111.001 and 111.002 (jointly owned property, except community property).

Beneficiary Designation—Estates Code, Sections 111.051 through 111.054. The following nontestamentary transfers are expressly recognized: insurance policy, employment contract, bond, mortgage, promissory note, deposit agreement, employees' trust, retirement account, deferred compensation arrangement, custodial agreement, pension plan, trust agreement, conveyance of property, security, account with a financial institution, mutual fund account, or any other written instrument effective as a contract, gift, conveyance, or trust. Estates Code, Section 111.052(a)(1). Estates Code, Section 116.003, adds manufactured homes.

Community Property Survivorship Agreement—Estates Code, Chapter 112 (between spouses).

Multiple-Party Accounts—Estates Code, Chapter 113 (banking and brokerage accounts—for example, convenience account, joint account, P.O.D. account, and trust account). A Chapter 113 trust account is a unique type of bank account, unrelated to a testamentary or inter vivos trust or a fiduciary account such as an IOLTA account. Estates Code, Section 113.004(5).

Transfer on Death Deed—Estates Code, Chapter 114 (interest in real property located in Texas).

Manufactured Housing Survivorship Agreement or Beneficiary Designation—Occupations Code, Section 1201.213 (mobile home or manufactured home); Estates Code, Section 116.003.

Survivorship Agreement for Motor Vehicles—Transportation Code, Section 501.031 (titled motor vehicles).

Beneficiary Designation for Motor Vehicles—Estates Code, Chapter 115; Transportation Code, Section 501.0315 (titled motor vehicles).

"Motor vehicles," both titled and untitled, are defined at Transportation Code, Section 501.002(17). The Texas Parks and Wildlife Department has promulgated a survivorship agreement for a boat or outboard motor (Form PWD 790). There is apparently no statutory authority for this form, except for Estates Code, Section 111.052(a)(1), which recognizes "any other written instrument effective as a contract, gift, conveyance, or trust."

In certain cases, the statutes authorizing these nontestamentary transfers speak directly to the property's exposure to creditors' claims. For example, Estates Code, Section 113.252, clarifies that multiple-party accounts are liable for their share of estate taxes and related expenses charged (even before the estate is exhausted) and, if other probate assets are insufficient, amounts needed to pay debts, expenses of administration, and other taxes. See also the section titled "Liability of Nonprobate Assets" in Special Instruction 54—Claims of Creditors.

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SPECIAL INSTRUCTION 24—GENERAL RULES FOR VALUATION OF ASSETS

General Rules for Valuation of Assets

1. Definition of fair market value: The price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. Treasury Regulations, Section 20.2031–1(b).
2. Time of valuation: For the inventory, this is the date of death. The same is true for federal estate and generation-skipping transfer taxes unless alternate valuation is elected.
3. Alternate valuation: For federal estate tax purposes, all assets may be valued on the date that is six months after the date of death or on the date of any distribution, sale, exchange, or disposition, whichever is earlier. IRC, Section 2032(a). But alternate valuation may not be elected unless there is a reduction in (a) the value of decedent's gross estate and (b) the total amount of federal estate and generation-skipping transfer taxes. IRC, Section 2032(c).
4. Appraisals: On the inventory, the appraisal may be made solely by decedent's executor or administrator (or by the client in a muniment of title proceeding) unless appraisers are appointed by the court, in which case they typically are made initially by decedent's executor or administrator (or the client) and approved by the appraisers. Note that the court cannot appoint appraisers over objections unless it is "for good cause." Estates Code, Section 309.001.

   For estate tax purposes, appraisals by expert(s), under oath, are required for household goods or personal effects having marked artistic or intrinsic value of a total greater than $3,000 (for example, jewelry, furs, silverware, paintings, etchings, engravings, antiques, books, statuary, vases, oriental rugs, coin or stamp collections). The appraisal must be accompanied by a written statement by the executor or administrator containing a declaration that it is made under the penalties of perjury as to the completeness of the itemized list and as to the disinterested character and the qualifications of the appraiser(s). Treasury Regulations, Section 20.2031–6(b). Appraisals are generally desirable for all real estate and for closely held business interests. The appraisal should include a statement of professional qualifications and show the various approaches used to determine value (market, cost, income).
5. Detailed handling of specific types of assets is covered in additional Special Instructions.
6. Treasury Regulations, Section 20.2031–7, provides tables for determining the values of annuities, life estates, terms of years, remainders, and reversions. Unitrust valuations can be obtained from Treasury Regulations, Section 1.664–4.

Penalties

If the estate tax is underpaid by $5,000 or more because of valuation understatements, substantial penalties can be imposed. IRC, Section 6662(g). Penalties increase for more egregious understatements. IRC, Section 6662(h). These penalties can be imposed on the estate or on its beneficiaries. Even though the values set forth in the United States Estate (and Generation-Skipping Transfer) Tax Return are usually determinative of the fair market value of the assets as well as the new income tax basis of those assets, the IRS takes the position that a beneficiary cannot rely with certainty on the valuation of property as set forth in such a return.

To reduce the risk of an undervaluation penalty, there must be a showing of good faith and a reasonable basis for the valuation. Even though no tax may be due, it may be essential to obtain an appraisal prepared by an independent appraiser who is experienced in valuing the type of asset involved. Discounts should be substantiated by appraisal and by citation to judicial authority.

The penalty for underpayment of taxes attributed to negligence or disregard of rules and regulations is 20 percent of the portion of the underpayment attributable to the negligence or disregard. IRC, Section 6662(a), (b)(1).

These penalty sections place some practical risks on executors and administrators as well as on the estate and its beneficiaries. As a result, administration expenses are likely to increase due to the need for more appraisals. Attorneys should be certain to advise all

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fiduciaries and other clients of the risk of these valuation penalties.

Further Reading

"Valuation Overview" by Richard R. Orsinger, 1992 Advanced Family Law Course, State Bar of Texas, is of general application and provides particularly helpful materials for matters that might be litigated. Also, see "Completing the Form 706 Puzzle: An Overview of the United States Estate (and Generation-Skipping Transfer) Tax Return" by Harry W. Wolff III, 2014 Intermediate Estate Planning and Probate Course, State Bar of Texas; "Current Valuation Issues Involving FLPS, LLCS and Other Hard-to-Value Assets" by John W. Porter, 2013 Advanced Estate Planning and Probate Course, State Bar of Texas; "The Valuation Discount: A Double-Edged Sword" by Charles E. King and Shyla R. Buckner, 2002 Advanced Estate Planning and Probate Course, State Bar of Texas; and "Preparing and Filing the Form 706: Who, What, How, When and Where" by Glen A. Yale, 2005 Advanced Estate Planning and Probate Course, State Bar of Texas.

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SPECIAL INSTRUCTION 25—DISCLAIMERS

WARNING: If a disclaimer is to be made, the attorney must determine the identity of the person(s) who will receive the property under the alternative dispositive provisions of *both* any account agreement *and* decedent's will or under the statutes of descent and distribution and must explain this to and obtain the approval of the person disclaiming the interest. It is always advisable for this person to obtain independent counsel.

This Special Instruction is limited to tax-motivated disclaimers by individuals in a decedent's estate with a personal representative. Special rules apply to disclaimers by other persons—for example, fiduciaries—and disclaimers of other interests—for example, beneficiary designation or trust property. Creditor-motivated disclaimers are beyond the scope of this System.

Property Code, Chapter 240, provides a state procedure and IRC, Section 2518, provides a federal procedure for disclaiming an interest or a power that would ordinarily pass by a decedent's will, an insurance contract, or the laws of intestate succession.

Although the state and federal procedures must be carefully integrated, they do not cover every situation. There are many unresolved areas, such as those dealing with minor beneficiaries, future interests, spendthrift provisions, and the like. None of these areas are covered in this System.

These provisions were enacted to provide specific statutory procedures whereby a refusal to inherit would result in a disclaimer rather than an assignment of an interest. Although an assignment might be a taxable gift, a proper disclaimer would not be. The proper use of the statutory disclaimers gives the person originally entitled to the property the opportunity to avoid either the receipt of unwanted assets or gift or estate tax consequences with respect to the interest. If a disclaimer is made, future interests will be accelerated.

Detailed federal tax implications are beyond the scope of our coverage in this System but are dealt with in depth in Treasury Regulations, Section 25.2518–1; "To Disclaim or Not to Disclaim: 'How?' Is the Real Question" by Glenn M. Karisch, Thomas M. Featherston, Jr., and Julia E. Jonas, 2015 Advanced Estate Planning and Probate Course, State Bar of Texas; "The Estate Administration Guide" by Sarah Patel Pacheco and Patrick J. Pacheco, 2017 Building Blocks of Wills, Estates and Probate Course, State Bar of Texas; and "Drafting to Integrate Retirement Plans and IRAs into the Estate Plan" by Karen S. Gerstner, 2014 Estate Planning and Probate Drafting Course, State Bar of Texas.

Both Texas and federal statutory procedures *must* be followed. Disclaimers may affect partial as well as full interests in property.

A disclaimer will not be a gift if *all* the following apply:

1. It is an irrevocable and unqualified refusal to accept an interest in property.
2. It is written, declares the disclaimer, describes the interest or power disclaimed, and is signed by the disclaimant.
3. A copy of this writing is received by the transferor or the legal representative of the transferor not later than nine months after the transfer (date of death). It is possible for a guardian to make a disclaimer. For federal tax purposes, the disclaimer also may be made within nine months after the disclaiming person reaches age twenty-one.
4. The disclaiming person has neither accepted any of the benefits of the property nor taken possession of or exercised dominion or control over the property transferred.
5. The interest disclaimed passes by operation of law to decedent's spouse or to someone other than the person making the disclaimer without any direction of the disclaiming person.
6. The disclaiming person cannot have been administratively determined or judged by a court to be in child support arrears. Property Code, Section 240.151(g).

The statutory time limits are strict and literal. There is no extension until the next business day if the nine-month period ends on a Saturday, Sunday, or holiday. There is no provision for obtaining an extension of time to file.

Since disclaimers are customarily used where there are federal estate and gift tax issues, particular attention must be paid to federal law and regulations. Treasury

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Regulations, Section 25.2518–1, provides detailed information and numerous examples.

Note that a surviving spouse may make a qualified disclaimer even though the disclaimed interest passes to a trust for the surviving spouse. Treasury Regulations, Section 25.2518–2(e)(2). A disclaimant who is not a spouse cannot be a beneficiary of a disclaimed interest. Treasury Regulations, Section 25.2518–2(e)(1)(ii).

The United States Supreme Court held that under federal law, the interest of an heir in an estate constitutes a right to property to which the federal tax lien attaches even though the heir purports to disclaim the interest under state law and that federal law, rather than state law, determines whether inheritance rights constitute property rights to which a federal lien attaches. *Drye v. United States*, 528 U.S. 49 (1999). The current situation is that while a disclaimer may work to keep an inheritance away from a creditor, it will not thwart the federal tax collector.

A disclaimer is treated as a disqualifying transfer for purposes of the disclaimant's eligibility for Medicaid. See "Protecting and Maximizing Public Benefits" by H. Clyde Farrell and Christina Lesher, 2015 Medicaid Hot Topics Course, State Bar of Texas.

A person administratively determined or judged by a court to be in child support arrears is barred from being able to disclaim assets that could be applied to satisfy the obligation. Property Code, Section 240.151(g). An assignment made by such a person under Estates Code, Chapter 122, is ineffective to the extent the assigned property or interest in property could be applied to satisfy the child support obligation. Estates Code, Section 122.201(b). However, a personal representative who transfers property pursuant to an assignment is protected if they do not have knowledge of the child support obligation. Estates Code, Section 122.201(e).

Further coverage is beyond the scope of this System.

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SPECIAL INSTRUCTION 26—REAL ESTATE

Valuation

1. Actual, current purchase or sales price is the most persuasive.
2. Sales price of a comparable property is the next best indication and is particularly good in evaluating raw acreage or a personal residence.
3. Other methods include capitalization of income and determination of reproduction costs. For many years, local assessed values were given little weight, but they now are taking greater significance, particularly in larger cities such as Houston. In fact, in a nontaxable estate, those values usually can be used for the inventory values. Fractional undivided interests in real estate are generally worth less than the pro rata value of the entire tract, and in this situation a discount may be available.
4. Improvements should be described and their value should be stated separately from land itself. This is important for depreciation deductions claimed after date of death.
5. In many instances it is appropriate to use the value determined by the applicable appraisal district. In the absence of other relevant evidence of value, determine the value of *producing mineral interests* by multiplying the amount of royalty income received during the twelve months immediately preceding decedent's death by three or the average monthly royalty by thirty-six. This is a three-year payout. Sometimes a two-, or four-, or even five-year payout is more appropriate. See Worksheet 7. Discounts should be available for lifting risks (perhaps 33-1/3 percent to 40 percent), followed by a further discount for present value (say at "prime" plus 1 percent).
6. If the IRS contests your value and proposes a higher value, request a detailed statement from the IRS under the provisions of IRC, Section 7517, as to an explanation of the valuation method used by the IRS, all computations used in arriving at the value, and a copy of any expert appraisal prepared by or for the IRS in determining the value.
7. When not using the value from the appraisal district, you should obtain a separate written appraisal for each item of real estate from a qualified appraiser. Every appraisal should provide separate valuations for land, buildings, and other assets such as fences, timber, growing crops, and farm implements.
8. For federal estate tax purposes it may be possible to use a lower value for certain real estate used in connection with a farm or other business. IRC, Section 2032A. This lower value is based on actual use of that real estate rather than the presumably higher fair market value determined by its highest and best use. Even when using this special valuation, you will still need a fair market value (FMV) appraisal to provide the basis for determining the percentages required for qualification. See Special Instruction 27—Special Use Valuation for Certain Real Estate.
9. If the property was decedent's residence, decedent's surviving spouse and minor children have homestead rights. Estates Code, Sections 353.051 and 353.052. The homestead is not to be partitioned during the lifetime of the surviving spouse for as long as the surviving spouse elects to use or occupy it as a homestead or during the period the guardian of the minor children is permitted to use and occupy it under a court order. Estates Code, Section 102.005. Because of these rights, decedent's interest in the homestead might be worth considerably less than the FMV at decedent's death, but this argument has been vigorously resisted by the IRS.
10. Discounts for undivided interests may be appropriate but will be subject to IRS scrutiny.
11. There are significant penalties for significant undervaluations. IRC, Section 6662.

Reporting for Federal Tax Purposes

1. Real estate is reported on Schedule A of decedent's IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, and includes mineral and royalty interests.
2. The description of real estate must be sufficiently complete that it may be readily identified and located. Include street address if applicable. Improvements should be described.

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3. Include property being purchased by contract for deed (Items 7.170 through 7.187 of MIL). The full FMV of the property from Item 7.184 is shown on Schedule A, and the unpaid contract amount (Item 7.178 of MIL) and accrued interest (Item 7.182 of MIL) should be deducted on Schedule K. Item 7.186 provides the alternate valuation.
4. Report all real estate, including out-of-state and foreign properties, but do not include the latter on the inventory to be filed in the probate proceedings.
5. Contracts to sell land are reported on Schedule C. See Special Instruction 20—Cash Items.
6. Include leases and accrued rent with underlying real property on Schedule A. For leased property, supplement the usual property description with the rent terms—for example, "Rent of $1,800 payable monthly." Create a separate item for rent accrued but uncollected as of the date of death—for example, "Rent due for September 2021, but not collected until November 2021."
7. If decedent was not personally liable for the payment of a mortgage (Item 7.32 of MIL), reduce the value of the property by the amount of the mortgage and show only this difference or "net equity" on Schedule A, but this may not be less than zero. If decedent was personally liable for its payment, the full value of the property is shown on Schedule A and the full amount of the mortgage and accrued interest is shown on Schedule K.

Sample Descriptions

1. House and lot, 6544 Valley, Houston, Texas, residence of Decedent, described as Lot 6, Block 7, Champions West, an addition in Harris County, Texas, per Harris County Appraisal District

Land	$ 15,000	
Improvements	70,000	
Total		$85,000

2. House and lot, 6544 Valley, Houston, Texas, rental property, described as Lot 6, Block 7, Champions West, an addition in Harris County, Texas. Rent of $1,800 payable monthly. Per Harris County Appraisal District

Land	$ 15,000	
Improvements	70,000	
Total		$85,000

3. Rent due on item 2 for September 2021, but not collected until November 2021 — $1,800
4. 73.75 acres, C. C. Butera Survey, Fayette County, Texas. Unimproved acreage. Value based on appraisal, copy of which is attached — $28,650
5. .0051735 royalty interest in 80 acres of land, part of Addie Jo Taylor Gas Unit No. 1, Duncan Field Wharton County, Texas. Robert Massey, Operator, D/N 5195-04-01 — $1,450
6. Undivided one-third interest in 8.1320-acre tract out of the W. M. Bronaugh Survey, Abstract 135, Houston, Harris County, Texas. Value based on appraisal, copy of which is attached. Less 15 percent discount for undivided interest — $5,667
7. Log cabin and three-bedroom house located on approximately 20 acres of land, John McCrosky Survey, William David Survey, and R. Allen Survey, Colorado County, Texas, subject to a non-personal liability note payable to T. J. Burkett. Value based on appraisal, copy of which is attached

Land	$ 20,000	
Improvements	35,000	
Total	55,000	
Note	- 22,000	
Accrued Interest	- 1,000	
Net Equity		$32,000

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8.	House and lot on Lake Livingston, described as Lot 7, Block 27, Lake Shore Addition, a subdivision in Polk County, Texas, 27 Leisure Lane, Trinity, Texas. Value based on selling price June 10, 2011	$116,580
9.	Nonparticipating 1/32 royalty interest in 18.77 acres, J. Casey Survey, Cameron County, Texas	$10
10.	Nonproducing mineral interest in 202 acres, John Dunlavy Survey, Colorado County, Texas, presently leased to Continental Oil Company	$150
11.	Lot 14, Block 2, Creek Meadow Heights, Ruidoso, Lincoln County, New Mexico. Value based on appraisal, copy of which is attached	$7,100
12.	Contract for deed to acquire Lot 1, Block 6, Thunderbird Estates, Borden County, Texas. Value based on attached appraisal	$2,500
13.	27.4 acres, S. Bennett Survey, Abstract 306, Dallas County, Texas. Value of $274,000 based on appraisal, copy of which is attached, less unpaid balance of no personal liability purchase-money note of $204,000. Net equity	$70,000

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SPECIAL INSTRUCTION 27—SPECIAL USE VALUATION FOR CERTAIN REAL ESTATE

IRC, Section 2032A, permits certain property to be valued for federal tax purposes on the basis of its actual use as distinguished from the supposedly higher fair market value (FMV). These optional provisions apply only to estates of decedents who were residents or citizens of the United States and only to property located in the United States. Certain special conditions must be met for eligibility.

Warning: The provisions of the regulations promulgated for IRC, Section 2032A, must be followed word for word. At least one version of the instructions for the preparation of an earlier Form 706 failed to include all the requirements.

In an effort to ameliorate the rigid interpretations made by the IRS, certain modifications may be made to the election and the related agreements. IRC, Section 2032A(d)(3).

The adjusted value of real and personal property used in farming or in a closely held trade or business must constitute at least 50 percent of the adjusted value of decedent's gross estate reduced by deductions permitted under IRC, Section 2053(a). Only 25 percent of the adjusted value of decedent's gross estate need consist of "qualified real property," and the balance can be personal property, such as farm machinery and equipment. *See* IRC, Section 2032A(b). "Qualified real property" includes residences and related improvements located on the qualifying real property and occupied on a regular basis by the owner and the owner's lessees or employees for occupational or maintenance purposes. IRC, Section 2032A(e)(3).

The property must pass to a "qualified heir." IRC, Section 2032A(b)(1). An agreement must be filed with the IRS within the time for filing the federal estate tax return, including extensions thereof. All parties with any interest in the property must consent to the election. IRC, Section 2032A(a)(1)(B), (d). "Qualified heir" means a member of decedent's family who acquired the real estate from decedent or to whom the property has passed. "Members of an individual's family" include the individual's ancestors, the individual's spouse, lineal descendants of the individual or the individual's spouse or of one of the individual's parents, and the spouses of such lineal descendants. An adopted child is treated as a natural-born child. IRC, Section 2032A(e)(1).

Decedent or a "member of decedent's family" must have owned the qualifying property and have "materially participated" in the operation of the business on the date of decedent's death and in five of decedent's last eight years. IRC, Section 2032A(b). Material participation is determined in a manner similar to the imposition of Social Security taxes on net earnings from self-employment. IRC, Section 2032A(e)(6). There are liberalizing exceptions if decedent was receiving old-age benefits or was disabled. IRC, Section 2032A(b)(4).

A proper election must be made by decedent's executor or administrator by checking Item 2 of Part 3 on Page 2 of IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, and the box in Part 1 of Schedule A-1 that is designated "Regular election," coupled with the proper completion and filing of the remainder of Schedule A-1, including the agreement by all persons who have an interest in the property whereby such persons consent to the recapture of estate tax on early disposition of the property. A protective election may be filed in cases of uncertainty. There is no procedure for revoking an election.

A special lien is imposed on all qualified property when the election has been made.

The advantage of the election is limited to the savings in estate tax resulting from the lower value of decedent's gross estate. The procedures are highly technical and complex, and there are numerous reports that IRS agents are aggressively attacking and disallowing this lower valuation.

The disadvantages of special use valuation include the following:

1. Lower cost basis in the hands of the heirs and beneficiaries reduces future depreciation allowances and increases potential gain on subsequent sale.
2. Actual or potential conflicts of interest may exist between heirs and beneficiaries, particularly when one group will use the property and another group may bear a portion of the estate tax. Because of these conflicts, it is highly

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desirable for all competing interests, particularly "qualified heirs," to be represented by independent counsel.

3. The qualified heir must continue the special use of the land for at least ten years after decedent's death (unless the qualified heir dies within the ten-year period), or a recapture tax will be imposed. The recapture tax generally is the amount of the estate tax on the excess of the FMV over the special use value. *See* IRC, Section 2032A(c).
4. Threat of recapture tax would restrict free use and alienability of the land.
5. Lower valuation might prevent decedent's estate from achieving the percentages required for installment payment of estate tax under IRC, Section 6166.
6. Step-up in basis for the community property interest of the surviving spouse is limited to the special use value.

Mineral and royalty interests are not eligible even when they form an interest in the property, and such interests should be separately valued. Crops may not qualify, either.

When describing the real estate for which special use valuation has been elected, add the language "Section 2032A valuation" following the description of that tract.

Additional coverage can be found in "Preparing and Filing the Form 706: Who, What, How, When and Where" by Glen A. Yale, 2005 Advanced Estate Planning and Probate Course, State Bar of Texas.

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SPECIAL INSTRUCTION 28—STOCKS, BONDS, AND OTHER SECURITIES

Valuation (See Treasury Regulations, Section 20.2031–2)

1. If there are sales on the valuation date, the fair market value (FMV) is the average of the highest and lowest selling prices on that date. It is not the closing price.
2. If the valuation date falls on a weekend and the stock was traded on both the Friday before and the Monday following the valuation date, the FMV is the average of the highest and lowest selling prices for both dates (i.e., high on Friday plus high on Monday plus low on Friday plus low on Monday divided by 4). The same procedure is followed when valuing securities on a holiday.
3. In other cases, determine the averages of high and low for the nearest trading dates before and after the valuation date and follow this procedure:
   a. Determine the nearest date the security was traded before the valuation date.
   b. Determine the average of high and low for that date.
   c. Determine the nearest date the security was traded after the valuation date.
   d. Determine the average of high and low for that date.
   e. Determine the number of *trading* days between the valuation date and the nearest date *before* that date on which the security was traded as determined in step a.
   f. Multiply result of step b. by result of step e.
   g. Determine the number of *trading* days between the valuation date and the nearest date *after* that date on which the security was traded as determined in step c.
   h. Multiply result of step d. by result of step g.
   i. Add results of steps f. and h.
   j. Add results of steps e. and g.
   k. Divide result of step i. by result of step j.
4. If stocks or bonds are listed on more than one exchange, the records of the exchange where the stocks or bonds are principally dealt in should be employed. In valuing listed securities, be careful to consult accurate records to obtain values as of the applicable valuation date. If quotations of unlisted securities are obtained from brokers or evidence as to their sale is obtained from officers of the issuing companies, copies of the letters furnishing the quotations or evidence of sale should be attached to the return.
5. For over-the-counter securities, the FMV is the average of the "bid" and "asked" prices on the applicable date.
6. The *bid* price is the FMV of open-end mutual funds on the applicable date.
7. An alternative to "do-it-yourself" valuation is to use the computerized valuation services available from several banks and stockbrokerage firms. These valuations will provide all information required on Schedule B of IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for decedent's estate ("the Return") as to publicly traded securities, including put/call options and bonds (corporate and government; U.S. and international).

   EVP Estate Valuations & Pricing Systems, Inc.
   5855 Topanga Canyon Blvd, Suite 520
   Woodland Hills, CA 91367
   800-323-7750 or 818-313-6300
   www.evpsys.com

   There are no setup or monthly fees. Charges are on a per-use basis. If using certain computerized programs for preparing the Return, the values per EVP can be electronically transferred to the Return without retyping.
8. Closely held securities.
   a. There is no single method of valuation.
   b. Certain restrictive or "buy-sell" agreements may be controlling.
   c. Appraisals may be extremely helpful in the absence of controlling buy-sell provisions.
   d. The IRS treats earnings as one of the most important factors.

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e. These securities are reportable on Schedule B of the Return.

f. Consider a discount for minority interest.

g. Consider a discount for lack of marketability.

h. There are penalties for undervaluation. IRC, Section 6662.

i. A shareholder of six months, and any shareholder of 5 percent or more of the outstanding shares of the corporation, may examine and copy corporate books and records. Business Organizations Code, Section 21.218(b). A 1 percent shareholder may inspect the federal income tax return and the Texas franchise tax return. IRC, Section 6103(e); Tax Code, Section 171.209. See generally "Examination of Corporate Books and Records," chapter 163 in 11 *Texas Litigation Guide* by William V. Dorsaneo III, published by Matthew Bender.

Tracking Down Old Securities to Determine Their Value (If Any)

1. For stocks and bonds, contact—

   a. Secretary of the corporation

   b. Transfer agent (whose name usually appears on the front of the certificate)

   c. Secretary of state of the state of incorporation

   d. Trustee-in-bankruptcy for a corporate issuer

2. For municipal bonds, contact comptroller of the city or town or treasurer of the state.

3. For securities of companies that have been listed for public trading, contact—

   a. New York Stock Exchange

      The New York Stock Exchange
      Public Information Office
      11 Wall Street
      New York, NY 10005
      212-656-3000
      www.nyse.com

   b. Over-the-counter

      Financial Industry Regulatory Authority (FINRA)
      1735 K Street
      Washington, DC 20006
      301-590-6500
      www.finra.org

4. Use a private service on a fixed-fee basis (about $35–$75 per company). You need to furnish state of incorporation, date on certificate, exact name of company, stamped self-addressed envelope, and photocopy of certificate.

   Spink
   145 West 57th Street
   18th Floor
   New York, NY 10019
   212-262-8400
   www.spink.com

   Prudential American Securities, Inc.
   921 East Green Street
   Pasadena, CA 91106
   626-795-5831
   www.securities-pricing.com

5. Use a private service on a contingent fee basis (20 percent to 30 percent of recovery). You need to furnish state of incorporation, date on certificate, exact name of company, stamped self-addressed envelope, and photocopy of certificate.

   Stock Search International
   P.O. Box 2359
   Vineyard Haven, MA 02568
   800-537-4523
   www.stocksearchintl.com

6. Publications include—

   a. *Capital Changes Reporter*
      CCH, Wolters Kluwer
      800-449-6435
      www.cch.com

   b. *Directory of Obsolete Securities: Annual Guide to Stocks* published by Financial Information, Inc., Jersey City, New Jersey. This publication lists stocks from 1927 on, tells you if stock is still active, and identifies the transfer agent.

   c. *Robert D. Fisher Manual of Valuable and Worthless Securities* published by R. M. Smythe & Co., New York, New York. This publication lists securities issued before 1927.

7. Decedent's broker can often assist. Paper certificates may not reflect current capitalization, due to mergers, splits, and stock dividends after the date of issuance. Surrender the certificate, and in the process of converting the paper to electronic notation, these issues are resolved. The first electronic statement will reveal the cumulative changes from date of issuance through the date of settlement, and it remains only to reconcile changes from the date of death.

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Stocks, Bonds, and Other Securities Are Reported on Schedule B of the Return

1. Dividends
   a. Four dates are important with respect to dividends: date of declaration, ex-dividend date, record date, and payment date. The date of declaration is the date the dividend is declared by the board of directors of the corporation. The record date is the date on which a person must be a stockholder according to the corporation's records to receive the dividend. The payment date is the date of the check and is usually the date on which the stockholder will receive the dividend. The ex-dividend date falls between the date of declaration and the date of record and is set by the exchange on which the stock is traded. Stocks trade "ex-dividend" between those two dates, and the amount of the per-share dividend is added to the trading value of a share of stock to determine the value of the stock to be used for estate tax purposes. Information concerning these dates can be obtained from the dividend checks, from the quarterly statements that accompany those checks, from the company, and from your stockbroker. Other sources for determining record date and ex-dividend date include Standard and Poor's Annual Dividend Record and Moody's Dividend Record.
   b. Amount of dividend is added to FMV of stock if date of death is between ex-dividend and record dates.
   c. Amount of dividend is reported separately if date of death is between record date and payment date. Even for alternate valuation, use this amount.
   d. Uncashed dividend checks on hand at decedent's death are reported on Schedule C of the Return.
2. Bonds
   a. Accrued interest on bonds from date of last payment to date of death is reported separately. Even for alternate valuation, use this amount.
   b. Information concerning bonds can be obtained from Moody's Annual Bond Record.
3. When describing publicly traded securities, include the National Securities Identifying Number (NSIN). The nine-digit CUSIP (Committee on Uniform Security Identification Procedure) number is used in the United States. EstateVal recognizes the SEDOL, used in the United Kingdom. Other NSINs include the ISIN (France, Germany), WKN (Germany), and Valor Number (Switzerland).

Transferring Publicly Traded Securities

1. Determine identity of transfer agent from certificate, from stockbroker, or from *State Inheritance, Estate and Gift Tax Reporter* (CCH). This publication is also helpful in determining whether the securities are worthless or have undergone changes of name or capitalization.
2. If there are multiple transfer agents, *always* use a Texas transfer agent whenever possible and always try to avoid a New York transfer agent.
3. Note that, when submitting letters testamentary or letters of administration, the letters cannot be more than sixty days old. Business & Commerce Code, Section 8.402(c)(1)(A).

Further Reading

"Completing the Form 706 Puzzle: An Overview of the United States Estate (and Generation-Skipping Transfer) Tax Return" by Harry W. Wolff III, 2014 Intermediate Estate Planning and Probate Course, State Bar of Texas, and "Valuing Assets for Form 706: Putting the 'Gross' in Gross Estate" by Glen A. Yale, 1999 Advanced Estate Planning and Probate Course, State Bar of Texas.

Sample Descriptions

1. 2,119 shares, Metropolitan Industries Incorporated, common, NYSE (CUSIP No. 442161 10 5). Unit value $30. Securities account number XXX3334 styled "Harry D. Green" at Edward Jones $63,570
2. 131,330 shares, UniRak Konservativ A (ISIN DE000A1C81C0). Unit value €0.124110. Securities account number xxxxxx4321 styled "Anne-Marie Fischer" at Union Investment Service Bank AG, Frankfurt am Main, Germany. Total value (€16,299.37 × $1.212614) $19,765

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3. 25 shares, Metropolitan Industries Incorporated, common, NYSE, held as employee's contribution in employee account in the Big City Lighting & Power Co. Employee Stock Purchase Plan. Unit value $30 — $750

4. 1,951 shares, Metropolitan Industries Incorporated, common, NYSE, held as employee contribution in employee account in the Big City Lighting & Power Co. Employee Stock Purchase Plan. Unit value $30 — $58,530

5. $10,000 Atchison, Topeka and Santa Fe Equipment Trust, Series E, 5% Bonds, due January 1, 2018, NYSE (CUSIP No. 649619AN). Unit value $51.50 — $5,150

   Interest at date of death — $319

6. 100 shares, Davis Investments, Inc., a closely held corporation. Unlisted. Principal business office is 3636 Eastheimer, Houston, Texas 77017. Unit value $43.75. Copies of income statements and balance sheets attached — $4,375

7. 200 shares, ConocoPhillips Company, common, NYSE (CUSIP No. 70735510). Unit value $50.40. Ex-dividend December 1, 2010, $.40 added to price — $10,081

8. 100 shares NRC Corp., 6% preferred, ASE (CUSIP No. 4177422). Unit value $16 — $1,600

   Dividend of $.30 per share declared on October 28, 2007, payable on December 1, 2010, to stockholders of record on November 15, 2010 — $30

9. 22,619.18 unissued shares, held in the name of Harry D. Green in account number XXX0277, U.S. Government Money Market Trust. Unit value $1 — $22,619

10. 13.7455 unissued shares, dividend reinvestment plan, El Paso Industries, common, NYSE, held in name of Mary Lee Green, Commerce National Bank, Fort Worth, Texas. Unit value $19.32 — $266

11. 1,000 (all of the issued and outstanding) shares, Harry D. Green, P.C., a professional corporation. Unlisted. Unit value $33.48. Copies of income statements and balance sheets attached. Valued at book value — $33,478

12. 100 shares, Blue Smoke Minerals, Inc. Unit value $0. Company out of business since 1995. Right to do business forfeited in 1996. — $0

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SPECIAL INSTRUCTION 29—PROCEDURES IN LIEU OF ADMINISTRATION

The Estates Code provides four separate and distinct judicial procedures whereby the administration of an estate may be avoided if a court determines that there is no necessity for the administration of the estate. Three of these procedures are covered in this System: muniment of title (MT), proceedings to declare heirship (PDH), and small estates (SE).

No procedure in lieu should be pursued if the estate's or distributees' insurance needs cannot be met without an administration, for example, by a prompt sale or distribution. See Special Instruction 92—Duty to Insure.

Muniment of Title

Muniment of title proceedings are authorized by Estates Code, Section 257.001. These proceedings are available only if a person had a will and there are no unpaid debts owed by that person's estate except for those secured by liens on real property or the court finds for another reason that there is no necessity for administration of the estate. If unpaid and unsecured debts exist, this shortcut procedure is not available. More detailed information about these proceedings appears in Special Instruction 73—Muniment of Title (MT).

Proceedings to Declare Heirship

Proceedings to declare heirship are provided for by Estates Code, Chapter 202, and are sometimes referred to as heirship determination procedures. If an application is filed within four years of decedent's death and if decedent died intestate and there are no unsecured debts at the time the application is filed with the court, it is possible to obtain an order that no administration is necessary. Such an order will protect persons dealing with the heirs. If unpaid and unsecured debts exist, this shortcut procedure is available but is impractical because of the lack of protection for purchasers of assets. More detailed information about these proceedings appears in Special Instruction 60—Proceedings to Declare Heirship (PDH).

Small Estates

Two separate provisions in the Estates Code relate to small estates. In this System we have included only the small estate procedures provided by Estates Code, Chapter 205, which is available only if decedent died intestate. To qualify, the nonexempt assets must exceed the known liabilities of the estate, and the *gross* value of the estate *must not* be more than $75,000 exclusive of eligible homestead and other exempt property. Adult children are unable to use these procedures to transfer title to the homestead, as the definition of homestead excludes them. Estates Code, Sections 205.009, 353.051(a)(1). This proceeding is sometimes referred to as collection of small estates upon affidavit or as a small estate affidavit. More detailed information on both procedures relating to small estates appears in Special Instruction 63—Small Estates (SE).

Finding of No Necessity for Administration

This System does not cover the proceeding under Estates Code, Section 301.153(b)–(d), involving a judicial finding that there is no necessity for administration. Under the provisions of that section, an application for letters of administration is filed and, at a hearing, the court enters an order that refuses the application and recites that there is no necessity for administration of the estate. After such an order is entered, persons dealing with the heirs specified in the order may do so without liability to them or to creditors of the estate, but they apparently are not given protection against the claims of unknown heirs of an intestate decedent. Because of this danger, we do not recommend following the procedures under Estates Code, Section 301.153(b)–(d), but do recommend, in appropriate situations, proceedings to declare heirship and collection of small estates by affidavit.

Affidavit of Heirship

The Estates Code also offers a nonjudicial procedure to determine heirs, the so-called affidavit of heirship. *See* Estates Code, Section 203.001. The statute refers to a "statement of facts" concerning family history, genealogy, marital status, or the identity of the heirs of a decedent. The statement may be in the form of an affidavit or the judgment of a court of record—for example, a divorce decree. The statement becomes prima facie evidence of the facts recited five years after recording in the deed records in the county where the real estate is located or where the decedent was domiciled or had a fixed place of residence at death. Estates Code, Section 203.001(a).

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Title companies routinely accept affidavits of heirship in lieu of an administration or proceeding to determine heirship. It is not uncommon for the title company to record the heirs' affidavit at closing, especially on the sale of a decedent's longtime homestead. The practice of accepting affidavits within five years of recording is not supported by the Estates Code but is approved by the *Texas Title Examination Standards* (2021), Standard 11.70, "Heirship Affidavits."

A suggested form for the affidavit is found at Estates Code, Section 203.002. It is not typically used if the estate will be administered. If a valid will exists and the legal heirs are not the named beneficiaries, an affidavit of heirship is inappropriate. If the will names all legal heirs as devisees, it is prudent to attach a copy of the will to the affidavit and note that the original will is on file with the clerk.

Although the affidavit of heirship may be a useful tool, title companies are not required to accept such an affidavit, and their requirements may vary—that is, some title companies will accept an affidavit of heirship well before the five-year recording requirement, some request the witnesses to have known the decedent for a specific period of time, and so forth. If there is a contract on the real estate before the affidavit of heirship is recorded in the deed records, it is recommended that the attorney send the draft affidavit to the title company for review. See Form 146 for a model developed from experience with several different underwriters in Harris County.

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SPECIAL INSTRUCTION 30—INSURANCE OWNED BY DECEDENT ON LIFE OF ANOTHER

The most common situation involving decedent's ownership of a policy on someone else's life arises when a spouse owned a community interest in a policy insuring the life of the surviving spouse.

The value of decedent's interest in a policy insuring someone else's life is the cost of a comparable contract or, if such a contract is not available, it is the interpolated terminal reserve plus the proportionate part of the last premium paid before date of valuation. Treasury Regulations, Section 20.2031–8(a). This information is reflected in Part II of IRS Form 712, Life Insurance Statement (FF 2), which should be requested from the insurance company issuing the policy. The appropriate value is included in the inventory and on Schedule F of IRS Form 706, United States Estates (and Generation-Skipping Transfer) Tax Return, for decedent's estate.

Sample Description

Interest in Texas General Life Insurance Company ordinary life insurance policy number TG 743666 insuring the life of Mary L. Green in the face amount of $10,000.00 (IRS Form 712 attached)	$988

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SPECIAL INSTRUCTION 31—NOTES AND ACCOUNTS RECEIVABLE

Valuation

1. The fair market value (FMV) of mortgages, notes, and accounts is the amount of unpaid principal plus the amount of interest accrued to the date of death unless mitigating circumstances are established. Treasury Regulations, Section 20.2031–4, states the following:

   > Valuation of notes. The fair market value of notes, secured or unsecured, is presumed to be the amount of unpaid principal, plus interest accrued to the date of death, unless the executor establishes that the value is lower or that the notes are worthless. However, items of interest shall be separately stated on the estate tax return. If not returned at face value, plus accrued interest, satisfactory evidence must be submitted that the note is worth less than the unpaid amount (because of the interest rate, date of maturity, or other cause), or that the note is uncollectible, either in whole or in part (by reason of the insolvency of the party or parties liable, or for other cause), and that any property pledged or mortgaged as security is insufficient to satisfy the obligation.

2. As a general rule, if alternate valuation is selected, both the value of the note and the amount of accrued interest are the same as on date of death. The primary exception would be for a situation when the note was reported at the unpaid balance on one date and was discounted on the other date. In either event, the amount of accrued interest would be the amount accrued at date of death.

3. Valuation normally depends on the terms of the note and not on the value of the underlying security unless a discount is claimed, in which event the underlying security must be impaired.

4. Notes receivable are reported on Schedule C of IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for decedent's estate ("the Return"), while accounts receivable are reported on Schedule F of the Return; both are reported on the List of Claims portion of the Inventory (Form 22).

5. Accrued interest is calculated by the use of the formula: P × R × T = I.

   P = the unpaid principal balance at the date of decedent's death (Item 12.06 of MIL); R = the interest rate specified in the note (Item 12.14 of MIL); T = the number of days between the date of last payment of all accrued interest (Item 12.16 of MIL) and the date of decedent's death (Item 1.07 of MIL) divided by 365; I = the amount of accrued interest to be included in decedent's estate (Item 12.17 of MIL). An example follows:

   Assume P = $8,000; R = 10%; T = 22 days

   I = $8,000 × .10 × 22/365

   I = $8,000 × .10 × .062739

   I = $48.22 (rounded to $48)

Value of note	$8,000
Accrued interest	48
Total value of note	$8,048

6. During periods of high inflation, low-interest-bearing notes are not worth face value. It is possible to value those notes at a discounted value, thereby reducing the amount of the death taxes payable. It is important to note that any payments collected after the recovery of the full discounted value may result in the recognition of ordinary income.

   If the note is an installment obligation and decedent and the obligor of the note are related persons, the FMV of the note cannot be reduced below its face amount. IRC, Section 691(a)(5)(B).

   One method for determining the discounted value is to (a) determine the prime rate on the date of D's death (Item 12.23 of MIL), (b) calculate the amount of interest that would be earned in one year on the unpaid principal balance on the date of decedent's death (multiply Item 12.06 of MIL by Item 12.14 of MIL), and (c) divide that amount of interest by the prime rate on the date of valuation

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(Item 12.23 of MIL). The resulting figure is the discounted value of the note. An example follows:

Assume the same facts as the previous example but that the prime rate on the date of valuation was 16 percent.

P = $8,000

R = 10%

I = $800 for a full year

Principal balance on date of death =	$8,000
Interest rate specified in note =	10%
Interest for a full year at specified rate ($8,000 × .10) =	$800
Prime rate on valuation date	16%
Discounted value of note ($800 divided by 16) =	$5,000

Sample Descriptions

1. Nondiscounted notes (Schedule C of the Return)

Note dated August 17, 2011, made payable by Oscar D. Carlos to the order of Decedent in original face amount of $18,000, bearing interest at 15% per annum, secured by first lien on real estate located at 1609 McKinney, Houston, Texas.

Unpaid principal	$13,766	
Accrued interest	65	
Total		$13,831

Unsecured note dated September 3, 2011, made payable by Charles A. Harris to the order of Decedent in original face amount of $2,000, bearing interest at 12% per annum.

Unpaid principal	$2,000	
Accrued interest	20	
Total		$2,020

2. Discounted note (Schedule C of the Return)

Note dated February 17, 2008, made payable by Wilson F. Meyer to the order of Decedent in the original principal sum of $11,000, bearing interest at the rate 10% per annum and having an unpaid principal balance of $8,000 on date of Decedent's death. Principal balance has been discounted to yield rate of return equal to the prime rate (16%) in effect on the date of valuation. Face of note ($8,000) less discount ($3,000) equals FMV of note.

Accrued interest at stated rate on principal balance unpaid on date of valuation.

Total	$5,000

Note: There is no discount taken on the interest actually accrued to date of death.

3. Accounts receivable (Schedule F of the Return)

Premium refund for unexpired car insurance	$82
Claim for refund of federal income taxes paid for 2010	$468
Deposit refund from Bell Telephone Company	$50
Personal loan due from Ronald L. Smith	$750
Accrued salary from Highland Mall Services	$888
Gift certificate, Betty's Better Bargains, Post, Texas	$25
Insurance renewal commissions, Gibraltar Insurance Company	$3,694

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SPECIAL INSTRUCTION 32—MOTOR VEHICLES

Motor vehicles are reported on Schedule F of IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for decedent's estate ("the Return").

Automobiles are generally valued according to the "blue book" value. Wholesale value is not ordinarily used. Sources for finding an automobile's value are J.D. Power, at **www.jdpower.com/cars**; Kelley Blue Book, at **www.kbb.com**; and, for 1990 and later, **www.edmunds.com**.

In Texas, registration of ownership of motor vehicles is governed by the Certificate of Title Act. The procedure for transfer of title registered in decedent's name is covered in Transportation Code, Section 501.074. Your county tax assessor-collector can explain local requirements for transfer of titles. Harris County requires an endorsed certificate of title; the previous year's registration receipt; a completed Form 130-U (Application for Texas Title); an odometer disclosure statement; and letters testamentary, letters of administration, or a certified copy of an appropriate court order. Notarization of the assignment is not necessary.

If no probate proceedings are necessary, it may be possible to use an affidavit of heirship for a motor vehicle (Form VTR-262).

Each Texas title to a motor vehicle must include an optional rights-of-survivorship agreement providing that the vehicle will be owned by the surviving eligible, acknowledging owners when one or more of the owners die. The survivor(s) may transfer ownership of the vehicle in the manner otherwise required by law, with a copy of the death certificate of the deceased person. A married person is eligible to file such an agreement only if the person's spouse is the only other party or if the vehicle is separate property. Transportation Code, Section 501.031. As a practical matter, a survivorship agreement between spouses can be made only on a title where there are no liens on the vehicle. In the case of an electronic lien title, the owner may request a paper title when the lien is released. An agreement between unmarried parties requires notarization and is accomplished using Form VTR-122.

Certificates of title and transfers of most motorboats and outboard motors are governed by the Texas Parks and Wildlife Code. Proof of ownership is by a manufacturer's or an importer's certificate, a certificate of title, or a certificate of number. Transfers are covered in Parks & Wildlife Code, Sections 31.036 through 31.056. A rights-of-survivorship agreement is available from Parks and Wildlife through Form PWD-790. Large vessels, such as yachts over 26 feet, may be documented through the U.S. Coast Guard National Vessel Documentation Center rather than titled through the Texas Parks and Wildlife Department. If the vessel is U.S. Coast Guard–documented, the vessel is required to be registered with the Texas Parks and Wildlife Department. To transfer title for a U.S. Coast Guard–documented vessel, probate of the will is likely necessary unless the title included rights of survivorship.

All aircraft are registered at the Federal Aviation Administration (FAA), Oklahoma City, Oklahoma. The FAA forms may be obtained from the Civil Aviation Registry at **www.faa.gov/licenses_certificates/aircraft_certification/aircraft_registry/aircraft_regn_forms/**. Due to increased security requirements, access to the public documents room by the general public has been superseded. That agency also maintains a lien registry but will not make a search for you. Those searches are made for a fee by commercial search firms located in Oklahoma City. If the aircraft has a radio, the transferee should obtain a radiotelephone license from the Federal Communications Commission office located nearest the transferee.

Sample Descriptions

1.	2022 Lexus 450 sedan VIN XXXXXXXXXXXXX000	$935
2.	2009 Winnebago motor home	$36,320
3.	2007 Harley-Davidson 450 motorcycle	$12,000
4.	1990 Glastron 16-foot outboard boat with Evinrude motor and trailer	$250
5.	2016 Cessna single-engine airplane, registration mark 4654M	$41,465
6.	2001 Patriot mobile home (20450), ID number 754441	$9,200

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SPECIAL INSTRUCTION 33—U.S. GOVERNMENT SAVINGS BONDS

Valuation

1. Savings bonds include Series E, F, G, H, J, K, EE, and HH bonds. Series E bonds were issued before 1980. The ownership of these bonds is determined by reference to the federal savings bonds regulations, and the values are determined by published redemption tables available at most banks. Most commercial banks will redeem these bonds. You can request a free copy of "Table of Redemption Values" Booklet PD-3600 from the Bureau of the Fiscal Service, Department of the Treasury at **www.treasurydirect.gov/forms.htm**. The Bureau also maintains the Savings Bond Calculator at **www.treasurydirect.gov/savings-bonds/savings-bond-calculator** for determining the value of Series E, EE, and I bonds. Be sure to indicate the month(s) for which you seek the redemption values. Redemption values for series E, EE, J, and K also appear in the CCH Standard Federal Tax Reporter.
2. Series E bonds were issued between May 1941 and June 1980. They cease drawing interest exactly forty years from their issue dates. As Series E bonds reach final maturity they should be cashed, or they may be exchanged for Series HH bonds (formerly Series H bonds) if the combined redemption value is $500 or more. Accrued interest on Series E bonds is not taxed at the time of the exchange. Series H bonds cannot be exchanged for Series HH bonds and should be redeemed at final maturity.
3. If decedent was the only registered owner of the bonds, they may be collected by presenting them to a bank, completing the appropriate form, and furnishing decedent's death certificate.
4. "Or" bonds (John Doe or Jane Doe) may be collected at any bank by either named party without any legal requirements, even when the other of the named persons is deceased.
5. "P.O.D. Bonds" or "Payable on Death Bonds" (John Doe, payable on death or P.O.D. to Jane Doe) may also be collected at a bank by the named survivor. Decedent's death certificate will be required.
6. These bonds and accrued interest are reportable on Schedule B of IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for decedent's estate ("the Return"), except that "or" bonds that created a true joint tenancy are reportable on Schedule E of the Return. It is possible for the accrued interest to be reported on decedent's final income tax return. If this is done, accrued interest is not reported on the estate tax return.
7. Series EE bonds are registered accrual type bonds. Their purchase price is 50 percent of the face amount. After six months they may be exchanged (in multiples of $500) for Series HH bonds or may be redeemed. Certain Series HH bonds held at least five years after November 1, 1982, earn interest at 85 percent of the average return on five-year marketable treasury securities but are guaranteed to earn at least 7.5 percent interest through initial maturity, compounded semiannually.
8. For Series E and EE bonds, interest accrued at decedent's death is the difference between decedent's cost and the redemption value on date of decedent's death. If decedent owned Series G and K bonds and died between interest payment dates, accrued interest is not reported on the estate tax return.
9. Alternate valuation is the same as date-of-death valuation.
10. Complete information regarding the tax status of Series EE and HH bonds is found in Department of the Treasury Circular, Public Debt Series No. 1-80 (Series EE) and No. 2-80 (Series HH), available at **www.treasurydirect.gov/laws-and-regulations/department-circulars**.
11. Claims for lost, stolen, or destroyed bonds are submitted on Form FS 1048, available at **www.treasurydirect.gov/forms.htm**. If possible, include serial numbers, issue dates, names and addresses on bonds, and Social Security numbers. Claims filed more than six years after final maturity will generally not be entertained unless the serial numbers are furnished. To search for lost bonds, begin at Treasury Hunt: **www.treasurydirect.gov/savings-bonds/manage-bonds/lost-stolen-destroyed-hh-bonds**.

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12. Transfer of all these bonds is governed exclusively by federal law and regulations that override inconsistent state laws. For example, co-ownership of a U.S. savings bond by husband and wife preempts Texas community property law, and a decedent's estate has no one-half community property interest in the bond. *Free v. Bland*, 369 U.S. 663 (1962).

Sample Description

$50 United States Savings Bond, Series E, I/N/O Harry D. Green or Mary L. Green, dated September 1977

Purchase price	$ 37.50	
Accrued interest	184.98	
Redemption value		$222.48

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SPECIAL INSTRUCTION 34—PERSONAL PROPERTY

Report items of personal property on Schedule F of IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return for decedent's estate ("the Return").

Valuation

1. In many cases decedent's household furniture, furnishings, and other similar tangible property have utilitarian value but no real value, and it is not unusual for a relatively nominal value to be used.
2. As people acquire more expensive tastes and turn to collectibles as a hedge against inflation, tangible personal property takes on greater significance. In analyzing decedent's assets, you should carefully review decedent's homeowner's insurance and personal property floater policies to determine if items of particular value have been individually listed or "scheduled." It is not uncommon for an IRS examining agent to ask for such policies, and you should be familiar with those policies to avoid being surprised and put on the defensive.
3. Treasury Regulations, Section 20.2031–6(a), states that a "room by room itemization of household and personal effects is desirable." It goes on to provide that all the articles having a value in excess of $100 should be itemized with a separate value for each item named. In lieu of such itemization, a written statement, made under penalties of perjury, may set forth an aggregate value as determined by a competent appraiser or dealer. An appraisal is required for items having an intrinsic, artistic, or collectible value in excess of $3,000 and for any collections whose combined artistic or collectible value exceeds $10,000. Treasury Regulations, Section 20.2031–6(b), and instructions to Item 1 on Schedule F of the Return.
4. Gold, silver, and foreign currencies held for investment should be reported on Schedule F rather than on Schedule C of the Return.
5. For miscellaneous property, see also Special Instruction 35—Valuing and Describing Other Assets.
6. The extent to which an examining agent might probe is illustrated by this excerpt from the now-obsolete 1980 edition of *IRS Estate Tax Audit Techniques Handbook* that contained instructions to agents:

> You may find assistance in solving such problems by scrutiny of insurance policies, by study of checking accounts, by inspecting individual and family portraits, and by comparison of the decedent's will with the inventory furnished. . . . If the lady had her portrait painted while she was wearing a diamond necklace, it is proper to inquire where it is, and what it is now worth.
>
> If we considered the items returned on Schedule F as truly reflecting the decedent's standard of living, we would in many cases have to conclude that the decedent owned but one suit, no wristwatch, and used orange crates for furniture.
>
> That is, the items returned and valued on this schedule frequently are not consistent with the decedent's financial and social position as disclosed by the return as a whole.

Sample Descriptions

1.	Stamp collection	$150
2.	Decedent's interest in household goods, furniture, furnishings, clothing, and personal items	$1,000
3.	Twenty-dollar gold piece, 1909 San Francisco mint	$475
4.	Rolex watch	$5,150
5.	Sable fur coat	$12,500

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SPECIAL INSTRUCTION 35—VALUING AND DESCRIBING OTHER ASSETS

Valuation (See Treasury Regulations, Sections 20.2031–1 through 20.2031–9)

1. *Business interests* (other than closely held securities).
   a. *Partnership* and *joint venture* interests are valued in the same manner as stocks in a closely held business. Consider discounts for minority interests, lack of control, and lack of marketability.
   b. *Sole proprietorships* may be valued in the same manner as closely held businesses but are generally valued at liquidation value since the key individual is deceased.
   c. These interests are reportable on Schedule F of IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return for decedent's estate ("the Return").
2. *Jointly owned property* is valued in the same manner as other property and is includible to the extent of the value of the tenancy contributed by or attributable to decedent. When reportable, these items are included on Schedule E of the Return.
3. *Annuities* are covered in Special Instruction 62—Annuities.
4. *Remainder and reversionary interests, interests for life* or for a *term of years* are valued under IRS tables. See *Actuarial Valuations Version 3A* (Rev. 5-2009) (remainder, income, and annuity examples), IRS Publication 1457.
5. The fair market value of *tangible personal property* is the price at which the item could be sold at retail to the public (not a dealer). Prices obtained at public auction or through newspaper advertisements within a reasonable time of the valuation date will be considered the retail price, and such assets are reportable on Schedule F of the Return.
6. *Household and personal effects* are valued in the same manner as tangible personal property, but an appraisal is required for federal estate tax purposes of items having marked artistic, intrinsic, or collectible value in excess of $3,000 and of any collections whose combined artistic or collectible value exceeds $3,000 (but note that the instructions to Item 1 on Schedule F of the Return refers only to collections valued in excess of $10,000). These assets are reportable on Schedule F of the Return. It is not unusual for the IRS to review personal property insurance to determine the values attributable to those items, and you should review those policies and make a careful investigation of the value of scheduled items. See also Treasury Regulations, Section 20.2031–6(c), regarding notice required to be given to the IRS before distribution or sale of household or personal effects in advance of an investigation by an IRS officer.
7. Because of their complexity, no effort is made to discuss the nature of valuation of any of the following:
   a. Farm products and growing crops
   b. Livestock. See section 24.51 ("Useful Websites"), *Texas Family Law Practice Manual*, *Practice Notes* (2020 ed.) regarding cattle and horses. Decedent's veterinarian, local trade associations, and the Texas Farm Bureau may also prove helpful.
   c. Trademarks, patents, copyrights, and royalties
   d. Leases
   e. Interests in trusts
   f. Gifts in contemplation of death, retained interests, and reversionary or remainder interests

Penalties

If the estate tax is underpaid by $5,000 or more because of valuation understatements, substantial penalties can be imposed (IRC, Section 6662(g)). These penalties can be imposed on the estate or on its beneficiaries. Even though the values set forth in the Return are usually determinative of the fair market value of the assets as well as the new income tax basis of those assets, the IRS takes the position that a beneficiary cannot rely with certainty on the valuation of property as set forth in such a return.

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The two situations that have the greatest effect on probate relate to substantial understatement of gift or estate tax valuations and substantial understatement of income tax. It would also be possible, but not likely, to have a substantial valuation overstatement.

If the value of property reported on an estate or gift tax return is not more than 65 percent of its correct value, an accuracy penalty of 20 percent of the underpayment is imposed if the underpayment exceeds $5,000. IRC, Section 6662(a), (g). If the value reported is not at least 40 percent of its correct value, the accuracy penalty increases to 40 percent. IRC, Section 6662(a), (h).

To reduce the risk of an undervaluation penalty, there must be a showing of good faith and a reasonable basis for the valuation. Even though no tax may be due, it may be essential to obtain an appraisal prepared by an independent appraiser who is experienced in valuing the type of asset involved. Discounts should be substantiated by appraisal and by citation to judicial authority.

If no federal estate tax will be imposed, it is not uncommon for an asset to be overvalued or at least valued at its maximum possible value to obtain a large tax basis for income tax purposes. This strategy has the potential for exposing the recipient of this asset to a deficiency for the understatement of income tax when that recipient uses the overstated basis to obtain increased deductions for depreciation.

These penalty sections place some practical risks on executors and administrators as well as on the estate and its beneficiaries. As a result, administration expenses are likely to increase due to the need for more appraisals. Attorneys should be certain to advise all fiduciaries and other clients of the risk of these valuation penalties.

Sample Descriptions

1. Sole proprietorship

   Assets of law practice of Harry D. Green not otherwise listed herein, including library, accounts receivable, work in process, furniture, furnishings, equipment — $9,000

2. Partnership

   Twenty-percent limited partnership interest in 315, Ltd., a Texas limited partnership; investment in acreage in Colorado County, Texas; valuation as required by partnership agreement per letter from general partner, copy of which is attached — $6,975

3. Tangible personal property (See Special Instruction 34—Personal Property) — $10

4. Patent

   U.S. Letters Patent number 7466377, issued to Decedent on April 18, 1998, covering a solar collection system. No commercial application — $10

5. Judgment

   Judgment for $866 against Warren W. Settegast, granted in cause number 97377, 63rd Judicial District Court of Rural County, Iowa, with accrued interest at 10% per annum from August 26, 2004 — $2,165

6. Foreign currency

   110 British pound notes (conversion rate of $1.85 on date of Decedent's death) — $201

7. Remainder interest in a trust

   Remainder interest in Harold R. Green Family Trust. Decedent had a general power of appointment over this interest. Value furnished by trustee, copy of which is attached — $16,642

8. Club membership

   Membership in Top of the Hill Country Club — $500

9. Interest in another estate

   One-fourth interest in all assets of Estate of Harold R. Green. Value furnished by executor of that estate, copy of which is attached — $50,227

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10. Farm products

Unharvested wheat from 640 acres, Wilkins County, Texas	$12,800

11. Livestock

Shetland pony	$600
Five-year-old gelding quarterhorse used for pleasure riding	$1,000
Twelve Jersey cows, eighteen calves, and one herd bull	$3,750

12. Farm equipment

1995 John Deere tractor	$3,775

13. Insurance premium refund

Premium refund for unexpired car insurance	$82

14. Tort claim pending

Claim for damages against Frank M. Johnson pending under Docket No. 2007-1080, 316th Judicial District Court, Harris County, Texas. Estimated value	$16,500

15. Other claim pending

Claim for refund pending against Coastal Cable Company	$78

16. Trademark

Trademark for use of name “6 Up”	$10

17. Copyright

Copyright on book entitled *Texas Cooking for Non Texans*	$100

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SPECIAL INSTRUCTION 36—EXECUTION OF WILLS

Intent, capacity, and execution determine whether a purported will is valid. The elements of proper execution vary whether the will is holographic or not and are set out in Chapter 251 of the Estates Code.

Intent is usually apparent—and all but disregarded in uncontested cases—but the applicant still must prove capacity and proper execution. If the will is self-proved, further evidence of capacity and execution is not required, greatly simplifying matters. Estates Code, Sections 251.102, 256.152. Examine every will both for validity and for a self-proving affidavit.

As a rule of thumb, a holographic will has one signature (*see* Estates Code, Section 251.052), an attested will has three (*see* Estates Code, Section 251.051), and a self-proved will has seven (*see* Estates Code, Section 251.104). Thanks to the one-step execution method enacted in 2011 (Estates Code, Section 251.1045), self-proved wills with just four signatures are increasingly common.

Did Decedent Leave a Will?

A valid will is signed by testator and, unless holographic, two witnesses. Another person may sign on the testator's behalf, if in his presence and at his request. Estates Code, Sections 251.051(2)(B), 251.052. Look for three signatures before analyzing the other execution requirements. A self-proving affidavit requires a notary (or else, rarely, an unsworn declaration in lieu of a sworn affidavit), but a will does not.

A typed document signed and notarized without two witnesses is not a valid will. A decedent's letter requesting a will is not itself a will. An unsigned draft is not a will. A form completed by hand but not signed is not a will. A copy of a valid will is not a will, but it may enable probate of the lost original. *See* Estates Code, Section 256.156.

A will includes a codicil and also an instrument that does nothing more than appoint an executor or guardian, direct how property may not be disposed, or revoke another will. Estates Code, Section 22.034.

Case law concerning wills is not intuitive, and analysis of an apparently defective will should never stop with the statutes. For example, who knew a stamped or typewritten signature counts? Or that a signature in the middle of a holographic will counts? See "The Anatomy of a Will: Practical Considerations in Will Drafting" by Steve R. Akers, Bernard E. Jones, and R. J. Watts, II, 2012 Estate Planning and Probate 101 Course, State Bar of Texas. The article, expanded and updated for the Estates Code, is published by the State Bar as *Wills Road Map: Practical Considerations in Will Drafting* (4th ed. 2025).

Is the Will Holographic?

A will wholly in decedent's handwriting is holographic and needs no witnesses. Estates Code, Section 251.052.

Is the Will Attested by Witnesses?

Unless holographic, wills must be attested and subscribed by two credible witnesses at least fourteen years old. Estates Code, Section 251.051(3). To "attest" is to witness the performance of a valid execution. "Subscribe" means to sign the will in the testator's presence. The witnesses typically watch the testator sign the will. Less often, they simply observe the testator's prior signature. *In re Estate of McGrew*, 906 S.W.2d 53 (Tex. App.—Tyler 1995, writ denied); *Venner v. Layton*, 244 S.W.2d 852, 856 (Tex. App.—Dallas 1951, writ ref'd n.r.e.). A self-proving affidavit may recite formal compliance, but it is not a requirement of an attested will. In other words, two witness signatures, without more, suggest the will was properly attested. Absent a self-proving affidavit, though, proof of execution of the attested will is required at the hearing. Estates Code, Section 256.153. See Special Instruction 93—Proof of Execution of Will (Not Self-Proved).

Is the Will Self-Proved?

For wills executed in Texas, "self-proved" means as provided in Estates Code, Chapter 251, Subchapter C. The self-proving affidavit may be a separate instrument (*see* Estates Code, Section 251.104) or integrated into the will to enable a one-step execution (*see* Estates Code, Section 251.1045).

If executed in another state or a foreign country, the will may be self-proved according to the law of that jurisdiction *at the time of execution*. Regardless of where executed, the will may be self-proved according to the law of the testator's domicile or residence at the

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time of *either* execution *or* the testator's death. Estates Code, Section 256.152(b).

To avoid proving the law of another jurisdiction, an enhanced affidavit may be executed by the testator and witnesses. Estates Code, Section 256.152(c).

A holographic will may be self-proved. The form is unique to holographic wills and requires only two signatures: the testator's and a notary's. *See* Estates Code, Section 251.107.

As long as the testator and witnesses live, a will not self-proved at execution may be made self-proving later with the appropriate affidavit. This is true for attested wills (*see* Estates Code, Section 251.103), holographic wills (*see* Estates Code, Section 251.107), and wills from other states or countries (*see* Estates Code, Section 256.152(c)).

When testator or witness signatures are accidentally omitted from the will, they may be "borrowed" from the self-proving affidavit. If so, the will is not considered self-proved. Estates Code, Section 251.105.

Unsworn Declarations

For a brief period, unsworn declarations were permitted, theoretically eliminating the need for a notary for a self-proving affidavit. Civil Practice & Remedies Code, Section 132.001, was amended effective September 1, 2011, to allow unsworn declarations made under penalty of perjury in lieu of sworn affidavits before a notary. That loophole was closed by Estates Code, Section 21.005, for self-proving affidavits executed on or after January 1, 2014. During the intervening twenty-eight months, though, self-proving affidavits without a notary were theoretically possible. Substantial compliance with the statutory form for unsworn declarations was required, making casual or accidental compliance unlikely. *See* Civil Practice & Remedies Code, Section 132.001. This issue might be safely ignored, except that the operative dates are of execution, not death, and it will be a lifetime before the last will from that period is probated.

Online Acknowledgments

Effective January 1, 2024, online notaries (but not traditional notaries) may take acknowledgments on tangible (paper) documents as well as on electronic signatures. This is a change from the prior law, which was effective July 1, 2018, stating that notaries may take acknowledgments remotely on electronic signatures only. The Texas secretary of state has educational information for online notarization procedures on their website as well as sample forms. The change seems to allow the online notarization of most documents in Texas. An exception may exist for will self-proving affidavits, as the statutes enabling online notarizations do not seem to enable remote attestation and subscription: witnesses still must be physically present to witness the testator's signature and to sign the will in the testator's presence. Civil Practice & Remedies Code, Sections 121.006 and 121.016; Government Code, Sections 406.101 through 406.113.

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SPECIAL INSTRUCTION 37—COMMON PROBLEMS AND MISTAKES IN PREPARING ESTATE TAX RETURN

The Internal Revenue Service issued its *Examination Technique Handbook for Estate Tax Examiners* on December 16, 1987 ("Handbook"). This was the first substantial revision since May 1980 and incorporated numerous legislative and other changes occurring over the years. It would be fair to say that certain of the examination techniques had become more aggressive. The manual was updated as of March 25, 2023.

The 1987 Handbook explained that the IRS asks for details that do not appear to bear directly on federal estate tax matters to determine if all assets have been included. It listed certain categories of priority returns to be examined first and a series of items to question in an audit. The examiner was directed to use IRS Form 5225, Estate Tax Preplanning and Examination Workpapers, in planning for the audit.

The 1987 Handbook went into great detail about real estate in general and provided rather exhaustive coverage of special-use valuation under IRC, Section 2032A, with emphasis on material participation and other technical issues. Although this handbook is dated, the general guidance continues to be quite helpful.

A copy of the current Handbook is available at **www.irs.gov/irm/** under Part 4, Chapter 25, Section 1, of the Internal Revenue Manual.

The following items should be considered when preparing any version of IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for decedent's estate ("the Return").

1. Comply with the instructions for the Return and its schedules.
2. Subtract mortgages from the value of real estate and show on Schedule A of the Return, unless decedent was personally liable for their payment. In those cases, they should be listed separately on Schedule K of the Return.
3. Include ad valorem taxes with debts owed by decedent on date of death on Schedule K of the Return. Ad valorem taxes on Texas real estate accrue as of January 1 of each year and should be deducted for the year of death even though not assessed or payable as of the date of death.
4. If the exact figure is known when the return is filed, fees of executors or administrators and of attorneys and accountants should not be shown as being estimated.
5. National Service Life Insurance (so-called GI Life Insurance) is always decedent's separate property.
6. All information, exhibits, and attachments required by the return and by the instructions must be enclosed.
7. Interest accrued to date of death should be included as an asset or deducted as a liability.
8. Dividends payable at date of death should be included as assets.
9. Income tax refunds should be included as assets, and income tax liabilities should be deducted as debts.
10. Schedule Q of the Return, used for calculating the credit for tax on prior transfers, is quite confusing. If the return is being examined, ask the agent for a copy of the audit form used by the IRS to make the computation of credit for tax on prior transfers.
11. Serious financial problems often occur because the personal representative fails to consider or take advantage of installment methods of paying the federal estate taxes.
12. Values and calculations should be rounded off in whole dollars to reduce math errors.
13. Items should be individually numbered on each schedule.

Current "red flags" include (1) family limited partnerships, (2) claims against the estate by heirs, (3) notes payable to decedent's family members, (4) failure to include all items shown on the inventory of decedent's safe deposit box on the appropriate schedules, (5) discounts in the valuation of assets, (6) separate property owned by decedent's surviving spouse, (7) amounts of fees of accountants, attorneys, administrators, and executors, and (8) no- or below-market interest note loans.

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SPECIAL INSTRUCTION 38—READING THE WILL

Reading a will is difficult and dangerous. The language is specialized and often limited or preempted by "silent doctrines" that, by design, lead to completely contrary results.

For example, gifts to spouses and in-laws and their fiduciary appointments are usually voided by a subsequent divorce, unless the will expressly provides otherwise. Estates Code, Section 123.001.

Common words may or may not have a common meaning when used in a will. Reference to a "child" includes by equitable adoption. Estates Code, Section 22.004(a). Unless it doesn't: the statutory definition does not preclude more or less restrictive definitions in the will. For example, a will may exclude adopted children or it may include stepchildren.

Unambiguous phrases (for example, "to my grandchildren") may be supplemented by statute. Estates Code, Section 255.401 (Posthumous Class Gift Membership).

For a thorough discussion of the substantive law affecting disposition of assets, extraneous references, restrictions on bequests, and more, see "The Anatomy of a Will: Practical Considerations in Will Drafting" by Steve R. Akers, Bernard E. Jones, and R. J. Watts, II, 2012 Estate Planning and Probate 101 Course, State Bar of Texas. The article, expanded and updated for the Estates Code, is published by the State Bar as *Wills Road Map: Practical Considerations in Will Drafting* (4th ed. 2025). Although presented as resources for the drafter, these texts are invaluable in estate administration, especially when interpreting wills drafted by others.

As a threshold matter, determine whether the will is valid. See Special Instruction 36—Execution of Wills.

Next, review the will for issues affecting the application. What is decedent's name? Is an executor named? Did decedent leave assets in a different name? Is administration independent? Is bond required? Does the will include a power of sale?

Compare the will to decedent's family tree. Was anyone disinherited? Who has homestead rights? Is anyone entitled to a family allowance?

Administrative issues should be resolved well before the application is filed. What are the dispositive provisions? Which gifts are subject to trust? Are all the beneficiaries living? If so, is there a survival requirement? Has it passed yet? If not, what happens to each deceased beneficiary's interest? Will any lapse? Does an anti-lapse statute apply?

How does the death of a child change gifts under the will? A birth?

Who bears the taxes? Is it the residuary? Does the estate pay secured debts, or do mortgages pass with the property?

Wills Road Map's Appendix A, "Checklist for Will Review," provides a comprehensive list of questions to consider when reading a will. See also "May It Please the Court: Meeting Court Expectations in Probate Administrations" by Madeline Schlesinger, 2019 Intermediate Estate Planning and Probate Course, State Bar of Texas, Appendix A, "Check 10 key points *in the Will* to get all the paperwork right for letters testamentary" (also available from the Travis County Probate Court at **www.traviscountytx.gov/images/probate/Docs/Check_10_key_points_inwill.pdf**), and "Performing a Pre-Mortem Autopsy: How to Dissect a Will Someone Else Drafted" by Christine S. Wakeman, 2016 Intermediate Estate Planning and Probate Course, State Bar of Texas.

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 the executor is not independent or if the executor wants court approval—if, for example, the will disposes of all of decedent's property to "my children" without naming them.Civil Practice & Remedies Code, Sections 37.004(a), 37.005(1), and 37.005(2). Declaratory judgment actions are expressly authorized in a muniment of title proceeding, and without a personal representative. Estates Code, Section 257.101. Declaratory judgments are beyond the scope of this System.

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SPECIAL INSTRUCTION 39—REQUEST FOR EXTENSION OF TIME TO PAY ESTATE TAXES

An extension of up to one year to pay federal estate taxes may be obtained for reasonable cause or up to ten years for undue hardship but is subject to advance approval by the Internal Revenue Service under IRC, Section 6161(a). Treasury Regulations, Section 20.6161–1(a).

Some factors that might be considered "reasonable cause" include owning a closely held business or farm as a significant asset of decedent's estate, high interest rates on borrowing to pay taxes, and decedent's estate's being involved in litigation. An example of undue hardship would be where assets must be liquidated to pay the tax but they can be sold only at a sacrifice price or in a depressed market. In addition to these factors, it is generally necessary to show lack of liquidity or a reasonable lack of ability to convert assets to cash.

At the election of the executor or administrator, an extension of time to pay the estate tax on the value of reversionary or remainder interests in property may be obtained until six months after the termination of the precedent interest(s) in the property. IRC, Section 6163. A further extension of up to three years may be granted at the discretion of the Internal Revenue Service. Treasury Regulations, Section 20.6163–1(a)(2).

If the estate contains an interest in a closely held business, the value of which exceeds 35 percent of the adjusted gross estate, the executor or administrator may elect to pay a pro rata portion of the federal estate tax in two to ten equal installments. IRC, Section 6166.

If requesting an extension of time to file IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for decedent's estate ("the Return"), an automatic six-month extension of time to file will be granted if IRS Form 4768, Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes (FF 11), is filed on or before the due date for the Return. Treasury Regulations, Section 20.6081–1(b).

If the automatic extension was not requested in time, an extension can be granted for good and sufficient cause. For this extension, it is necessary to prepare and attach a statement explaining why it is impossible or impractical to file a reasonably complete return by the due date. Treasury Regulations, Section 20.6081–1(c).

NOTE: THE AUTOMATIC EXTENSION OF TIME TO FILE DOES NOT GRANT AN AUTOMATIC EXTENSION OF TIME TO PAY THE TAX.

If requesting an extension of time to pay the tax, it is necessary to prepare and attach a statement made under penalties of perjury stating the period for which an extension is requested. The application must state the reasonable cause on which it is based, the undue hardship that would result if the extension were denied, or both. An application based on undue hardship may contain an alternate request for an extension based on reasonable cause. Treasury Regulations, Section 20.6161–1(b).

If requesting extensions of time to file the Return for decedent's estate and to pay the tax, the statements may be combined.

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SPECIAL INSTRUCTION 40—SECTION 303 REDEMPTION

The purpose of IRC, Section 303, is to ensure that certain corporate redemptions are not treated as dividends (ordinary income) but rather are treated as payments in exchange for stock (long-term capital gain). If the statutory requirements are met, these distributions of cash or other property can be up to the total amount of all estate, inheritance, and succession taxes (including interest), plus funeral expenses and expenses of administration allowable as deductions for the federal estate tax (whether or not so deducted). Thus the election to deduct such expenses for estate tax or for income tax purposes has no effect on this redemption.

To qualify, the stock to be redeemed must be included in decedent's gross estate, the stock must be liable for or obligated to contribute to the payment of those death taxes or expenses, and the value of decedent's stock must exceed 35 percent of decedent's adjusted gross estate. The stock can be in two or more corporations if decedent owns 20 percent or more in value in each corporation. The redemption generally must be made within four years after decedent's date of death.

If possible, stock qualifying for redemption under IRC, Section 303, should not be distributed to decedent's surviving spouse in an attempt to qualify also for the marital deduction. Assets qualifying for the marital deduction (see Special Instruction 42—The Marital Deduction) are not subject to the federal estate tax, and being subject to that tax is a prerequisite for favorable treatment under IRC, Section 303. In this sense, the marital deduction and the redemption under IRC, Section 303, are mutually exclusive.

It is possible to obtain the benefits of IRC, Section 303, and to defer the payment of a portion of the estate tax under IRC, Section 6166, but particular care must be taken to avoid accelerating the deferred tax when the redemption proceeds are received. In order not to accelerate the tax, the amount of each distribution must be applied promptly to the payment of the deferred estate tax.

If the stock is the subject of a generation-skipping transfer, then the generation-skipping transfer tax may be treated in the same manner as the federal estate tax for purposes of this redemption.

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SPECIAL INSTRUCTION 41—JOINTLY OWNED PROPERTY

The following discussion assumes that decedent's surviving spouse is a U.S. citizen. If decedent's spouse is not a U.S. citizen, it is necessary to determine the amount or proportion of contribution of the consideration made by decedent's spouse for property held jointly with right of survivorship by decedent and decedent's spouse and necessary disclosures must be made on Schedule E of decedent's IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return ("the Return").

Jointly owned properties are reported on Schedule E of the Return. If decedent and decedent's spouse owned joint bank accounts or securities as their community property, these items should be reported on Schedule C and not on Schedule E of the Return. If decedent and decedent's spouse owned property as joint tenants with right of survivorship and they were the only joint tenants, the gross estate of the first to die includes one-half of the property's value regardless of which spouse furnished the funds or how the joint tenancy was created. IRC, Section 2040(b). These assets are reported in Part 1 of Schedule E.

In other situations, the entire value of a joint account in decedent's name is included in decedent's estate except to the extent that some portion may be shown to belong to another person. IRC, Section 2040. These other joint interests are reported in Part 2 of Schedule E.

Estates Code, Chapters 111 through 114, deal with multiple-party accounts and contractual provisions relating to payment or transfer at death. These provisions provide a statutory plan to permit a written agreement to the effect that, at the death of a person, that person's interest in property passes to a designated survivor. The mere fact that an account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language, is not adequate for an inference that there is a survivorship agreement. Estates Code, Sections 112.052(d) and 113.151(c).

Estates Code, Chapter 111, provides for written agreements for right of survivorship by joint owners. Its provisions do not apply, however, to agreements between spouses regarding their community property. *See* Estates Code, Section 111.002.

The Texas Constitution (Article XVI, Section 15), as amended effective November 4, 1980, permits spouses not only to create separate property by a partition of their community property but also to agree that the income from a spouse's separate property would be the separate property of that spouse. Following the effective date of that amendment, a number of banks and savings and loan associations revised their forms so that, when a married couple opened a joint account, the language in the "small print" attempted to partition their community interest into equal separate property interests and provided that the earnings are also separate property. In these situations, the entirety of these accounts can pass to the survivor in accordance with the written agreement.

The 1987 amendment to the Texas Constitution (Article XVI, Section 15) permits spouses to agree in writing that all or any part of their community property becomes the property of the surviving spouse without the requirement of a prior partitioning of community property. Estates Code, Chapter 112, contains a comparable but somewhat more restrictive grant of authority. Also see Estates Code, Chapters 111 and 113, and Estates Code, Section 111.002, in particular. The 1987 amendment allowing spouses to create joint tenancies with right of survivorship may be retroactively applied to pre-amendment survivorship agreements. *Haynes v. Stripling*, 812 S.W.2d 397 (Tex. App.—Eastland 1991, no writ).

Signature cards for older accounts do not have these provisions. For these older accounts there is no partition, and regular community property rules apply. Accordingly, if decedent was married and you are trying to determine whether an account was community or separate property and whether it passed to the survivor(s) at decedent's death or is a part of decedent's probate estate, you *must* obtain copies of the signature card, resolutions, and other forms signed by decedent regardless of the date on which the account was opened.

Under Texas law, Estates Code, Section 113.151, provides the exclusive means for creating a right of survivorship in joint accounts. A written agreement signed by decedent is required. *See Stauffer v. Henderson*, 801 S.W.2d 858 (Tex. 1990).

Payment of a joint account is not to be made to decedent's executor or administrator or to decedent's heirs

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unless decedent was the last surviving party or unless there is no right of survivorship under Section 113.151, 113.152, 113.153, or 113.155 of the Estates Code. Estates Code, Section 113.203(b). However, a multiple-party account will not be effective in favor of a surviving party against an estate of a deceased party to the extent of amounts needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse and minor children, if other assets of the estate are insufficient, or against the claim of a secured creditor with a lien on the account. Estates Code, Section 113.252(a). The Code provides protection to a financial institution that pays funds to a surviving party pursuant to a written agreement and before receiving notice from decedent's executor or administrator stating the sums necessary to pay debts, taxes, claims, and expenses of administration. See Estates Code, Sections 113.207 and 113.253.

During the lifetime of all parties, a "joint account" belongs to the parties in proportion to their "net contributions" to the account. Estates Code, Section 113.102. If community property was used for the account, at the death of either spouse, the account belongs equally to the surviving spouse and to the heirs or devisees of the deceased spouse unless there is a right of survivorship.

At the death of one of the parties to a joint account with survivorship rights, the account belongs to the surviving party. Estates Code, Section 113.151(a). If community property was used, the results might be different if the account was established before November 3, 1987.

A "pay on death" or "P.O.D." account passes at the depositor's death to the payee if the payee survives. Estates Code, Section 113.152(a). If there is no express trust, a "trust account" passes to the beneficiary at the "trustee's" death. Estates Code, Section 113.153(a). If community property was used for either type account and if decedent was the depositor and decedent's surviving spouse was not the beneficiary, decedent's surviving spouse may assert a claim for one-half of the funds by alleging actual or constructive fraud.

Spouses may enter into agreements granting survivorship rights in community property. Estates Code, Chapter 112. In such instances, the property remains community property and, if subject to decedent's sole or joint management, disposition, or control during marriage, it will continue to be subject to decedent's liabilities without regard to the right of survivorship of decedent's spouse. Estates Code, Section 112.252(a).

Each Texas title to a motor vehicle must include an optional rights-of-survivorship agreement providing that the vehicle will be owned by the surviving eligible, acknowledging owners when one or more of the owners die. The survivor(s) may transfer ownership of the vehicle in the manner otherwise required by law, with a copy of the death certificate of the deceased person. A married person is eligible to file such an agreement only if the person's spouse is the only other party or if the vehicle is separate property. Transportation Code, Section 501.031.

For an excellent discussion of the issues and an explanation of the rights of the parties in these and other circumstances, see "Joint Tenancy with Right of Survivorship Issues" by Glenn M. Karisch, 2009 Advanced Estate Planning and Probate Course, State Bar of Texas.

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SPECIAL INSTRUCTION 42—THE MARITAL DEDUCTION

Due to the property system of the community property states, spouses are each made to be the owner of an undivided one-half interest in each asset owned by them as community property. When one spouse dies, only a one-half interest in those assets is included in the valuation of that spouse's estate.

In the other states, the common law system of property ownership prevails. In simplistic terms, this means that the person who acquired the property or in whose name property is held is regarded as the owner of a full interest in those assets.

An estate is taxed at progressively increasing rates based on the size of the estate. In an all-community-property estate worth $1 million it did not matter which spouse died first, since only one-half, or $500,000, would be taxed; but before 1948, in a common law state, if one spouse owned $1 million and the other spouse had no property and the wealthy spouse died first, the full $1 million would have been subject to estate taxes at that time.

In an effort to equalize the results for residents of the common law states, a deduction was allowed in the estate of the first spouse to die for gifts of separate property made to the surviving spouse. The marital deduction is a deduction for the value of gifts made to decedent's surviving spouse but is of limited use if the surviving spouse is not a U.S. citizen. IRC, Section 2056(d).

There is an annual gift tax exclusion of $194,000 for 2026 (adjusted for inflation in future years) for such a spouse (see IRC, Section 2523(i)), but there is no estate tax marital deduction unless a qualified domestic trust (QDOT) is used. IRC, Section 2056A. In all events, decedent's entire estate tax exemption may be used for gifts to a non–U.S. citizen spouse to the same extent as gifts to other persons.

From 1977 through 1981 the marital deduction was in the amount given by decedent to decedent's surviving spouse but limited to the larger of (1) one-half of decedent's adjusted gross estate or (2) $250,000. This was sometimes referred to as the "minimax" marital deduction. The use of the gift tax marital deduction reduced the amount of the estate tax marital deduction. As discussed in detail at the end of this Special Instruction, this rule can still apply.

The purpose of the marital deduction is to reduce the estate tax burden at the time of the death of the first spouse and to permit the postponement (not avoidance) of the full impact of the tax until the death of the surviving spouse. The general rule is that, to qualify for a marital deduction in decedent's estate, an asset must pass to decedent's spouse in such a form that it will be subject to estate taxation in the estate of the surviving spouse. The original intent was to obtain equality in the treatment of taxpayers in common law states with those in community property states (such as Texas).

> *Note:* If it can be avoided, stock qualifying for redemption under IRC, Section 303 (see Special Instruction 40—Section 303 Redemption), should not be distributed to decedent's surviving spouse in an attempt to qualify also for the marital deduction. Assets qualifying for the marital deduction are not subject to the federal estate tax, and being subject to that tax is a prerequisite for favorable treatment under IRC, Section 303. In this sense, the marital deduction and the redemption under IRC, Section 303, are mutually exclusive.

A gift in any form other than a terminable interest (such as a life estate) will qualify for the marital deduction. Such gifts by decedent to decedent's spouse may take the form of an outright gift or a marital deduction trust to avoid the terminable interest rule. If the gift is not outright, the amount of the deduction is based on the present value of the property or interest on the date of decedent's death whether or not the alternate valuation is used. The conditions for qualification of a power of appointment marital deduction trust are the following:

1. Decedent's spouse must be entitled to all the income for life.
2. The income must be paid at least annually.
3. Decedent's spouse must have the power to appoint the trust to the creditors of, the estate of, or directly to decedent's spouse (a general power of appointment).
4. The power of appointment must be exercisable by decedent's spouse alone and in all events.

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5. No one other than decedent's spouse can have the power to appoint any portion to anyone except decedent's spouse.

Elections to deduct administration and other expenses for income tax purposes rather than for estate tax purposes can increase the size of decedent's estate as well as the marital deduction. The IRS takes the position that the amount of the marital deduction must be reduced by the amount of those expenses even if such expenses are not deducted on the estate tax return.

The marital deduction is available only for property interests included in decedent's gross estate on Schedules A through I of IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return ("the Return"). The deduction is taken on Schedule M. In completing Schedule M, list all property interests received by decedent's surviving spouse from decedent's probate estate, as decedent's surviving joint tenant, as an appointee under decedent's exercise of a power of appointment, as a taker in default on decedent's failure to exercise a power of appointment, and as beneficiary of insurance on decedent's life. Where possible, cross-reference each item to the other schedules of the Return and to the applicable provision(s) of decedent's will. The value of each property interest should be reduced by the debts secured by it.

No marital deduction is allowed for a gift of a terminable interest, such as a life estate, an annuity, an estate for a term of years, or a patent. However, the concept of "qualified terminable interest property" (Q-TIP) was introduced in the Economic Recovery Tax Act of 1981 and is effective for estates of persons dying on or after January 1, 1982. The same principles apply as in the case of the traditional power of appointment marital deduction trust, except that no person has a power to appoint any part of the trust assets to any person other than decedent's spouse, except by a power exercisable only after the surviving spouse's death. IRC, Section 2056(b)(7)(B)(ii). Absent exercise of power of appointment by decedent's spouse, at the spouse's death, the trust assets will pass in accordance with the terms of decedent's will although the value of those assets on the date of death of decedent's spouse will be included in the spouse's federal gross estate. Typically decedent's will provides for a trust funded with Q-TIP for the trust making payment of some part of the spouse's estate tax liability before distributing the remainder to beneficiaries specified by decedent. A Q-TIP trust is often used in blended families.

For Q-TIP to qualify for the marital deduction in decedent's estate, decedent's executor or administrator must make an irrevocable election on IRS Form 706. All these interests should be grouped together on Schedule M and designated as "Qualified Terminable Interest Property."

If (1) decedent died after November 10, 1988, (2) decedent had a gross estate of more than the applicable exclusion amount (as determined in Worksheet 6), and (3) *decedent's surviving spouse is not a U.S. citizen*, the estate tax marital deduction will not be available except by the use of a QDOT. IRC, Sections 2056(d) and 2056A. Note that the critical factor for decedent's surviving spouse is citizenship rather than residency. The use of a QDOT does not provide a true marital deduction or an escape from estate taxes. The tax is simply postponed until principal distributions are made or until the death of decedent's surviving spouse.

For qualification as a QDOT, there must be a trust that otherwise qualifies for the marital deduction; at least one trustee must be a U.S. citizen or a domestic corporation, and no distributions of principal may be made unless such a trustee has the right to withhold the QDOT tax imposed on the distribution; and a proper (but irrevocable) election must be made on IRS Form 706 for decedent's estate. IRC, Section 2056A. In the case of decedents who die after August 5, 1997, the IRS has the power (but not the obligation) to issue regulations waiving the requirement of a U.S. trustee. IRC, Section 2056A(a)(1). This trust can be created under decedent's will or can be created by decedent's surviving spouse.

If decedent's surviving spouse was a U.S. resident at all times after decedent's death and becomes a U.S. citizen before "making" (filing) decedent's estate tax return, normal marital deduction rules will apply. IRC, Section 2056(d)(4). At least for tax purposes, becoming a U.S. citizen is a more desirable method of obtaining the marital deduction than using a QDOT. Non–U.S. citizen spouses, however, should not rely on postmortem naturalization to avoid a QDOT because the naturalization timeline is uncertain and largely outside the surviving spouse's control.

All distributions from the corpus of the QDOT, as well as the balance on hand at the death of decedent's surviving spouse, will be taxed at the highest marginal estate tax rate of decedent's estate. A limited exception exists for "hardship" distributions made during the lifetime of the surviving spouse. The credit for previously taxed property should be available for the estate of the surviving spouse. Taxable events such as these are reported on IRS Form 706-QDT, U.S. Estate Tax Return for Qualified Domestic Trusts (form not provided in this System).

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It is not always clear whether to claim a marital deduction and, if so, how much to claim. In smaller estates, many lawyers recommend taking the full deduction available even though this forgoes the use of the exemption equivalent for gifts to children and may result in "stacking" the estate of the surviving spouse. In large estates where both spouses are expected to die within close proximity of each other, it may be advantageous to forgo the marital deduction entirely or merely to use that portion necessary to equalize the two estates.

Further coverage is beyond the scope of this System. Detailed coverage is provided in "International Estate Planning (with Emphasis on the Qualified Domestic Trust)" by Rodney C. Koenig and Judith Williams, 1989 Advanced Estate Planning and Probate Course, State Bar of Texas, and "Planning for Aliens (Including Qualified Domestic Trusts)" by Henry S. Ziegler, 1991 Advanced Estate Planning and Probate Course, State Bar of Texas.

There is a **transitional rule** for formula marital deduction clauses contained in wills and other documents executed on or before September 12, 1981. These formula clauses typically give to the spouse an amount (or a fractional part) of the estate equal to the maximum marital deduction, with the rest of the estate passing to or for the benefit of others. Since the maximum marital deduction is now unlimited, such a provision would cause the entire estate to pass to the spouse while children and others would receive nothing. Congress chose to avoid this result by specifying that the unlimited marital deduction would not apply to wills and trusts containing formula clauses if those wills and trusts were executed on or before September 12, 1981. If decedent's will was signed on or before that date *and* has a formula marital deduction clause, the unlimited marital deduction is generally not available and the marital deduction must be determined under the old rules.

Decedent's intent to adopt subsequent tax changes may extend the unlimited marital deduction to old wills. Private Letter Ruling 90-48-001 (Aug. 16, 1990) (full deduction allowed where decedent's will referred to the Internal Revenue Code as "now existing or hereafter amended"). See also "Transfer Tax Planning Between the Deaths" by Glen A. Yale, 2008 Advanced Estate Planning Strategies Course, State Bar of Texas.

The marital deduction is for the amount given by decedent to decedent's surviving spouse, but limited to the larger of (1) one-half of decedent's adjusted gross estate or (2) $250,000 (the "minimax" marital deduction).

The $250,000 minimax marital deduction is available to the all/part-community-property estate but is subject to what the Code calls the "community property adjustment." This can be expressed in terms of the Stanley M. Johanson formula:

> A – [B – (C–D)] where A = $250,000; B = Value of community property in decedent's gross estate, including tainted separate property; C = Total amount of deductions for decedent's debts, funeral expenses, and expenses of administration allowable against decedent's estate; D = An allocable portion of those deductions in the ratio of decedent's separate property to decedent's gross estate.

Because of those adjustments, there generally will be no marital deduction for the all-community-property estate of $550,000 or more.

In making your calculations, it may prove helpful for you to obtain and follow the computation provided in the November 1981 revision of IRS Form 706 (United States Estate Tax Return) and review the IRS instructions to that form.

CAVEAT: Do not use Worksheet 14 unless decedent died before 1982 or had a formula marital deduction provision in a will dated on or before September 12, 1981.

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SPECIAL INSTRUCTION 43—CREDIT FOR TAX ON PRIOR TRANSFERS

A credit is allowed under IRC, Section 2013(a), against decedent's federal estate tax liability for federal estate tax that has been paid on the transfer of property to decedent from a transferor who died within ten years before, or two years after, decedent. The credit is available only with respect to federal estate tax paid by the transferor's estate and not with respect to any gift tax paid by the transferor. The purpose is to prevent double federal estate tax liability on the value of the property passed from one decedent to a person who dies shortly before or after the transfer.

The amount of credit allowed varies, depending on the length of time between decedent's death and the transferor's death. If property has been transferred to decedent from more than one transferor, this sliding scale is applied separately with respect to each of the transferors.

There is no requirement that the transferred property be identified in decedent's estate or that the property be in existence at the time of decedent's death. It is sufficient that the transfer of the property was subjected to federal estate tax in the estate of the transferor and that the specified time did not elapse between the deaths of decedent and the transferor. There is no property tracing requirement.

The completion of Schedule Q of decedent's estate tax return calls for some of the most complex calculations imaginable. The IRS Instructions to Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, contain detailed instructions for completing the schedule and a worksheet that should be completed first. Note that Part I of the worksheet relates to the transferor(s) and Part II relates to decedent's estate. On the worksheet, the term "transferee" refers to decedent. Further coverage is beyond the scope of this System.

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SPECIAL INSTRUCTION 44—TEXAS INHERITANCE TAX

The Texas inheritance tax was based on the federal credit. As the credit decreased and was finally eliminated, the Texas inheritance tax was also eliminated. Therefore, no Texas inheritance tax or Texas generation-skipping transfer tax will be due and no return is required.

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SPECIAL INSTRUCTION 45—WHEN TO TERMINATE ADMINISTRATION OF ESTATE

Since there is no administration in a muniment of title proceeding, a proceeding to declare heirship, or a small estate proceeding, there is no administration to terminate.

Eventually the administration of other estates will come to an end. Most clients desire the administration of the estate to be concluded as rapidly as possible. However, in many estates in which tax planning has called for the creation of the estate as a separate entity for income tax purposes, it may be advantageous to "keep the estate open" for as long as possible.

For income tax purposes, an estate is considered terminated after a reasonable period for performing the ordinary duties of administration. Since an audit or a deficiency assessment may occur at any time within three years and nine months following the date of decedent's death, an estate may be kept open during that entire period even when all other debts and claims have been paid. There is authority for the proposition that the estate continues to be open until all deferred payments of federal estate tax have been made.

A simple way to close the estate for income tax purposes is to check the box marked "Final Return" on IRS Form 1041, U.S. Income Tax Return for Estates and Trusts, for the final year. Note that an entire twelve-month period is not required for the final return and that the estate's year may be a short year.

For a court-supervised administration (administration with dependent executor, administration with will annexed, or regular dependent administration), the estate is closed and the administration is terminated on the court's approval of the account for final settlement and the order of the court discharging the executor or administrator, canceling the letters testamentary or letters of administration, discharging and releasing any bond sureties, and declaring the estate closed. Estates Code, Section 362.013.

Estates Code, Chapter 405, provides procedures for closing an independent administration by closing report or notice of closing estate. These procedures are not covered by this System. The author does not ordinarily take any action to formally close an independent administration. There have been numerous instances of stock certificates located for the first time several years after all work has been concluded and the file closed and forgotten. If the estate has not been closed, it is possible to obtain current letters testamentary to facilitate the transfer of these newly discovered assets.

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SPECIAL INSTRUCTION 46—BOND

Bond is required of the executor or administrator in all dependent administrations unless the representative is an authorized corporate fiduciary or decedent's will directs that no bond is required. Estates Code, Section 305.101.

In an independent administration created by agreement, bond is required unless the court waives bond on application. Estates Code, Section 401.005. In this System we have assumed that bond has been waived in an independent administration created by agreement. Check your court's policy if any distributee is a minor, disabled, or under a guardianship. Some will not waive bond if any distributee is an incapacitated person (see Estates Code, Section 22.016).

Estates Code, Section 401.005, enables but does not require the court to waive bond on the unanimous agreement of decedent's distributees. This power extends to estates where an independent administration is created by agreement and (1) the will names an executor but does not create an independent administration (Estates Code, Section 401.002(a)); (2) the will names no executor who can serve and does not create an independent administration (Estates Code, Section 401.002(b)); and (3) there was no will (Estates Code, Section 401.003). There is no express provision for the court to waive bond when the will names an independent executor but does not waive bond. "May It Please the Court: Meeting Court Expectations in Probate Administrations" by Madeline Schlesinger, 2019 Intermediate Estate Planning and Probate Course, State Bar of Texas, Appendix A, "Check 10 key points *in the Will* to get all the paperwork right for letters testamentary," at 14–15. To enable the court to waive bond in this fourth case, each named executor may decline to serve *as executor* before proceeding with an application for an independent administration with will annexed (TBA) and appointment of *an administrator* under Estates Code, Section 401.002(b), in which case Estates Code, Section 401.005(a), applies.

At the hearing, you should present evidence as to the amount of cash on hand and estimated to be needed for administrative purposes, revenue anticipated for the next twelve months, estimated value of securities, face value of life insurance or other policies payable to decedent or decedent's estate, estimated value of other personal property, and estimated amount of debts owed by the estate. Estates Code, Section 305.152.

The amount of the bond is fixed by the court in an amount equal to the estimated value of personal property of decedent's estate, together with an additional amount sufficient to cover revenue anticipated to be derived during the next twelve months. Revenue includes interest, dividends, collectible claims, rentals, and installment payments other than Social Security payments. Estates Code, Section 305.153(a). The bond is to be secured by sureties or by deposits of cash or securities approved by the court in lieu of sureties. Estates Code, Section 305.156(a).

If the executor or administrator is also entitled to all of decedent's estate, the bond may be in an amount sufficient to pay creditors if that amount is less. Estates Code, Section 305.151(b).

Likewise, the amount of the bond may be reduced if the executor or administrator deposits funds or securities in safekeeping where their withdrawal is not permitted without an order from the court. Estates Code, Section 305.155.

Before coming to court, you should have the applicant prequalify with the surety company to ensure that the applicant is bondable.

The bond is to be filed within twenty days after the order granting letters. The court is to promptly review the filed bond and approve it if acceptable. Estates Code, Section 305.004(a), (b). However, in a temporary dependent administration (TDA) the bond must be filed no later than the third business day after the date of the order. Estates Code, Section 452.004(b).

You must determine the local custom concerning individual sureties, because in some counties individual sureties are acceptable, while in other counties they are not permitted. Even where they are permitted, the court cannot consider a bond with individual sureties until each proposed individual surety executes an affidavit stating the amount by which assets of that surety reachable by creditors exceed his liabilities. The total net worth of the sureties must equal at least double the amount of the bond. The affidavits must be presented to the court for consideration and, if approved, are attached to and made a part of the bond. Estates Code, Section 305.203. The bond is signed by decedent's executor or administrator as the principal and by the corporate or individual sureties. Estates Code, Section 305.107.

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Additional procedures are specified for bonds and sureties in other situations. See Estates Code, Chapter 305.

Check with the clerk to determine the proper procedure for filing the bond.

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SPECIAL INSTRUCTION 47—SALE OF REAL PROPERTY DURING ADMINISTRATION

Most wills grant a power of sale of real property of an estate, in which case no court order is required, although specific provisions of the will relating to sale must be followed. Estates Code, Section 356.002. If decedent left no will or the will does not authorize the executor to sell real property, the court may grant an independent executor or independent administrator any power of sale agreed to by all the interested distributees. Estates Code, Section 401.006. Otherwise, real property of an estate may be sold only by order of the court. Estates Code, Section 356.001.

Even without the power of sale's being granted in decedent's will or by agreement, real property may be ordered sold pursuant to the provisions of Estates Code, Section 356.251, when it is necessary or advisable to do so to pay expenses of the administration, funeral expenses, expenses of last illness, allowances, and claims against decedent's estate or when selling the interest is considered in the estate's best interest.

Sales in lieu of a partition as permitted under Estates Code, Section 360.202, are not covered by this System. Likewise, public sales are beyond the scope of this System.

Private sales are covered and the procedures are set forth in Estates Code, Chapter 356, Subchapters F, G, J, and L. A private sale may be conducted after decedent's inventory has been filed and approved by the court. It begins with the filing of the Application for Sale of Real Property (Form 39) with Verified Exhibit Showing Condition of the Estate (Form 40). The clerk then issues a citation informing all persons interested in the estate of the right to file an opposition within the time prescribed by the court. Estates Code, Section 356.253. A hearing is required only if an opposition is timely filed, but the court may determine in its discretion that a hearing is necessary even if no opposition is filed. The date of the hearing is set by the court. Estates Code, Section 356.255. If the court finds the sale is necessary or advisable, the court will authorize the sale of the property by signing the Order of Sale of Real Property (Form 42). See Estates Code, Section 356.256.

Many courts require testimony regarding whether decedent applied for and received Medicaid benefits on or after March 1, 2005. Those benefits may be subject to a claim for recovery under the Medicaid Estate Recovery Program (MERP). If decedent received covered benefits, the Texas Department of Aging and Disability Services (DADS) must be contacted to determine whether a MERP claim has been or will be filed against the estate. The form found at **www.hhs.texas.gov/sites/default/files/documents/services/aging/txmerpcertificationform.pdf** should be submitted to obtain information about any claim. The form returned by DADS provides evidence concerning any such claim. Details about MERP, including claims procedures and exemptions, are found at Administrative Code, Title 1, Chapter 373. See Special Instruction 100—Needs-Based Benefits.

Following the court's order authorizing the sale, decedent's executor or administrator may enter into a contract to sell the property. Note that the cash down payment must be at least 20 percent of the purchase price, and any credit sale must be evidenced by a note bearing interest of not less than 4 percent per year, with installments due at least annually, providing for acceleration of maturity on default, and secured by a retained vendor's lien and a deed of trust with foreclosure provisions. Estates Code, Section 356.302. Note that IRC, Section 1274, may bear on the interest rate.

After the contract has been signed, a report of the contract for sale—or, for estates of decedents who died before September 1, 2019, a report of the sale—is filed with the court. In some Texas counties the court also may require an appraisal of the property by a court-appointed or other appraiser. The Report of [Contract for] Sale of Real Property (Form 43) must state the purchase price and terms of the sale (Estates Code, Section 356.551) and must be on file with the court for at least five days before the court may enter any order concerning the property. Estates Code, Section 356.552. If the details of the sale are approved by the court following the expiration of this five-day period, the judge will sign an Order [Confirming/Approving] Sale of Real Property (Form 44). Estates Code, Section 356.556. (Relevant sections of the Estates Code provided for court confirmation, rather than approval, of sales in estates of decedents who died before September 1, 2019.) When the judge signs this order, the Deed (Form 45) may be executed by decedent's executor or administrator and title to the property passes to the

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purchaser. Estates Code, Sections 356.557 and 356.558. Note that a general warranty deed should not be given, because decedent's executor or administrator does not have the power to bind decedent's estate or its beneficiaries. A deed without warranty or a special warranty deed should be used.

Careful note should be made of the need for an accurate description of the property in the application, order of sale, report of sale, order confirming sale, and deed. The most accurate means is to photocopy the property description and attach it to each of these documents.

Attaching copies of the earnest money contract, appraisal, and tentative HUD settlement to the report of sale is recommended. If the administrator has a bond, it will be increased to cover the cash proceeds from the sale.

Should the sale fall through and not be consummated, the order of the court authorizing the sale should be set aside by the filing of Application to Set Aside Report of [Contract for] Sale and Order [Confirming/Approving] Sale and the proposed Order thereon (Form 46), whereupon the procedure must be initiated again to effect a sale.

After decedent's Inventory, Appraisement, and List of Claims (Form 22) has been filed and approved, if real property is to be sold by private sale during administration and if power of sale of real property is not specified in decedent's will, follow the procedure outlined in Item 83 of the Checkplan.

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SPECIAL INSTRUCTION 48—SALE OF PERSONAL PROPERTY DURING ADMINISTRATION

Most wills grant a power of sale of personal property of an estate, in which case no court order is required, although specific provisions of the will relating to sale must be followed. Estates Code, Section 356.002. If decedent left no will or the will does not authorize the executor to sell personal property, the court may grant an independent executor or independent administrator any power of sale agreed to by all the interested distributees. Estates Code, Section 401.006. Otherwise, personal property of an estate may be sold only by order of the court. Estates Code, Section 356.001.

To the extent possible, proceedings concerning the sale of personal property should conform to the requirements under Estates Code, Chapter 356, Subchapter F, for the sale of real estate. Estates Code, Section 356.102. The laws regulating the approval or disapproval of a sale of real estate (Estates Code, Chapter 356, Subchapter K) apply to sales of personal property, although a conveyance is not required. Estates Code, Section 356.105(a). For such sales, see also Special Instruction 47—Sale of Real Property during Administration.

Even without the power of sale's being granted in decedent's will, personal property may be ordered sold pursuant to the provisions of Estates Code, Section 356.101, when it is necessary to pay expenses of administration, funeral expenses, expenses of last illness, claims, or various allowances such as the family allowance. Ordinarily exempt property or specific legacies are not to be sold.

Sales of livestock are covered by Estates Code, Sections 356.151 through 356.155, and are not specifically covered in this System. Likewise, public sales are beyond the scope of this System.

Private sales of personal property are covered and the procedures are set forth in Estates Code, Sections 356.051, 356.101, 356.102, and 356.105. After decedent's inventory has been filed and approved by the court, the executor or administrator should promptly apply for a court order to sell certain estate property that is liable to perish, waste, or deteriorate in value or that will be an expense or disadvantage to the estate if kept. Estates Code, Section 356.051. See Special Instruction 50—Sale of Personal Property Likely to Perish, Waste, Etc. A private sale of other personal property begins with the filing of the Application for Sale of Personal Property under Section 356.101 of the Estates Code (Form 47) with Verified Exhibit Showing Condition of the Estate (Form 40). The clerk then issues a citation informing all persons interested in the estate of the right to file an opposition within the time prescribed by the court. A hearing is required only if an opposition is timely filed, but the court may determine in its discretion that a hearing is necessary even if no opposition is filed. The date of the hearing is set by the court. If the court finds the sale is necessary or advisable, the court will authorize the sale of the property by signing the Order of Sale of Personal Property under Section 356.101 of the Estates Code (Form 48). Estates Code, Sections 356.102 and 356.251 through 356.256.

Following this order, decedent's executor or administrator may receive a bid for sale of or enter into a contract to sell the property. When this has been done, a report of the successful bid or contract for sale—or, for estates of decedents who died before September 1, 2019, a report of the sale—is prepared and filed with the court. The Report of [Successful Bid or Contract for] Sale of Personal Property (Form 49) must state the purchase price and terms of the sale and must be on file with the court for at least five days before the court may enter any order concerning the property. If the sale is approved by the court following the expiration of this five-day period, the judge will sign an Order [Confirming/Approving] Sale of Personal Property (Form 50). (Relevant sections of the Estates Code provide for court confirmation, rather than approval, of sales in estates of decedents who died before September 1, 2019.) When the judge signs this order, the property may be sold and the right and title of the estate to the property vest in the purchaser on payment of the purchase price. No conveyance is necessary, although the executor or administrator may give a bill of sale without warranty to the purchaser. Estates Code, Sections 356.105 and 356.551 through 356.556.

After decedent's Inventory, Appraisement, and List of Claims (Form 22) has been filed and approved, if personal property is to be sold by private sale during administration and if power of sale of personal property is not specified in decedent's will, follow the procedure outlined in Item 92 of the Checkplan.

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SPECIAL INSTRUCTION 49—MARITAL PROPERTY RIGHTS

Unless decedent was married at the time of death, all of decedent's property is separate property.

Marital Property

In the case of a married couple, it is always necessary to identify husband's separate property, wife's separate property, and their community property.

Separate property and community property are defined in the Texas Constitution, Article XVI, Section 15, and in Family Code, Sections 3.001 and 3.002.

The three main categories of a spouse's separate property are (1) the property owned or claimed by that spouse before the marriage, (2) the property acquired at any time by that spouse by gift or inheritance, and (3) the recovery at any time by that spouse for personal injuries. Family Code, Section 3.001.

Community property is all other property acquired during marriage by either spouse. Family Code, Section 3.002. Property possessed by either spouse during or on dissolution of the marriage (for example, by death) is presumed to be community property, and a spouse or other person who wishes to establish that it is separate property has the burden of showing that by clear and convincing evidence. Family Code, Section 3.003.

Note that community property generally includes income from each spouse's separate property. Examples include interest earned on a separately owned bank account or certificate of deposit, cash dividends from separately owned stocks, and rent from separately owned real estate. There is an exception if the spouses have agreed that income from a spouse's separate property will be that spouse's separate property and their agreement complies with Texas Constitution, Article XVI, Section 15, and Family Code, Sections 4.101 through 4.106, and Family Code, Section 4.103, in particular.

If an asset is purchased with credit during the marriage, it is presumed to be the credit of the community and thus the asset is regarded as a community asset. This presumption can be overcome in limited circumstances. *See Cockerham v. Cockerham*, 527 S.W.2d 162, 171 (Tex. 1975).

Each spouse has the sole right to manage, control, and dispose of his or her (1) separate property; (2) personal earnings; (3) revenue from separate property; (4) recoveries for personal injuries; and (5) increases of, mutations of, and revenues from all property subject to that spouse's sole right to manage, control, and dispose. Family Code, Sections 3.101 and 3.102(a). Except as so provided, all community property is subject to their joint management, control, and disposition unless the spouses provide otherwise. Family Code, Section 3.102(c).

Thus, there are five kinds of marital property: (1) wife's separate property, (2) wife's sole management community property, (3) joint management community property, (4) husband's sole management community property, and (5) husband's separate property.

Ownership and categorization are fixed at the time an asset is acquired. This is called "inception of title."

The character of real property is controlled by the law of the state in which it is located, but personal property is controlled by the law of the state of domicile of the parties. Once fixed, this characterization does not change when the spouses move from one state to another.

Quasi-community property is an additional classification of property defined in Family Code, Section 7.002. This is property acquired by a spouse while domiciled in a state other than Texas that is construed to be community property if the property would have been community property had that spouse been domiciled in Texas at the time of acquisition. While this is an important concept in the context of property division in divorce, the Texas Supreme Court has refused to extend it to probate matters. *Estate of Hanau v. Hanau*, 730 S.W.2d 663 (Tex. 1987).

Casual handling of funds, failure to maintain separate bank accounts, or an inadequate accounting system can cause assets to lose their separate-property character by a process known as "commingling." The commingling of separate property with community property, coupled with the community property presumption, frequently makes it impossible for a spouse to assert a successful separate-property claim. The foundation for a successful claim occurs by a spouse's "tracing" separate property from inception of title to its present form, but this rarely can be done without well-maintained records. Tracing is covered in "Characterization & Tracing: An Overview" by Mary Johanna McCurley, Brad M. LaMorgese, Ryan Kirkham, and T.

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Hunter Lewis, 2011 Advanced Family Law Course, State Bar of Texas; "Characterization and Tracing—A New Spin on an Old Topic" by Wendy S. Burgower and Sara Springer Valentine, 2011 Marriage Dissolution Institute, State Bar of Texas; "Tracing Cash and Other Liquid Assets" by Randall B. Wilhite, 2010 New Frontiers in Marital Property Law Course, State Bar of Texas; and "Different Ways to Trace Separate Property" by Richard R. Orsinger, 2009 Advanced Family Law Course, State Bar of Texas.

Sometimes community funds are used to improve a spouse's separate property. Sometimes a spouse's separate funds are used to improve a community asset or the other spouse's separate property. An example would be for the husband to spend $15,000 of his separate cash to construct a swimming pool at the home owned by the wife before their marriage. This expenditure would not change the character of the home from being the wife's separate property, but, with proper records, it would permit the husband to trace his expenditure and assert a claim for reimbursement. More information on how this works is found in Special Instruction 76—Reimbursement.

Accounting principles and procedures relating to tracing and reimbursement are described in "Reimbursement" by Joan F. Jenkins and Susan E. Oehl, 2011 Advanced Family Law Course, State Bar of Texas; "Reimbursement: Statutory and Common Law Recoveries" by Michael P. Geary, 2010 New Frontiers in Marital Property Law Course, State Bar of Texas; "Equitable Relief/Reimbursement" by Jonathan J. Bates, 2010 Marriage Dissolution Institute, State Bar of Texas; "The New Reimbursement Statute: The Return of Common Law?" by Natalie L. Webb, 2010 Advanced Family Law Course, State Bar of Texas. See also "Reimbursements Revisited: Separate Property Companies; Jensen Claims; Alter Egos; Reverse Piercing; and Representing the Spouse Who Does Not Run the Company" by Keith M. Nelson, Cheryl L. Wilson, Donn C. Fullenweider, Jonathan J. Bates, and Monica Cruz, 2009 Advanced Family Law Course, State Bar of Texas.

The death of a spouse operates as a legal partition of the community property. Half is retained by the surviving spouse and the other half passes to the devisees (if there is a will) or to the heirs (if there is no will) of the deceased spouse.

Probate and Nonprobate Assets

Nonprobate assets are those involved in a transaction entered into during decedent's lifetime in which some agreement controls the disposition of those assets at decedent's death.

A person can confer benefits at death by the use of beneficiary designations and joint tenancies with right of survivorship. These assets will pass to the beneficiaries because of written contracts. Life insurance policies, payable on death (P.O.D.) bonds, and individual retirement accounts are just a few examples of nonprobate assets, so called because they pass by contract rather than by will or by statutory inheritance. It also is possible for spouses to create a right of survivorship in their community property. Estates Code, Chapter 112. See also Special Instruction 41—Jointly Owned Property and the section titled "Nonprobate Assets" in Special Instruction 23—Inventory, Appraisement, and List of Claims.

All other assets are probate assets, because they will pass by the terms of a will or, if there is no will, by the terms of Estates Code, Chapter 201. If there is not a will, the distinction between separate and community property is necessary because Estates Code, Section 201.002, and Estates Code, Section 201.003, provide different patterns of distribution depending on the characterization of the asset.

Significance of Characterization

Proper characterization is an imperative and, in some cases, the most significant part of dealing with an estate. Here are some basic rules:

1. Decedent's estate consists of all of decedent's separate property and one-half of all of the community property regardless of management rights.
2. If decedent had no will, then to the extent not disposed of by contract (nonprobate assets), decedent's separate property will be distributed as provided in Section 201.002 of the Estates Code, and decedent's half of the community will be distributed as provided in Section 201.003 of the Code.
3. If decedent had a will, then to the extent not disposed of by contract (nonprobate assets), decedent's separate property and decedent's half of the community property may be disposed of in any manner and to any persons designated in decedent's will.
4. Proper categorization identifies assets that are subject to the claims of creditors. Separate property of a nonobligor spouse will not be liable for the obligations of the other spouse. See

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also Special Instruction 72—Spousal Liability.

5. Categorization and tracing can create a right of reimbursement that will be an asset of decedent if decedent made the advance or a liability of decedent if the advance was for the benefit of decedent's separate property.
6. The income tax basis of decedent's separate property assets and *all* of the community property assets will be adjusted upward (stepped-up basis) or downward (stepped-down basis) to their fair market value on the date of decedent's death (or other date if alternate valuation is used for federal estate tax purposes).
7. Decedent's executor or administrator has the right to administer decedent's separate property, decedent's sole management community property, and all of the joint management community property but not the separate property or the sole management community property of decedent's surviving spouse. See Estates Code, Section 453.009.

Dissolution of Marriage

Texas law nullifies gifts made to a spouse under a will, codicil, or revocable trust (absent express provision otherwise in the instrument itself, a related contract, or a court order) if, after the instrument was drafted, the testator or trustor's marriage to the beneficiary was dissolved by divorce, annulment, or declaration of void marriage. Certain nontestamentary appointments and transfers may also be affected. Chapter 123 of the Estates Code addresses wills and nontestamentary transfers. See also Estates Code, Section 1104.211, regarding guardianship after divorce; Estates Code, Section 751.132, regarding powers of attorney; Health & Safety Code, Section 166.155(a–1), regarding medical powers of attorney; and Family Code, Sections 9.301 and 9.302, regarding life insurance policies and retirement plan benefits.

Further coverage is beyond the scope of this System. Detailed coverage is provided in separate articles, including "Characterization & Tracing: An Overview" by Mary Johanna McCurley, Brad M. LaMorgese, Ryan Kirkham, and T. Hunter Lewis, 2011 Advanced Family Law Course, State Bar of Texas; "Selected Issues Regarding Tracing and Characterization" by Patrice L. Ferguson and Cynthia P. Nguyen, 2010 Marriage Dissolution Institute, State Bar of Texas; "Separate and Community Property: 30 Rules with Explanations & Examples" by Richard R. Orsinger, R. Scott Downing, and Stephen M. Orsinger, 2010 Advanced Family Law Course, State Bar of Texas; "Troubling Issues of Characterization, Reimbursement, Valuation, and Division upon Divorce" by Richard R. Orsinger, 2010 Advanced Family Law Course, State Bar of Texas; "Different Ways to Trace Separate Property" by Richard R. Orsinger, 2009 Advanced Family Law Course, State Bar of Texas; "Analyzing Your Property Case: A Prequel to Characterization, Valuation and Division of the Marital Estate" by Charles E. Hardy and Kelly Koch, 2009 Advanced Family Law Course, State Bar of Texas; "Characterization Challenges" by Diana S. Friedman and Randall B. Wilhite, 2008 Advanced Family Law Course, State Bar of Texas.

See also "Valuation of Property: A Practitioner's Perspective" by T. Hunter Lewis, Robert C. Sullivan, Marilea Lewis, and Tracey Edward Gajak, 2011 Advanced Family Law Course, State Bar of Texas; "Valuation: Approaches, Assets and Authority" by R. Scott Downing, Stephen M. Orsinger, Lindsay D. Barbee, and Ryan S. Kirkham, 2010 Advanced Family Law Course, State Bar of Texas; and "Protecting Your Characterization and Valuations Claims: Avoiding Waiver or Admission in Inventory, Discovery Responses and Testimony" by Barbara D. Nunneley and Stephen C. Farrar, 2009 Advanced Family Law Course, State Bar of Texas.

Also available are "Closely Held Business Interests: Characterization and Tracing" and "Whose Money Is It? The Characterization of Partnership Distributions" by James M. Wingate, 2010 New Frontiers in Marital Property Law Course, State Bar of Texas.

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SPECIAL INSTRUCTION 50—SALE OF PERSONAL PROPERTY LIKELY TO PERISH, WASTE, ETC.

After decedent's inventory has been filed and approved, decedent's executor or administrator is to apply promptly for a court order to sell certain personal property that might perish, waste, or deteriorate in value or that will be an expense or disadvantage to the estate if kept. Estates Code, Section 356.051(a). If the court is satisfied with the conditions and determines that the bond is sufficient, the court may enter its order permitting such disposition without the necessity of further proceedings.

If such sale is desired before the Inventory, Appraisement, and List of Claims (Form 22) has been filed, see Special Instruction 57—Temporary Dependent Administration (TDA), refer to the section in the Checkplan entitled "Temporary Dependent Administration (TDA)," and take appropriate action.

Note: Sales made under Estates Code, Section 356.051, are at the discretion of the probate judge, and, notwithstanding the broad provisions of the statute, the judges in many counties require strong proof that this section should apply. In the usual sale under this section, the provisions for notice are dispensed with and the order of sale may be obtained the same day the application for sale is filed and heard. However, this also is discretionary with the court. Credit sales require a payment schedule of six months or less.

After decedent's inventory, appraisement, and list of claims has been filed and approved, if decedent owned personal property that is likely to perish, waste, deteriorate, or be an unnecessary expense or disadvantage to decedent's estate, refer to Item 94 of the Checkplan and take appropriate action.

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SPECIAL INSTRUCTION 51—FAMILY ALLOWANCE

An allowance for support of decedent's surviving spouse, minor children, and adult incapacitated children can be fixed by the court immediately after approval of decedent's inventory or filing of the affidavit in lieu of the inventory. Estates Code, Sections 353.101 through 353.107. The allowance is set in an amount sufficient for maintenance of the surviving spouse and eligible children for one year from the date of decedent's death. The amount is fixed with consideration of the facts and circumstances existing and those anticipated to exist for the first year after decedent's death. Estates Code, Section 353.102.

A surviving spouse who has sufficient separate property for maintenance is not entitled to the allowance. The same is true for eligible children who have sufficient property in their own right. An adult incapacitated child is not entitled to the allowance if decedent was not supporting that child at the time of decedent's death. Estates Code, Section 353.101(d). The allowance is to be paid in preference to all other debts against decedent's estate except for those expenses of decedent's funeral and last illness that qualify as Class 1 claims under Section 355.102 of the Estates Code. Estates Code, Section 353.104.

The IRS treats these allowances as distributions to beneficiaries, and these payments are included in the income of the recipient(s) to the extent of the share of the recipient(s) of the estate's distributable net income.

After decedent's inventory has been filed and approved or the affidavit in lieu thereof has been filed, you should review the financial situation of decedent's family to determine whether a family allowance could and should be requested and, if so, refer to Item 100 of the Checkplan and take appropriate action.

It is possible, before the filing and approval of the inventory or the filing of the affidavit in lieu thereof, to make application and have the court fix the family allowance for the support of decedent's surviving spouse and eligible children. In this situation, the application must be accompanied by a verified affidavit describing the amount necessary for the maintenance of the surviving spouse and eligible children for one year after decedent's death and describing the spouse's separate property and any property that eligible children have in their own right. Estates Code, Section 353.101(b). This allowance is available whether or not decedent had a will.

Additional coverage is provided in "The Estate Administration Guide" by Sarah Patel Pacheco and Patrick J. Pacheco, 2017 Building Blocks of Wills, Estates and Probate Course, State Bar of Texas; "Handbook on Texas Marital Property Law for Estate Administration" by Thomas M. Featherston, Jr., 2023 Advanced Estate Planning and Probate Course, State Bar of Texas; and "Protecting the Surviving Spouse . . . and Protecting Yourself after *Belt v. Oppenheimer*" by Glenn M. Karisch, 2006 Advanced Estate Planning and Probate Course, State Bar of Texas.

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SPECIAL INSTRUCTION 52—EXEMPT PROPERTY, SETTING ASIDE EXEMPT PROPERTY, AND ALLOWANCE IN LIEU OF EXEMPT PROPERTY

The Texas Constitution (Article XVI, Section 50) provides protection for a person's homestead against general creditors. Similar protection of the homestead of a decedent who is survived by a spouse or minor child appears in Estates Code, Section 102.004.

Property Code, Sections 41.001 and 41.002, provide more details regarding the homestead. The homestead exemption protects only the surviving spouse and minor children. Estates Code, Section 353.051 and 353.052. Homestead rights are also granted to single adults. The property may be a residential homestead or a business homestead. Property Code, Section 41.002(a), (b). Cemetery lots are also exempt on the same basis. *See* Property Code, Section 41.001(a).

In general, the only claims that may be asserted against a homestead are limited to unpaid purchase-money mortgages, property taxes, and improvements made pursuant to a written and acknowledged contract signed by both spouses. Also, an owelty of partition, refinanced liens, including certain refinanced tax liens, certain homestead equity loans, and a reverse mortgage can create valid liens on the homestead. Property Code, Section 41.001(b); Estates Code, Section 102.004. The homestead is exempt from the claims of other creditors.

Rural homesteads may consist of up to two hundred acres for a family or one hundred acres for an unmarried adult. Property Code, Section 41.002(b). Excess acreage is subject to claims of all creditors.

Unharvested crops grown on the rural homestead are also exempt, *McCullough Hardware Co. v. Call*, 155 S.W. 718 (Tex. App.—Amarillo 1913, no writ), and proceeds from a voluntary sale or from insurance for damage to the homestead are exempt for up to six months. Property Code, Section 41.001(c); *see Sorenson v. City National Bank*, 49 S.W.2d 718 (Tex. [Comm'n Op.] 1932).

Urban homesteads are located within the limits or extraterritorial jurisdictions of municipalities or platted subdivisions and are provided with certain specified services, such as police and fire protection. Property Code, Section 41.002(c). An urban homestead may consist of up to ten acres in one or more contiguous lots. Property Code, Section 41.002(a). The improvements thereon are not subject to the claims of general creditors regardless of cost or value. The rules are identical for business and urban residential homesteads.

The Texas Constitution (Article XVI, Section 49) authorizes the legislature to grant exemptions for personal property. In response, the legislature has exempted certain personal property that may include furnishings of a home; provisions for consumption; certain livestock; household pets; farm and ranch vehicles and implements; tools, equipment, books, boats, motor vehicles, and apparatus used in a trade or profession; wearing apparel; certain jewelry; two firearms; sporting equipment; and certain motor vehicles. Property Code, Section 42.002. The total value of this personal property may not exceed $100,000 for a family or $50,000 for an unmarried adult. Property Code, Section 42.001(a). Current wages, professionally prescribed health aids, support payments, and religious bibles are exempt and not subject to the dollar limitations. Property Code, Section 42.001(b). Unpaid commissions may also be exempt. Property Code, Section 42.001(d).

Certain pension and profit-sharing plans, annuities, individual retirement accounts, health savings plans, and government payments are also exempt, as are certain college savings plans. Property Code, Section 42.0021. An interest or right in a qualified savings plan that was acquired by reason of the death of another person is exempt to the same extent that the interest or right of the decedent was exempt on the date of the decedent's death. Property Code, Section 42.0021(c).

However, contributions to a qualified savings plan that are excess contributions—inclusive of interest on such contributions—under IRC, Section 4973, are not exempt unless otherwise exempt by law. One example of nonexemption in this context requires caution: where a person grants a valid and enforceable security interest in the person's interest in or right to receive payments from a qualified savings plan to secure a loan, the person's right to receive those payments is subject to attachment, execution, and seizure for the satisfaction of the security interest or lien granted by

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the person to secure the loan. Property Code, Section 42.0021(d).

Certain insurance and annuity benefits are also exempted. Insurance Code, Sections 1108.051 through 1108.053.

None of these exemptions will defeat liens for child support. Property Code, Section 42.005; Insurance Code, Section 1108.053.

If exempt articles are not among the belongings of decedent, an allowance in lieu of the exempt articles must be made. Estates Code, Section 353.053(a).

The allowance in lieu of a homestead may not exceed $45,000, and the allowance for all other exempted property may not exceed $30,000, exclusive of the family allowance. Estates Code, Section 353.053(b).

Worker's compensation payments are not liable for the debts of decedent or the beneficiaries and are exempt from legal process. Labor Code, Section 408.201. However, they can be subject to liens or claims for an attorney's fee for representing an employee or legal beneficiary, court-ordered child support, and certain subrogation interests. Labor Code, Section 408.203.

Although there are also exemptions under the Federal Bankruptcy Act, they apply only to bankruptcy proceedings and not to probate proceedings.

One word of warning: Certain property exempt from creditors during a person's lifetime may still be exempt if the person has a surviving spouse, minor children, unmarried adult children who live with the family, or an adult child who is incapacitated, but in other situations the exemption will be lost on the person's death.

On application and as soon as the inventory is approved or the affidavit in lieu of the inventory is filed, the court shall set aside the homestead for the use and benefit of the surviving spouse and minor children and all other exempt property owned by decedent that is described by Property Code, Section 42.002(a), for the use or benefit of the surviving spouse, minor children, unmarried adult children who live with decedent's family, and each other adult child who is incapacitated. Estates Code, Section 353.051(a).

After decedent's Inventory, Appraisement, and List of Claims (Form 22) has been filed and approved by the court or the Affidavit in Lieu of Inventory, Appraisement, and List of Claims (Form 103) has been filed, review the financial situation of the family to determine whether exempt property should be set aside and, if so, refer to Item 101 of the Checkplan and take appropriate action.

If there was no exempt property, determine whether to seek an allowance in lieu thereof and, if so, refer to Item 102 of the Checkplan and take appropriate action.

It is possible, before the filing and approval of the inventory or filing of the affidavit in lieu thereof, to apply to have the court set aside exempt property. In this situation, the application must be accompanied by a verified affidavit listing all the property the applicant claims is exempt. Estates Code, Section 353.051(b).

Additional coverage is provided in "The Estate Administration Guide" by Sarah Patel Pacheco and Patrick J. Pacheco, 2017 Building Blocks of Wills, Estates and Probate Course, State Bar of Texas; "Creditors' Claims and Allowances in Decedents' Estates" by Lisa H. Jamieson, 2012 Building Blocks of Wills, Estates and Probate Course, State Bar of Texas; "Handbook on Texas Marital Property Law for Estate Administration" by Thomas M. Featherston, Jr., 2023 Advanced Estate Planning and Probate Course, State Bar of Texas; and "Protecting the Surviving Spouse . . . and Protecting Yourself after *Belt v. Oppenheimer*" by Glenn M. Karisch, 2006 Advanced Estate Planning and Probate Course, State Bar of Texas.

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SPECIAL INSTRUCTION 53—MINERAL LEASES

A mineral lease covering property belonging to an estate can be entered into only by order of the court unless the power to lease is specifically set out in decedent's will. When the power is specified in decedent's will, no order of the court is necessary, but the provisions of decedent's will must be followed.

Mineral leases may be authorized at public sale under the provisions of Estates Code, Sections 358.051 through 358.060, or may be negotiated privately under the provisions of Estates Code, Sections 358.101 and 358.102. Public sales are beyond the scope of this System. Private leasing procedures are much simpler than those involving the sale of real estate, since Sections 358.101 and 358.102 of the Code do not require the giving of any notice or the making of a report of lease or having the court sign an order setting the time and place of hearing or sign an order confirming the lease.

Generally speaking, someone who wishes to lease property has already made contact with decedent's executor or administrator and has prepared and presented a copy of the proposed lease for review. Once the business terms have been accepted and the form of the lease has been approved, you are ready to proceed. Note that the primary term of a lease made at public sale cannot exceed five years. Estates Code, Section 358.059(b). Although a maximum term is not specified for a lease made at private sale, a five-year term is probably going to be the outer limit that will be approved by a court.

The easiest way to have a lease authorized is to prepare and file an Application to Lease Property for Mineral Exploration and Development at Private Sale Pursuant to Section 358.101 of the Estates Code (Form 56) and attach a photocopy of the lease. Since a hearing on this application must be held not less than five days or more than ten days after the date of filing the application (Estates Code, Section 358.102(a)), it is very important to determine the judge's schedule before the application is filed.

At the hearing, if the court finds that the lease is for fair and sufficient consideration and on fair terms, the court will enter its Order Granting Application to Lease Property for Mineral Exploration and Development at Private Sale (Form 57). Once again, it is good practice to attach a photocopy of the proposed lease to the order itself. Within thirty days following the signing of the order, decedent's executor or administrator should actually enter into the lease agreement in accordance with the terms of the order and must do so if the lease was made at public sale. Estates Code, Section 358.057(b).

When attempting to authorize a mineral lease, it is very important to carefully observe the time schedules, because the lease is *void* if it is not authorized or entered into within the time periods prescribed above. Be sure that the terms of the lease are not changed after the approval by the court, or the process must be repeated.

After decedent's inventory has been filed and approved, if property is to be leased for mineral exploration or development through private negotiations and if power to make leases is not given in decedent's will, follow the procedure outlined in Item 84 of the Checkplan.

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SPECIAL INSTRUCTION 54—CLAIMS OF CREDITORS

One of the most important tenets of estate administrations is that the beneficiaries of a decedent's estate should be left with either nothing from the probate estate, in the case of an insolvent estate, or assets. It is the responsibility of a prudent personal representative to marshal assets so that beneficiaries do not inherit the decedent's bad debts or bad credit as a legacy. Special instructions should be given to nervous beneficiaries and executors before they assume responsibility for any of decedent's debts and liabilities. Neither the personal representative nor the beneficiaries of an estate should ever be responsible for using their personal funds to satisfy the claims of a decedent's creditors.

Notwithstanding the above, decedent's personal representatives and distributees are exposed to the claims of creditors. Title to decedent's assets vests in the heirs and beneficiaries on death, but subject to decedent's debts. Estates Code, Sections 101.001, 101.051. That liability inhibits executors and administrators from making distributions until all debts are paid or, failing that, until limitations has run. If decedent left a mortgage, limitations may not run for decades. See Special Instruction 99—Limitations.

The Estates Code assists both the solvent and the insolvent estate with a variety of claims statutes. Permissive notice may compel unsecured creditors to present claims promptly or else be barred. Secured creditors are put to an election: be paid now from all the estate's assets (matured secured status) or confirm the original payment plan and limit liability to the collateral (preferred debt and lien). The solvent estate may be distributed safely within a matter of months, not years. Absent the claims statutes, only time and limitations would resolve unpaid debts.

For insolvent estates, the claims statutes can shield the executor or administrator while protecting exempt property and the family allowance, even as creditors go unpaid. The statutes favor some creditors over others, classifying claims but dictating pro rata payment within each class. Expenses of administration are Class 2, ahead of all but a limited amount for the funeral and last illness. The work of administration may continue, and at the expense of other creditors. The executor or administrator owes a fiduciary duty to the estate's distributees, not its unsecured creditors. *Mohseni v. Hartman*, 363 S.W.3d 652, 657 (Tex. App.—Houston [1st Dist.] 2011, no pet.).

Claims Statutes

The claims statutes are found in Estates Code, Chapters 308, 355, and 403. Chapter 308 addresses notice to claimants; Chapter 355, presentment and payment of claims in dependent administrations; and Chapter 403, exemptions, allowances, and claims in independent administrations.

In general, Chapter 403 is the exclusive source for claims in independent administrations. Estates Code, Section 403.058. However, frequent cross-references to Chapters 308 and 355 swallow the rule, and familiarity with the claims process in dependent administration is helpful to the independent executor. For the relation of select statutes, see the chart below, "Claims Statutes," derivative of that found in "Creditor Claims in Independent and Dependent Administrations" by Gus G. Tamborello, 2013 Intermediate Estate Planning and Probate Course, State Bar of Texas. See also "Creditor Claims in Probate: Road Map for the Creditor's Attorney" by Gus G. Tamborello, 2022 Collections and Creditors' Rights Course, State Bar of Texas.

In both dependent and independent administrations, a general notice to creditors is required to be published. Specific notice to secured creditors is mandatory; permissive notice to unsecured creditors is optional.

In dependent administrations, creditors must formally present claims before the administrator allows, objects to, or rejects the claim. The court then approves or disapproves the claim. If the claim is rejected by the executor or administrator or disapproved by the court, the creditor must sue promptly to establish the claim or else it is barred. Once all claims are approved by the court or established by judgment, the court classifies the surviving claims for payment within their priority. Even in the solvent estate, payment requires *presentment* by the creditor, *allowance* by the executor or administrator, and *approval* and *classification* by the court.

A similar scheme applies in independent administrations. In the absence of court involvement, some procedures are enhanced to better protect the creditor. For example, the creditor's deadline for suit on a rejected claim is not accelerated absent permissive notice, which requires more specific instruction to the creditor than in dependent administrations. *See* Estates Code, Section 403.051(b). If permissive notice is not given,

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formal presentment is not mandatory, but the independent executor or administrator still must *approve* and *classify* claims to avoid personal liability. Estates Code, Section 403.0585.

In an estate administration with significant debts where the personal representative anticipates multiple claims, the personal representative may elect to file an application for probate as a dependent administration even if an independent administration is otherwise available. This way, the dependent administrator can focus on accepting or rejecting claims that are presented formally per the Estates Code rather than making a subjective attempt to determine if a claim has been presented along with the appropriate response in an independent administration. A dependent administration can generally be converted to an independent administration by agreement among all beneficiaries presuming the beneficiaries are all adults and have capacity to consent to the independent administration. Estates Code, Sections 254.006 and 401.001(b). An independent administration can also be converted to a dependent administration both voluntarily—perhaps to avail the personal representative of the claims procedure rules or to address issues with feuding beneficiaries—and involuntarily, if a will contest is filed following the will's admission to probate.

The claims statutes are generally limited to "claims for money." Unliquidated claims, including tort, contract, quantum meruit, specific performance, and title, are not subject to presentment and other requirements before the creditor files suit. See Section 355.001 cmt. of *Johanson's Texas Estates Code Annotated* (2025 ed.) by Stanley M. Johanson, published by Thomson Reuters.

Other Statutes

The United States has an unrecorded lien securing decedent's liabilities, and the executor or administrator who fails to give priority to federal debts—for example, income or gift taxes—is personally liable and may be sued in federal court. 31 U.S.C., Section 3713.

Nonprobate assets enjoy preferential treatment. Estates Code, Sections 112.251 (community property with right of survivorship), 113.252 (multiparty accounts), 114.106 (transfer on death deeds), and 116.003 (beneficiary designations for manufactured homes).

Decedent's sole or joint management community property is liable for decedent's and surviving spouse's debts upon the death of either spouse. Estates Code, Section 101.052. The liability of other marital property, including the surviving spouse's, varies depending on when the claim arose, whether it is founded in contract or tort, and the responsible spouse. See Special Instruction 49—Marital Property Rights and Special Instruction 72—Spousal Liability. The order of execution on marital property may be determined by the court. Family Code, Section 3.203. See "Handbook on Texas Marital Property Law for Estate Administration" by Thomas M. Featherston, Jr., 2023 Advanced Estate Planning and Probate Course, State Bar of Texas.

Limitations and tolling are addressed by Civil Practice & Remedies Code, Chapter 16.

Further coverage is beyond the scope of this System.

General Notice to Creditors

See Item 55 of the Checkplan.

Notice to general creditors of decedent's estate must be given by publication in a newspaper of general circulation printed in the county in which the letters were issued within one month after the executor or administrator receives original letters testamentary or of administration. Estates Code, Section 308.051(a)(1). This is accomplished by publication of a Notice to Creditors and Publisher's Affidavit (Form 20).

If decedent remitted or should have remitted taxes administered by the Comptroller of Public Accounts, notice also must be given to the comptroller by certified or registered mail, return receipt requested, or other qualified delivery method with proof of delivery. Estates Code, Section 308.051(a)(2).

These requirements specifically apply to independent executors and administrators. Estates Code, Sections 403.051(a)(1) and 22.017. These notice requirements do not apply where a will is admitted to probate as a muniment of title.

Secured Creditors

See Item 56 of the Checkplan.

Within two months after receiving letters, the administrator must give notice of the issuance of letters to holders of secured claims—for example, real estate mortgages or car loans. Estates Code, Section 308.053. Lienholders secured by transfer on death deed property must be given the same notice. Estates Code, Section 114.104. See Proof of Service of Notice on Secured Claimants (Form 21). This requirement also applies to independent executors. Estates Code, Section 403.051(a)(1).

The secured creditor may elect to have the claim treated as (1) a matured secured claim to be paid in due course of the administration or (2) a preferred debt and

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lien against the encumbered property to be paid according to the contract. If the creditor fails to make a timely election, the claim is treated as a preferred debt and lien. A creditor who seizes the collateral has effectively elected preferred debt and lien status. Estates Code, Sections 355.151(a), 355.152, and 403.052 through 403.054.

To elect matured secured claim status, a secured creditor must give notice to the executor or administrator on or before the later of (1) four months from receipt of the notice or (2) six months from the date that letters testamentary or of administration were granted. Estates Code, Sections 355.152 and 403.052. In independent administrations, a timely election also requires the creditor whose debt is secured by real property to record the notice in the deed records. Estates Code, Section 403.052.

Matured secured claims are Class 3 and are paid after the family allowance and Class 1 and 2 claims. Estates Code, Sections 355.102(d), 355.103, 355.153(a), and 403.051(a)(3). In independent administrations, the claim remains secured by the collateral, but the lien itself is subordinated to Class 1 and 2 claims. Estates Code, Section 403.053. Subject to these rules, all the assets of the estate are available to satisfy a matured secured claim. In an independent administration, nonjudicial foreclosure is permitted, but only with the approval of the court or of the executor or administrator. Estates Code, Section 403.053(a)(2).

In contrast, a preferred debt and lien is superior to the family allowance and all other claims but is limited to the collateral, and the estate's other assets are immune. Estates Code, Sections 355.154 and 403.052. A nonjudicial foreclosure sale is permitted in an independent administration, and without consent, but not within the first six months after letters are granted. Estates Code, Section 403.054. In dependent administrations, if the collateral is not sold or distributed within six months, the executor or administrator is required to pay all accrued maturities and perform all other contractual terms, and the creditor may enforce that duty with a sale or foreclosure. Estates Code, Sections 355.155 and 355.156 through 355.160. In a dependent administration, the executor or administrator can force liquidation of collateral when the preferred lienholder has accelerated the debt but is slow to foreclose. Once the preferred debt and lien is allowed by the executor or administrator and approved by the court, the creditor who elects to take possession or sell the collateral has only a "reasonable" time, as determined by the court, to do so, and the personal representative may petition the court for a sale if the creditor delays. Estates Code, Section 355.1551. Coverage of this procedure is beyond the scope of this System.

If the claim holder fails to take possession or sell secured property within the reasonable time determined by the court, then—on application by the personal representative—the court may require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt in full satisfaction of the claim.

> *Example.* Decedent financed a car and died with dozens of monthly installments remaining. By the time administration opens, several installments are delinquent.
>
> Consider the dealer who elects preferred debt and lien status. If the collateral is sufficient, the dealer will be paid in full. In a dependent administration, the executor or administrator has six months to make back payments. Estates Code, Section 355.155(a). In an independent administration, the dealer may judicially foreclose at any time; nonjudicial foreclosure must wait six months. Estates Code, Section 403.054. If the dealer misjudged and the collateral proves inadequate, no deficiency judgment is available and the administrator should reject any further claims or collection attempts. (See Response to Preferred Debt and Lien Holder's Attempt to Collect Deficiency (Letter 125), [Rejection/Partial Rejection] of Claim (Form 125), and Memorandum of [Rejection/Partial Rejection] of Claim (Form 126).)
>
> If the collateral is insufficient, the dealer may prefer matured secured status, which permits payment from the estate's other assets, subject to claims with higher priorities. A deficiency judgment is possible but subordinate to the family allowance and Class 1 and 2 claims. Estates Code, Sections 355.153(a) and 403.051(a)(3). In independent administrations nonjudicial foreclosure is available with the approval of the court or of the executor or administrator. Estates Code, Section 403.053.

Permissive Notice

See Items 55 and 67 of the Checkplan and Worksheet 13.

Although there is no express statutory requirement for further notice to general unsecured creditors, it is recommended that the "permissive notice" provisions of

the Estates Code, Sections 308.054 and 403.051(a)(2), be considered.

The permissive notice procedure permits an executor or administrator in either an independent or a dependent administration to give notice, by certified or registered mail, return receipt requested, or, in proceedings commenced on or after September 1, 2023, by another qualified delivery method with a request for proof of delivery, to any unsecured creditor having a claim for money. (See Permissive Notice to Unsecured Creditor (Letter 99).)

The notice can be given at any time before the estate is closed and, among other things, must expressly state that the creditor must present a claim before the 121st day after the date of receipt of the notice or the claim will be barred. Estates Code, Sections 308.054 and 403.051(a)(2). Furthermore, in independent administrations the notice should also include a statement that a claim "may be effectively presented by only one of the methods prescribed by Chapter 403, Subchapter B." Estates Code, Section 403.051(b). If this permissive notice is sent to unsecured creditors, it can bar their claims if (1) the notice is properly worded and sent by certified or registered mail, return receipt requested, or, in proceedings commenced on or after September 1, 2023, by another qualified delivery method with a request for proof of delivery and (2) those creditors do not properly present their claims before the 121st day after the date of receipt of the notice. Estates Code, Sections 308.054 and 403.055.

Claims in Dependent Administrations

In a dependent administration, a claim for money owed to an individual must be supported by an affidavit that the claim is just and that all legal offsets, payments, and credits known to the affiant have been allowed. If the claim is based on a written instrument or account, a photocopy is to be attached. If it is not founded on a written instrument or account, the affidavit must also state the facts on which the claim is founded. Estates Code, Section 355.004.

If evidence of the claim is lost or destroyed, in addition to so stating, the affidavit must also state the claimant is still the owner of the claim. Estates Code, Section 355.006. Unless the claim is proved by disinterested testimony taken in open court or by oral or written deposition, allowance or approval of the claim is void. Estates Code, Section 355.062.

If the claim is made by an authorized officer or representative of a corporation or other entity, an executor, an administrator, a trustee, an assignee, an agent, a representative, or an attorney, the affidavit is sufficient if it states that the person making it has made diligent inquiry and examination and believes that the claim is just and that all legal offsets, payments, and credits made known to the affiant have been allowed. Estates Code, Section 355.005.

Creditors must present their claims under oath and in proper form with decedent's executor or administrator or with the clerk of the court. Estates Code, Sections 355.001, 355.002, and 355.004.

Presentment by the creditor, plus at least partial rejection by the representative or disapproval by the court, are conditions precedent to judgment on a claim for money. Estates Code, Section 355.065.

If a claim is not barred by limitations, it may be presented at any time before the estate is closed unless the creditor was given permissive notice. Estates Code, Sections 355.001 and 355.060.

Claims in Independent Administrations

Before the 2011 enactment of the provisions of current Estates Code, Section 403.056, there was no prescribed format for an unsecured claim in an independent administration. An email, invoice, or letter to the executor might constitute a valid claim against the estate. *See, e.g.*, *Alterman v. Frost National Bank of San Antonio*, 675 S.W.2d 619 (Tex. App.—San Antonio 1984, no writ) (holding that a letter describing a claim was sufficient to constitute a claim even though it did not expressly demand payment). While claimants who are not responding to permissive notice letters are presumably still at liberty to use any form or method of presenting a claim in an independent administration, those claimants responding to a proper permissive notice are now confined to the methods described in Estates Code, Section 403.056.

Notice of the claim must either—

1. be contained in a written instrument that complies with Estates Code, Section 355.004 (requiring supporting affidavits and vouchers and so forth) that either—
   a. is sent to the executor or administrator by certified mail or hand delivered with proof of receipt or, in proceedings commenced on or after September 1, 2023, is sent by another qualified delivery method with a request for proof of delivery or
   b. is filed with the court in which the administration is pending (Estates Code, Section 403.056(a)(1), (a)(3)) or

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2. be contained in a pleading filed in a lawsuit with respect to the claim or a pleading filed in the court in which the administration is pending (Estates Code, Section 403.056(a)(2), (a)(3)).

To be effective, the permissive notice letter must contain this phrase: "a claim may be effectively presented by only one of the methods prescribed by Chapter 403, Subchapter B." Estates Code, Section 403.051(b). An unsecured creditor who receives a proper permissive notice must present its claim before the 121st day after the date of receipt of the notice or the claim is barred. Estates Code, Section 403.055.

Before September 1, 2011, when any filing or communication with an administrator within the 120-day period might constitute a claim, the permissive notice procedures were not particularly useful to independent administrators. The independent executor or administrator may now use permissive notice to bar a claim based on failure to follow formalities prescribed by Estates Code, Section 355.004. The creditor's casual response is more likely fatal now. Estates Code, Sections 403.051(a)(2) and 403.055.

The creditor's claim may not be barred because the creditor failed to file a suit within ninety days of rejection. Estates Code, Section 403.058(1). An independent administrator can still object to the form of a claim responding to a permissive notice letter without rejecting a claim and without disturbing the 120-day period for presentment under Estates Code, Section 355.007.

The applicable statute of limitations is tolled by only written approval of a claim, a lawsuit pending at the time of decedent's death, or a lawsuit brought by the creditor against the independent executor. Estates Code, Section 403.057. The mere presentment of a claim does not toll the running of the statute of limitations for that claim.

Responding to Claims

See Item 55 and 67 of the Checkplan and Worksheet 13.

In general, a personal representative is advised to allow valid claims even if the estate is insolvent, object to defective claims, and reject claims that are inappropriate or barred by limitations or permissive notice.

Following the presentment of a claim in a dependent administration, the executor or administrator must allow or reject the claim within thirty days. Estates Code, Section 355.051. (See Allowance of Claim (Form 123), Memorandum of Allowance of Claim (Form 124), [Rejection/Partial Rejection] of Claim (Form 125), and Memorandum of [Rejection/Partial Rejection] of Claim (Form 126).) Allowance or rejection of a claim does not depend on the solvency of the estate. If the claim is a valid claim, the executor should allow the claim even if there are insufficient funds to pay it. The claim will be paid or partially paid in accordance with its priority. See Estates Code, Sections 355.103, 355.107, and 355.108. Also note the order of abatement of bequests in Estates Code, Section 355.109.

Failure of the executor or administrator in a dependent administration to allow or reject a claim within thirty days after presentment is deemed a rejection of the claim. Estates Code, Sections 355.051 and 355.052. In a dependent administration, when a claim is rejected, the creditor then has ninety days to file suit to collect the claim, or it is forever barred regardless of whether the initial 120-day notice period has expired. Estates Code, Section 355.064(a).

Although the Estates Code does not reconcile objections to the form of a claim with the executor's duty to either accept or reject the claim as required by Estates Code, Section 355.051, an administrator can also respond to the claim with an objection to the form of a claim under Estates Code, Section 355.007, within thirty days. A claim may be objectionable if it is not in compliance with Estates Code, Section 355.004. For example, a claim might not be supported by an affidavit indicating that the claim is just and all legal offsets have been allowed, or the claim may have insufficient vouchers. (See Objection to Claim (Form 127) and Memorandum of Objection to Claim (Form 128).)

If an objection is made within thirty days of the attempted claim's presentment, the executor presumably avoids a deemed rejection of an otherwise valid claim and the associated personal liability. Meanwhile, the 120-day period referenced in the original permissive notice letter (if applicable) will not be tolled by the attempted presentment of the defective or insufficient claim. After the expiration of the 120-day period, the claim will be barred.

In a dependent administration, creditors often find their claims barred for failure to follow the strict procedural and form requirements. On receipt of a permissive notice letter, creditors often just redirect their invoices to counsel for the administrator without paying attention to any of the formal requirements of claims procedures. By the time the creditor figures out the requirements of a valid claim, either the 120-day period to file a valid claim has expired and the claim is barred, or the 90-day limit to sue on the rejected claim

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has expired and the claim is barred. Consequently, many practitioners elect to administer estates with significant debt as supervised or dependent administrations even though an independent administration is otherwise available.

In an independent administration, the executor or administrator may approve or reject any claim, or take no action on a claim. The executor or administrator must classify and pay claims approved or established by suit against the estate in the same order of priority, classification, and proration as provided for dependent administrations. Estates Code, Section 403.051.

The independent executor or administrator's objection to the form of an unsolicited claim is unnecessary and ineffective because, absent permissive notice, presentment is not required of creditors in an independent administration anyway. Estates Code, Section 403.058.

A literal reading of Estates Code, Section 403.058, would also excuse any objection to the form of a claim responsive to permissive notice. However, because permissive notice in an independent administration relies so heavily on the claims form in dependent administrations, this System recommends that the independent executor or administrator that gives permissive notice review the creditor's claim against the requirements of Estates Code, Section 355.004, and object to defects or insufficiencies according to Estates Code, Section 355.007.

Classifying and Paying Claims

See Item 67 of the Checkplan.

On the administrator's allowance of a claim, the court will enter the memorandum of allowance of claim on the claims docket to consider approval of the claim. (See Memorandum of Allowance of Claim (Form 124), which includes a proposed order for the court to approve and classify claims under Estates Code, Section 355.102.) In an independent administration, this process is handled by the executor or administrator alone.

Estates Code, Section 355.102, describes eight classes of claims. When making payment on claims, decedent's executor or administrator should first pay Class 1 claims—up to $15,000 toward funeral expenses and up to $15,000 toward expenses of last illness, including claims for reimbursement of these expenses. (Under previous law, funeral expenses and expenses of last illness were collectively limited to $15,000. The new statute separates the allowances to provide a $15,000 allowance for funeral expenses and also a $15,000 allowance for expenses of last illness for decedents dying on or after September 1, 2019.) Decedent's executor or administrator should next pay any allowances made to the surviving spouse and children; then Class 2 claims—expenses of administering and preserving the estate, including fees and expenses awarded for defending the will, and unpaid expenses of administration awarded in a guardianship of decedent and—for an estate for which a public probate administrator has taken any action under Chapter 455—court costs and commissions to which the administrator is entitled under Subchapter A, Chapter 352. Next are federal taxes; then Class 3 claims—matured secured lien claims in their order of priority; next, Class 4 claims—claims for child support (both accrued interest and arrearages that have been confirmed as a judgment or determination of arrearages by a court under title 5 of the Family Code or administratively determined as evidenced by a certified child support payment record produced by the title IV-D agency in a title IV-D case and claims for unpaid child support accelerated under Family Code, Section 154.015, on decedent's death). Next are Class 5 claims—certain state taxes, penalties, and interest; then Class 6 claims—for the cost of decedent's confinement in a penal institution (Government Code, Section 501.017); then Class 7 claims—reimbursement to the state for medical assistance payments (Human Resources Code, Chapter 32); and, finally, Class 8 claims—any other claims. Claims are to be paid in the order of their classification. Estates Code, Sections 355.102 and 355.103. If assets are insufficient to pay all claims of the same class, other than secured claims that are to be paid in order of their priority, the claims must be paid pro rata as directed by the court and in the order directed. Estates Code, Section 355.108(a).

The order in which particular separate or community property will be subject to execution and sale to satisfy a judgment shall be determined by a judge who shall consider the facts surrounding the transaction or occurrence on which the suit is based. Family Code, Section 3.203.

Liability of Nonprobate Assets

Assets that pass outside of probate are potentially exposed to creditors' claims. If decedent's estate is insolvent, accounts in financial institutions that pass by survivorship or P.O.D. designation can be reached by decedent's executor or administrator (on demand by a creditor) for the payment of debts, taxes, and expenses of administration, including statutory allowances for the surviving spouse and minor children. Estates Code, Section 113.252; see Estates Code, Sec-

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tion 113.004(3). Any proceeding by the personal representative to assert liability may be commenced only if the personal representative receives a written demand by a surviving spouse, a creditor, or a person acting on behalf of a minor child of the deceased party. The personal representative has no power to pursue nonprobate assets to pay claims, expenses, and taxes unless such a written demand is made. Any claim or proceeding made by the personal representative of a deceased party to a multiple-party account must be commenced within two years from the date of death of the deceased multiple-party accountholder. Estates Code, Section 113.252(c).

Real property transferring under a transfer on death deed is subject to liens and encumbrances at the transferor's death in addition to creditors' claims. Estates Code, Section 114.104(a). Manufactured homes transferred by beneficiary designation are subject to liens and encumbrances at the transferor's death in addition to creditors' claims in the same manner. Estates Code, Section 116.007. The same provisions regarding notice to secured creditors and election of treatment of the claim apply as to other secured debts. Estates Code, Sections 114.104(b)–(d) and 116.007. If the estate is insufficient, a claim against the estate, expenses of administration, taxes, or an allowance in lieu of exempt property or family allowance may be enforced against property transferred by a transfer on death deed or a manufactured home to the same extent that a personal representative could enforce that liability if the property were part of the probate estate. Estates Code, Sections 114.106(a) and 116.007. A proceeding to enforce this liability must be commenced within two years of decedent's date of death. Estates Code, Section 114.106(e).

The rights of creditors to seek satisfaction of their claims from nonprobate assets is determined on an asset-by-asset basis. In certain cases, potential exposure for liability for creditors' claims is addressed in the statutes authorizing the nontestamentary transfer. See the section titled "Nonprobate Assets" in Special Instruction 23—Inventory, Appraisement, and List of Claims. See also "Multi-Party Accounts and Other Non-Probate Assets in Texas" by Glenn M. Karisch, 2016 Texas Bar College "Summer School" Course, State Bar of Texas, and "Nonprobate Assets," part VI in chapter 29 in *Texas Collections Manual* (2020 ed.), published by the State Bar of Texas.

Personal Liability

Estates Code, Section 355.052, provides that if a personal representative fails to timely allow or reject a claim under Estates Code, Section 355.051, and that claim is later established by suit after rejection, "the costs" may be taxed against the representative individually or the representative may be removed. In contrast, an independent executor will have no personal liability for paying an approved, classified claim for money not barred by limitations if, at the time of payment, the independent executor reasonably believes the estate will have sufficient assets to pay all claims. Estates Code, Section 403.0585. There is little guidance on what "the costs" constitutes. A literal reading might mean the court costs, filing fees, or both. A liberal reading might include attorney's fees and possibly the underlying claim itself.

For guidance on creditors' claims, see "New Rules in an Independent Administration and How to Deal with Them" by C. Boone Schwartzel, 2012 Advanced Estate Planning and Probate Course, State Bar of Texas; "Creditor Claims in Independent and Dependent Administrations" by Gus G. Tamborello, 2013 Intermediate Estate Planning and Probate Course, State Bar of Texas; and "Creditors' Claims in Dependent and Independent Administrations" by M. Keith Branyon, 2012 Advanced Estate Planning and Probate Course, State Bar of Texas.

CLAIMS STATUTES
(PR means executor or administrator)

	Dependent Administration	Independent Administration
Mandatory notices		
Public notice	W/n one month after letters issued; posted if no newspaper of general circulation in county—308.051(a)(1), (c)	Same—308.051(a)(1), (c), 403.051(a)(1)
Notice to comptroller (if D remitted/should have taxes)	W/n one month after letters issued—308.051(a)(2)	Same—308.051(a)(2), 403.051(a)(1)

	Dependent Administration	Independent Administration
Form	Either publication or comptroller notice must include date letters issued, address for presentment, and PR's statutory choice of addressee—308.051(b)	Same—308.051(a)(1), (c), 403.051(a)(1) Same—308.051(a)(2), 403.051(a)(1)
Notice to secured creditors	W/n two months after letters received—308.053(a)	Same—308.053(a), 403.051(a)(1)
Late discovery	W/n reasonable period of actual knowledge—308.053(b)	Same—308.053(b), 403.051(a)(1)
Form, filing	Certified/registered mail, r.r.r., or other qualified delivery method w/proof of delivery w/ntc of issuance of letters, to record holder last known address; file copy, return receipt or proof of delivery, and affidavit—308.053	Same—308.053, 403.051(a)(1)
Presentment deadlines		
Generally	Before limitations runs or the estate is closed—355.001	Before limitations runs or the estate is closed—403.057
PR's personal claims	File with court w/n six months of qualification—355.201(b)	Apparently N/A—403.058
Limitations	Determined by CPRC ch. 16 and sometimes by agreement, e.g., CPRC 16.070 (contractual limitations period)	Same
Tolling	Obligor's death tolls any statute until PR qualifies but not more than twelve months—CPRC 16.062	Same
	Presentment to clerk tolls—355.008(1) Suit against PR tolls, unless presentment to PR required—355.008(2)	PR's writen approval, pending suit at D's death, or creditor's suit against PR tolls; presentment or notice does not toll—403.057
Permissive notice and the unsecured claim for money		
Deadline for estate's notice	Anytime before estate is closed—308.054	Same—308.054, 403.051(a)(2)
Form of notice	Certified/registered mail or, in proceedings commenced after 9/1/2023, by another qualified delivery method w/ request for proof of delivery (see Special Instruction 16—Citation and Notice) w/ntc of deadline (120th day after receipt of ntc), date letters issued, and address/addressee for claim—308.054	Same; if D died on/after 9/1/2011, ntc of prescribed method also required—308.054, 403.051(b)
Presentment accelerated	Presentment required w/n 120 days of receipt of notice—308.054(b), 355.060	Same—403.055

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	Dependent Administration	Independent Administration
Claims, generally		
Presentment	To personal representative—355.001 To clerk—355.002	If permissive notice received, claim for money requires presentment by— 1. certified mail w/proof of receipt or other qualified delivery method w/ proof of deposit with a courier or approved private delivery service (see Special Instruction 16) to PR/attorney—403.056(a)(1), 2. independent lawsuit—403.056(a)(2), or 3. written instrument or pleading filed in probate case—403.056(a)(3) Otherwise, presentment apparently not required—403.058
Form	Claim for money requires affidavit with 355.004 recitations and either facts or written instrument or account—355.004 *et seq.*	If permissive notice received, claim for money requires affidavit with 355.004 recitations and either facts or written instrument or account—403.055
Attorney's fees	May be included—355.003	Apparently N/A—403.058
Agent's affidavit	Corporate officer/representative, PR, trustee, assignee, agent, representative, attorney may make affidavit on recitation that "affiant has made diligent inquiry and examination and believes the claim is just and that all legal offsets, payments, and credits made known to the affiant have been allowed—355.005	Apparently N/A—403.058
Lost or destroyed evidence	Enhanced affidavit required (usual recitations plus fact of loss/destruction and current owner)—355.006 Allowance/approval void absent 355.006 affidavit and disinterested testimony in open court or by oral/written deposition—355.062	Apparently N/A—403.058
Secured claims		
Presentment	To personal representative—355.001 To clerk—355.002	Secured claim for money requires presentment by— 1. certified mail w/proof of receipt or other qualified delivery method w/ proof of deposit with a courier or approved private delivery service (see Special Instruction 16) to PR/attorney—403.056(a)(1), 2. independent lawsuit—403.056(1)(2), or 3. written instrument or pleading filed in probate case—403.056(1)(3) Otherwise, presentment apparently not required—403.058

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	Dependent Administration	Independent Administration
Form	Secured claim for money requires affidavit with 355.004 recitations and either facts or written instrument or account—355.004 *et seq.*, 355.059, 355.151(a)	Secured claim for money requires affidavit with 355.004 recitations and either facts or written instrument or account—403.056
Election	Secured claim for money must also specify creditor's preference whether estate (1) pays as matured secured claim (balance accelerated) or (2) fixes as preferred debt and lien (confirming both original installment agreement and lien against the collateral)—355.151(a)(1), (2)	Election to approve as matured secured claim also requires— 1. timely notice of election to PR and 2. timely recording in deed records of county where real property located Otherwise claim fixed as preferred debt/lien—403.052
Deadline to make election	Later of six months after letters are granted or four months after receipt of 308.053(a) notice—355.152(a)	Later of six months after letters are granted or four months after receipt of 308.053(a) notice—403.052
Deadline to possess/sell	If preferred debt and lien, w/n a reasonable time—355.151(a)(2), 355.152(b), 355.1551(a)	Expressly N/A—355.1551(c)
Estate's response		
Objection to form	File objection with clerk w/n thirty days of presentment—355.007	Apparently N/A—403.058 (but this System recommends objection of claim responsive to permissive notice)
Allow or reject	W/n thirty days of presentment—355.051	PR may approve or reject at any time, or take no action—403.051(a)(3) But approval required to limit PR's liability on payment—403.0585
Effect of failure to allow or reject	Deemed rejected after thirty days—355.051, 355.052 If later established by suit, costs taxed against PR, individually—355.052	Apparently N/A—403.058
After claim allowed or rejected	PR files with county clerk for claim docket—355.053	Apparently N/A—403.058 (but approval tolls limitations—403.057)
Court's action		
	W/n ten days after an allowed claim entered on claim docket, court approves/disapproves and classifies claim—355.055	Apparently N/A—403.058
	Court may examine parties and hear evidence—355.056	Apparently N/A—403.058
	Court's action has effect of final judgment—355.057, 355.058	Apparently N/A—403.058
Classification of claims		
Required	By court—355.055	By PR—403.051(a)(3)
Classes	355.102	Same—403.051(a)(3) (generally); Class 3—403.053(a) (subordinate to 1, 2)

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	Dependent Administration	Independent Administration
	Class 1: Up to $15,000 for funeral and up to $15,000 for last illness, if court approved Class 2: Administration, will contest, guardianship fees Class 3: Matured secured claims for money Class 4: Child support	Class 5: Taxes Class 6: Cost of confinement Class 7: Medicaid reimbursement Class 8: Other claims
Family allowance and allowance in lieu of exempt property	Preference over all but Class 1 claims—353.104	Same—403.001
Creditor's suit		
Conditions precedent	If claim for money— Presentment to PR—355.065(1) and Rejection by PR or disapproval by court—355.065(2)	None—403.058, 403.059
Deadline to sue on rejected claim (subject to limitations)	If presentment required, w/n ninety days after rejection—355.064 If a claim for money, PR may not be sued after order for partition and distribution, but heirs, devisees, and creditors may—355.063	355.064 expressly N/A—403.058(1) 355.063 apparently N/A—403.058 (Some observers believe the creditor who receives permissive notice from the independent PR has ninety days following rejection to file suit, even if the 120-day presentment deadline runs first)
Estate's answer		If claim for money, no answer due w/n six months of PR's appointment—403.059
Judgment	No execution, court classifies, handled as an allowed and approved claim—355.066	355.066 expressly N/A—403.058(1) Execution runs against estate in possession of PR—403.059
Costs	Statutory allocation of costs depends on whether claim allowed/approved, allowed but disapproved, rejected but established by suit, rejected and not established by suit, or rejected in part and claimant fails to recover more than approved/allowed—355.111	Approved N/A—403.058
Payment of claims		
Conditions precedent	Court approval or establishment by judgment—355.101	If PR reasonably believes estate solvent, PR must approve and classify claim to avoid personal liability—403.0585
Order of payment	Up to $15,000 for D's funeral and up to $15,000 for D's last illness, inclusive of reimbursement claims for these expenses—355.103(1) Allowances to surviving spouse/children (family allowance uner 353.101 and 353.104; allowance in lieu of homestead up to $45,000 and allowance in lieu of exempt property up to $30,000 under 353.053)—355.103(2) Expenses of administration—355.103(3) Other claims in order of classification—355.103(4)	Same—403.051(a)(3)

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	Dependent Administration	Independent Administration
Time of payment	On PR's application, six months after letters granted—355.106 On creditor's application, one year after letters granted—355.107	At any time, if PR reasonably believes estate solvent, and claim approved and classified—403.0585
Insufficient funds	Court order for pro rata payment required—355.108 Abatement of bequests—355.109 SS community immune from D's funeral expense—355.110 D's estate severally liable for joint obligations—355.112	Same, but w/o court order—403.051(a) (independently of the court, claims to be paid "in the same order of priority, classification, and proration prescribed in this title")
Matured secured claims	Paid in due course of administration—355.153(a) Absent exoneration, PR sells collateral if devisees cannot pay their pro rata shares—355.153 Deficiencies subordinated per 355.103(1), (2), (3)—355.153(a)	Absent exoneration, PR sells collateral if devisees cannot pay their pro rata shares—355.153, 403.053(c) Nonjudicial foreclosure requires PR/court approval—403.053 Deficiencies subordinated the same—403.051(a)(3)
Preferred debt and lien	Debt limited to collateral; other assets immune—355.154 W/n six months after letters granted, PR pays and performs outstanding obligations under the security agreement, e.g., catches up installments and buys insurance, unless collateral sold or distributed first—355.155 On PR's default, lienholder may judicially foreclosure—355.155(b), 355.156–.160	Debt limited to collateral; other assets immune; prepayment at PR's discretion—403.052 On default, lienholder may judicially foreclose at any time—403.054 Nonjudicial foreclosure also permitted but only six months after letters granted—403.054; 355.156–.160 expressly N/A—403.058(2)

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SPECIAL INSTRUCTION 55—ANNUAL ACCOUNT

The Estates Code requires an executor or administrator of an estate to file an account not later than the sixtieth day after the first anniversary of the date of qualification and annually thereafter, unless the court authorizes an extension. Estates Code, Sections 359.001 and 359.002. The initial account is to cover the twelve-month period following qualification. Estates Code, Section 359.001(a). The account must be under oath and specify the following:

1. A list of all claims against decedent's estate that were presented within the year covered by the account, specifying those that have been allowed, those that have been paid, those that have been rejected and the date rejected, and those for which a lawsuit has been filed and the status of that lawsuit.
2. A list of all property not previously listed or inventoried as estate property that has come to the knowledge or into the possession of the executor or administrator.
3. Any changes in the estate property not previously reported.
4. A complete account of the receipts and disbursements of the estate during the covered period, including the source and nature of the receipts and disbursements, with separate listings for principal and income receipts.
5. A complete, accurate, and detailed description of the property being administered and its condition and use. If rented, the terms and price must also be set forth.
6. The cash balance on hand in any account and the name and location of the depository.
7. Any other cash held in a savings account or other manner that was deposited subject to court order and the name and location of the depository.
8. A detailed description of the personal property of decedent's estate that shows how and where the property is held for safekeeping. For bonds, notes, and other securities, the description should include the names of obligor and obligee, the date of issue and maturity, the rate of interest, the serial number or other identifying numbers, how the property is secured, and other information necessary to identify the bond, note, or other security.
9. A statement that all tax returns due during the period have been filed and all taxes due and owing have been paid, including a complete account of the taxes, when paid, and to what governmental entity.
10. If any return or taxes are delinquent, the reasons for and a description of the delinquency.
11. A statement that the executor or administrator has paid all required bond premiums for the period.

Estates Code, Section 359.001.

It is necessary to attach satisfactory proof as to the possession of cash, listed securities, or other assets held in safekeeping or on deposit under order of the court. This means that proper vouchers for credits, official letters from banks and other depositories, and proof of existence of and possession of securities and other assets held by a depository subject to court order must be attached to the account before it may be properly filed. Estates Code, Section 359.003. The exact nature of the required supporting documents for securities and other assets held under court order is set forth in Estates Code, Section 359.004.

Most courts will permit the accounting period to be on a calendar-year basis or even on a fiscal-year basis to dovetail with other estate recordkeeping, but this must be requested and approved in advance by the court.

The annual account is filed with the county clerk and must remain on file for ten days before being acted on by the judge. The court may not approve the account unless it accurately describes the condition of decedent's estate and is accompanied by the proper proof. Estates Code, Section 359.051.

If decedent's estate is solvent, the court must order the immediate payment of all claims allowed and approved or established by judgment. Estates Code, Section 359.053. The approval of the account authorizes the executor or administrator to pay the approved claims and expenses set forth in the account.

The executor or administrator shall continue to file annual accounts until decedent's estate is closed. One shortcut that can be used in any year is to refer to the inventory (or most recently filed annual account) for a

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starting point and then enumerate only the changes in money, securities, or other property during the period covered by the particular account. Estates Code, Section 359.002.

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SPECIAL INSTRUCTION 56—FINAL ACCOUNT

In this System we refer to the final account as the account for final settlement as provided by the Estates Code. The procedures relating to the account for final settlement are contained in Estates Code, Chapter 362.

The administration of decedent's estate should be settled and closed when all known debts have been paid (or when they have been paid in order of priority as far as the assets remaining on hand will permit) and there is no further need for administration. Estates Code, Section 362.001. For income tax considerations, refer to Special Instruction 45—When to Terminate Administration of Estate.

Although no specific time for final settlement and closing is set forth in the Estates Code, it provides that the court may remove an executor or administrator who has failed to make a final settlement within three years after the grant of letters unless the time is extended by the court. See Estates Code, Section 361.052(a)(6). If the executor or administrator is removed, the court must order delivery of the remaining estate property to the successor executor or administrator or to the persons entitled to the property. Estates Code, Section 361.053(3). The principal reason for keeping decedent's estate open is to secure income tax advantages, as described in Special Instruction 19—Fiscal Years.

The requirements of the final account are specified in Estates Code, Sections 362.003 and 362.004. This account must be signed under oath by the executor or administrator with exhibits and vouchers properly attached. More detailed information on the supporting documents appears in Special Instruction 55—Annual Account.

When the account has been filed, the county clerk is to issue citation to each heir or distributee by certified or registered mail, return receipt requested, or, in proceedings commenced on or after September 1, 2023, by another qualified delivery method with proof of delivery. The executor or administrator must provide a copy of the Account for Final Settlement (Form 65) to each heir and distributee either (1) by certified mail, return receipt requested, or, in proceedings commenced on or after September 1, 2023, by another qualified delivery method with proof of delivery or (2) by electronic delivery. The executor or administrator must also file a sworn affidavit or a certificate signed by the attorney regarding the foregoing requirements. Estates Code, Section 362.005.

After the return date for the citation, the court examines the account and then will "audit and settle" it. Estates Code, Section 362.006. In the metropolitan counties this review is done by the judge's administrative assistant, while in some other counties the work is done by the clerk of the court or by the judge.

In this System we have assumed that the identities of the heirs have been determined before the final account is filed, but it is not unusual for the court to hear the proof for the determination of heirship at the same time it hears this account. Combining these steps can eliminate one court hearing. You should check with the clerk of your court to determine local procedure.

When the heirs have been determined and the account approved, the court will order the executor or administrator to deliver decedent's estate remaining to the heirs. When this has been completed, decedent's estate can be closed, the executor or administrator discharged, letters testamentary or letters of administration canceled, and the sureties (if any) discharged and released. Estates Code, Section 362.013.

If there are missing or unknown heirs, see Special Instruction 90—Missing Heirs.

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SPECIAL INSTRUCTION 57—TEMPORARY DEPENDENT ADMINISTRATION (TDA)

A very important special type of administration of a decedent's estate is a temporary dependent administration. Since it normally takes a minimum of ten days between filing an application and having the court appoint an administrator or executor, the earlier appointment of a temporary administrator to take immediate action is sometimes required. Whenever the interest of a decedent's estate requires, the judge may appoint a temporary administrator immediately and without prior notice or citation of any kind. This appointment is made on a verified application, and the order appointing the temporary administrator defines (and limits) the powers of the temporary administrator and fixes the amount of the bond. The content of the application and affidavit are set forth in Estates Code, Section 452.002(b). The duration of the appointment must be specified and may not exceed 180 days unless the appointment is made permanent. Estates Code, Section 452.003(2).

Situations that may require the appointment of a temporary administrator include (1) the existence of perishable property required to be sold or otherwise disposed of immediately, (2) the need to continue the operation of decedent's business, (3) the need to file a lawsuit before the action is barred by a statute of limitations, (4) the need to take any action that must or should be taken before an executor or a permanent administrator could be appointed and qualified to act, and (5) a will contest. In other words, the court would be justified in appointing a temporary administrator in any emergency situation if time is of critical importance.

The courts in some jurisdictions have not limited their appointments of temporary administrators to emergency situations, and, by a liberal interpretation of Chapter 452 of the Estates Code, they have permitted a temporary dependent administration to be used as a device to avoid a full-scale permanent administration. This is not a recommended procedure, however, due to the availability of other more effective statutory procedures, such as proceedings to declare heirship, that may be utilized in lieu of a regular dependent administration.

The procedures relating to temporary dependent administrations are set forth in Estates Code, Chapter 452.

The temporary administrator must file the bond not later than the third business day after the appointing order is signed. Estates Code, Section 452.004(b). The oath must be taken and filed before the issuance of temporary letters of administration. Estates Code, Sections 305.053 and 305.055. Alternatively, the administrator may make, sign, and file a declaration. Estates Code, Sections 305.053 and 305.055. However, this System does not recommend the use of a declaration in temporary administrations due to the privacy concerns raised by the inclusion of the temporary administrator's birthdate in the declaration. Filing the bond and the oath completes the qualification process. Not later than the third day after the date of qualification, the clerk of the court shall issue temporary letters of administration listing the powers granted by the court. Estates Code, Section 452.005. That same day, the clerk of the court shall post a notice of the appointment to all interested persons giving them the opportunity to contest the appointment. Estates Code, Section 452.006(a)(1). Again, on that same day, the temporary administrator must notify decedent's known heirs, by certified or registered mail, return receipt requested, or other qualified delivery method with proof of delivery, of the appointment and of their right to contest the appointment and must file proof of service of the notice with the court no later than the seventh day after the date the letters are issued. Estates Code, Section 452.006(a)(2), (c). The content of that notice is set forth in Estates Code, Section 452.006(b). If any such contest is filed, complete Items 82q, 82r, and 82s of SDL.

One common use of a temporary administrator is in a will contest or a contest over appointing an administrator. While the contest is pending over a will or the granting of letters testamentary or of administration, the court is authorized to appoint a temporary administrator with the powers that the circumstances require, including all the powers of a permanent administrator regarding claims against the estate, and this appointment may continue in force until the termination of the contest and the appointment of an executor or administrator with full powers. Estates Code, Sections 452.051 and 452.052(a). Most courts will appoint a neutral third party rather than the contestant.

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Temporary administrators may exercise only the rights and powers that are specifically expressed in the order appointing them (or subsequent orders enlarging the powers), and any acts performed by them that are not so expressly authorized by the court orders are void. Estates Code, Section 452.101.

Section 452.101 does not preempt other statutory duties—for example, Estates Code, Section 351.101 ("Duty of Care"). A temporary administrator may be liable for failing to insure estate assets, and without regard to the powers included in the order of appointment. *Frost Nat'l Bank v. Kayton*, 526 S.W.2d 654, 660–61 (Tex. App.—San Antonio 1975, writ ref'd n.r.e.). Estates Code, Section 351.052, lists certain powers, including the power to insure, that all but temporary administrators always have. The best practice in an application for a temporary administration is to request the Section 351.052 powers in the application (and list them in the court's order), so that there is no doubt that the power to insure has been granted. If not, it should be sought as needed, and urgently.

Therefore, it is important that the order and the letters of temporary administration set forth a detailed list of all powers that may be needed. A suggested list of such powers for a temporary administrator appointed for the purpose of continuing the operation of a business is contained in the Application for Temporary Administration (Form 83 or Form 84). A temporary administrator appointed pending a will contest would require broader powers that would include taking possession of all assets belonging to decedent's estate, rather than particular assets as in the usual other type of temporary administration. Because such a temporary administration may last for a longer time, it might be desirable to grant to the temporary administrator all the powers of a permanent administrator with respect to claims against decedent's estate, as expressly authorized by Estates Code, Section 452.052.

The letters of temporary administration are issued by the clerk, specify the exact powers granted by the court, and will usually track the language in the order of appointment.

Even when a decedent dies leaving a will in which an independent executor is named and there is very little likelihood of any will contest, a temporary dependent administration is sometimes necessary because of a necessity for immediate action. Therefore, it is not uncommon for the executor named in the will to file not only the regular application to probate the will but also an application to be appointed temporary administrator of that estate.

The appointment of a temporary administrator can be made the same day that the application is filed, and the temporary administrator can be properly qualified and in a position to act officially on behalf of the estate on that same day, provided that the oath is taken and the bond is filed and approved.

When there is no longer a need for a temporary dependent administration and there is no necessity for a permanent administration, the temporary dependent administration may be closed. This has the effect of closing the estate as far as the court is concerned.

In a temporary dependent administration pending a will contest, the temporary dependent administration terminates when the contest is over, and the assets of the estate are then delivered to the duly appointed executor or administrator. Estates Code, Sections 452.051(b) and 452.152.

When the temporary appointment expires, the temporary administrator must file with the court clerk a sworn list of all estate property that has come into the possession of the temporary administrator, a return of all sales made, and a full exhibit and account of all other acts of the temporary administrator. Estates Code, Section 452.151. In this System we call this pleading Final Account of Temporary Administrator (Form 92). The court must act on the list, return, exhibit, and account. If the court approves the account, it will enter an order requiring the temporary administrator to promptly deliver any remaining assets of the estate to the persons legally entitled to possession of the assets. On proof of delivery, the court will enter another order closing the temporary dependent administration, discharging the temporary administrator, and releasing the surety or sureties from future liability. Estates Code, Section 452.152.

In this System it is assumed that applications for temporary 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.

Procedures for temporary dependent administration begin at Item 14 of the Checkplan.

When no application has been filed or is pending, Chapter 152 of the Estates Code allows a person qualified to serve as administrator to seek an emergency intervention order for payment or reimbursement of

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funeral and burial expenses or to gain access to accommodations rented by decedent that contain decedent's personal property when the applicant has been denied access to those accommodations. Estates Code, Chapter 152. Further coverage of Chapter 152 is beyond the scope of this System.

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SPECIAL INSTRUCTION 58—WHO INHERITS WHEN THERE IS NO WILL

Who inherits when there is no will is determined by reference to the Texas laws of intestate succession and the laws of descent and distribution. See Estates Code, Sections 201.001 and 201.002, for separate property, and Estates Code, Section 201.003, for community property.

The first step in applying these laws is to determine if decedent was married and if decedent had children or descendants of children at the time of death. For simplicity, we will shortcut by referring to these children or their descendants as "children" and to adoptive parents as "parents." An adopted child is regarded as the child of the adoptive parent or parents; an adoptive parent is regarded as the parent of the adopted child. *See* Estates Code, Section 201.054(a). An adopted child inherits from and through the child's natural parents unless otherwise stated in the decree of adoption or parental termination order, although the natural parents and their kindred may not inherit from or through the adopted child. Estates Code, Section 201.054(b). Adoptive parents and their kindred inherit from and through the adopted child as if the adopted child were the natural child of the adoptive parents. Estates Code, Section 201.054(a). Adoption may occur by statutory procedure, an equitable adoption, or acts of estoppel. *See* Estates Code, Section 201.054(e). The next step is to determine whether property is community property or decedent's separate property, because the rules are different for each type of property. The third step is to determine whether the property is real estate or personal property. The fourth step is to determine if all these people survived decedent by at least 120 hours. Estates Code, Sections 121.052 and 121.053.

Generally speaking, separate property is all property that decedent owned before marriage, all property acquired by decedent in another state during marriage that is not community property under the laws of that state, and all property received by decedent at any time by gift or inheritance. All other property is community property. *See* Family Code, Sections 3.001 through 3.008.

If decedent was **married** and had **no children**, decedent's surviving spouse inherits all community property. If decedent died on or after September 1, 1993, and was **married and** had **children from a prior marriage**, decedent's surviving spouse retains one-half of the community property and decedent's children collectively divide decedent's remaining one-half of the community. If decedent died on or after September 1, 1993, and was **married and all** of the **children** were the **children of decedent and decedent's surviving spouse**, decedent's surviving spouse inherits all community property.

COMMUNITY PROPERTY

MARRIED DECEDENT WITH NO CHILDREN OR DESCENDANTS

REAL ESTATE	OTHER PROPERTY
All to surviving spouse	All to surviving spouse

MARRIED DECEDENT WHO DIED BEFORE SEPTEMBER 1, 1993, WITH CHILD OR CHILDREN

Entire community is divided like this:

REAL ESTATE		OTHER PROPERTY	
1/2 equally divided among D's children	1/2 retained by surviving spouse	1/2 equally divided among D's children	1/2 retained by surviving spouse

Children of deceased children take their parent's share. Advancements to children must be accounted for.

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MARRIED DECEDENT WHO DIED ON OR AFTER SEPTEMBER 1, 1993, AND ALL SURVIVING CHILDREN AND DESCENDANTS ARE ALSO CHILDREN AND DESCENDANTS OF THE SURVIVING SPOUSE

REAL ESTATE	OTHER PROPERTY
All to surviving spouse	All to surviving spouse

MARRIED DECEDENT WHO DIED ON OR AFTER SEPTEMBER 1, 1993, BUT A SURVIVING CHILD OR OTHER DESCENDANT IS NOT THE CHILD OR DESCENDANT OF THE SURVIVING SPOUSE

REAL ESTATE		OTHER PROPERTY	
1/2 equally divided among D's children	1/2 retained by surviving spouse	1/2 equally divided among D's children	1/2 retained by surviving spouse

Children of deceased children take their parent's share. Advancements to children must be accounted for.

SEPARATE PROPERTY

MARRIED DECEDENT WITH CHILD OR CHILDREN

REAL ESTATE		OTHER PROPERTY	
2/3 equally divided among D's children	1/3 to surviving spouse for life*	2/3 equally divided among D's children	1/3 to surviving spouse

* To children and their descendants upon death of surviving spouse.

If decedent was survived by a SPOUSE but had NO CHILDREN, decedent's surviving spouse inherits all personal property and one-half of the real estate, and one-fourth of the real estate goes to decedent's father and one-fourth goes to decedent's mother. If only one parent survives, that parent receives one-fourth of the real estate and the other one-fourth is equally divided between decedent's brothers and sisters and their descendants (referred to hereafter as "sibings" for simplicity). If no siblings survive decedent, then the surviving parent inherits a full one-half of the real estate. If there is no surviving parent, the siblings divide that one-half of the real estate. Only when decedent is not survived by parents or by siblings will the surviving spouse inherit all the real estate.

MARRIED DECEDENT WITH NO CHILDREN

REAL ESTATE			OTHER PROPERTY
1/4 to father	1/4 to mother	1/2 to surviving spouse	All to surviving spouse

If only one parent survives, he or she takes 1/4 of the real estate in the separate property, and 1/4 is equally divided between siblings of the deceased and their descendants. If there are no siblings or their descendants, then surviving parent takes 1/2 of the real estate. If neither parent survives, then 1/2 of the real estate is equally divided among siblings of the deceased and their descendants; if none of them, all to surviving spouse.

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If decedent had CHILDREN but had NO SURVIVING SPOUSE, the real estate and personal property are equally divided among the children.

UNMARRIED DECEDENT WITH CHILDREN

REAL ESTATE	OTHER PROPERTY
Equally divided among children	Equally divided among children

Children of deceased children take their parent's share. Advancements to children must be accounted for.

If decedent had NO SURVIVING SPOUSE AND NO CHILDREN, decedent's parents and perhaps siblings are next in line. Each of decedent's surviving parents inherits one-half of everything, and if there is only one parent surviving, that parent still inherits one-half of everything while the other one-half is equally divided among decedent's siblings. If no parent survives, the siblings inherit everything. If there are no siblings, the surviving parent inherits everything.

UNMARRIED DECEDENT WITH NO CHILDREN AND WITH BOTH PARENTS SURVIVING OR BOTH DECEASED

REAL ESTATE		OTHER PROPERTY	
1/2 to father	1/2 to mother	1/2 to father	1/2 to mother

If neither mother nor father survives, then equally divided among siblings. Children of a deceased sibling take their parent's share.

There are provisions in the law for the disposition of property if decedent was not survived by a spouse, or by children or their descendants, or by parents, or by siblings and their descendants, but these provisions are even more complicated and are not covered by this System.

UNMARRIED DECEDENT WITH NO CHILDREN AND WITH SURVIVING MOTHER OR FATHER AND SIBLINGS

REAL ESTATE		OTHER PROPERTY	
1/2 equally divided among siblings*	1/2 to surviving parent	1/2 equally divided among siblings*	1/2 to surviving parent

*Children of a deceased sibling take their parent's share.

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SPECIAL INSTRUCTION 59—DETERMINING IDENTITY OF DECEDENT'S HEIRS

Estates Code, Chapters 202 through 204, provide the method for determining the identities of the heirs of a person who died without a will. At some stage in the administration if there was a full or partial intestacy, it is necessary to determine the identities of decedent's heirs. This is done through an heirship proceeding.

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. Civil Practice & Remedies Code, Sections 37.004(a), 37.005(1), and 37.005(2). Declaratory judgments are beyond the scope of this System.

There also is a separate proceeding to determine heirship that is a method for totally avoiding the administration of an estate, and that procedure is explained in greater detail in Special Instruction 60—Proceedings to Declare Heirship (PDH).

All heirs and beneficiaries must either (1) be made parties to the application, (2) be properly served with citation, (3) file waivers of service of citation, or (4) file answers to the application. In this System we have provided for citation by publication directed to the heirs whose names or locations are unknown and for the appointment of an attorney ad litem to represent their interests. Estates Code, Section 202.009(b), allows the court to expand the appointment of an attorney ad litem to include representation of an heir who is an incapacitated person if the court finds it necessary to protect the heir's interest. By properly following this procedure, you will get protection against the claims of unknown heirs as well as protection against the claims of unknown creditors.

Although Estates Code, Section 202.051, provides for citation on known heirs who are twelve and older by registered or certified mail or other qualified delivery method with proof of delivery (see Special Instruction 16—Citation and Notice), we urge you to use extreme caution in doing so. In consideration of equitable principles, it appears highly desirable to make every reasonable effort to obtain waivers or actual service or to give as much notice as possible to all interested parties.

There are times when identifying decedent's heirs may involve something out of the ordinary. In those situations, useful references include "Who Are Your Descendants? - Adoptions, Half-Bloods, Surrogates, Etc." by Barbara B. Ferguson, 1987 Advanced Estate Planning and Probate Course, State Bar of Texas; "Intestacy/Wills/Trusts Case Update" by Gerry W. Beyer, 1991 Advanced Estate Planning and Probate Course, State Bar of Texas; and "Who's Your Daddy? Who's Your Mama?" by Ellen A. Yarrell, 2001 Advanced Estate Planning and Probate Course, State Bar of Texas.

The court may require that any testimony admitted as evidence be reduced to writing and subscribed and sworn to by the witnesses. The testimony must be taken in open court; by deposition in accordance with Estates Code, Section 51.203; or in accordance with the Texas Rules of Civil Procedure. Estates Code, Section 202.051. This System provides for the preparation of separate statements of facts to be signed by two disinterested witnesses who are to appear in open court in support of the application. If this is not a practical solution, you should refer to Estates Code, Section 203.001. Additional information is found in Special Instruction 60—Proceedings to Declare Heirship (PDH).

For decedents dying on or after January 1, 2014, the appointment of an attorney ad litem for heirs whose names or locations are unknown is *mandatory*. See Estates Code, Section 202.009(a). That appointment may be expanded to include representation of an heir who is an incapacitated person if necessary to protect the heir's interests. Estates Code, Section 202.009(b). The court may appoint an attorney ad litem for certain other potential defendants. See Estates Code, Section 53.104(a).

In some counties it is customary for the court to hear the proceedings for the determination of heirship at the same time that it hears the final account (or, as we refer to it, account for final settlement). In this System we have assumed that the identities of the heirs have been determined before the final account is filed, but it is not unusual for the court to hear the proof for the determination of heirship at the same time that it hears this account. Combining these steps can eliminate one court hearing. You should check with the clerk of your court to determine local procedure.

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SPECIAL INSTRUCTION 60—PROCEEDINGS TO DECLARE HEIRSHIP (PDH)

Estates Code, Chapters 202 through 204, provide a relatively simple method to determine heirship. If the application to determine heirship is filed within four years of the date of death, this proceeding can combine a determination of heirship with a determination that there is no necessity for an administration. Estates Code, Section 202.006.

A proceeding to declare heirship (PDH), also known as determination of heirship, is used when a person who owns real or personal property in Texas dies without a will and there has been no administration of the estate. It is also available for situations in which property is not disposed of by a will or an administration or when it is necessary for a trustee of a trust holding assets for the benefit of a decedent to determine the heirs of the decedent. Estates Code, Section 202.002. The proceeding may be brought at any time after decedent's death. Estates Code, Section 202.0025. Venue for heirship proceedings is determined under Estates Code, Section 33.004.

All heirs and beneficiaries must either (1) be made parties to the application, (2) be properly served by citation, (3) file waivers of service of citation, or (4) file answers to the application. Estates Code, Sections 51.201 and 202.051. Owners of record of any real property interest described in the application are also necessary parties. Estates Code, Section 202.008. In this System we have provided for citation by publication directed to the heirs whose names and whereabouts are unknown and for the appointment of an attorney ad litem to represent their interests. By properly following this procedure, you will get protection against the claims of unknown heirs as well as protection against the claims of unknown creditors.

If independent administration of an intestate estate is sought, a proceeding to declare heirship is mandatory. Estates Code, Sections 401.003(b) and 401.004.

Local practice varies as to combining the heirship and the administration applications into a single pleading. However, the two applications have slightly different requirements, including contents of applications, necessary parties, form of citation, and waiver of citation.

Regardless of whether the heirship and administration applications are combined, 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.

Although Estates Code, Section 202.051, provides for citation on known heirs who are twelve and older by registered or certified mail, return receipt requested, or other qualified delivery method with proof of delivery, we urge you to use extreme caution in doing so. In consideration of equitable principles, it appears highly desirable to make every reasonable effort to obtain waivers or actual service or to give as much notice as possible to all interested parties.

When the heirs' consent is required—for example, in the creation of an independent administration under Estates Code, Section 401.002 or Section 401.003—it is generally preferred that all heirs, in their consents to the independent administration, also consent and waive personal notice with respect to the proceeding to declare heirship.

For decedents dying on or after January 1, 2014, proceedings to declare heirship require an affidavit of service of citation. The affidavit may be filed any time before the court enters its order; however, many courts require it to be filed before the hearing. Citation and proof of delivery must also be filed. The affidavit must list each person waiving citation. Any person served whose name is not shown on the proof of delivery must also be listed in the affidavit. The affidavit is sworn to by the applicant. In the alternative, the applicant's attorney may sign a certificate. Estates Code, Section 202.057. When a representative waives citation on behalf of a minor, the affidavit or citation must also state the name and capacity of the representative. Estates Code, Section 202.057(a)(2)(C). See Special Instruction 16—Citation and Notice.

The court may require that any testimony admitted as evidence be reduced to writing and subscribed and sworn to by the witnesses. The testimony must be taken in open court; by deposition in accordance with Estates Code, Section 51.203; by a recorded statement of facts contained in an affidavit or instrument that satisfies the requirements of Estates Code, Section 203.001, or in a judgment of a court of record as specified by Estates Code, Section 203.001(a)(1)(B); or in accordance with the Texas Rules of Civil Procedure.

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Estates Code, Section 202.151. This System provides for the preparation of separate statements of facts to be signed by two disinterested witnesses who are to appear in open court in support of the application. If it is shown to the court's satisfaction that only one disinterested and credible witness can be found, the court may allow testimony of only one disinterested and credible witness. Estates Code, Section 202.151(c). The attorney should be prepared to prove the efforts made to the court. If this is not a practical solution, you should refer to Estates Code, Section 203.001, and the rules of evidence, particularly Texas Rules of Evidence, Rules 803 and 804, for other methods of proof. A statement of facts concerning family history, genealogy, marital status, or identity of heirs may be admissible as prima facie evidence of those facts if the statement is contained in an instrument legally executed and acknowledged or in a judgment of a court of record that, at the time the application is filed, has been recorded for five years or more in the deed records of any Texas county in which the property involved is located or in which decedent was domiciled or a resident at the time of death. Estates Code, Section 203.001(a). This Section 203.001 is cumulative of all other statutes. Estates Code, Section 203.001(d). See the section titled "Affidavit of Heirship" in Special Instruction 29—Procedures in Lieu of Administration.

In a proceeding to declare heirship with regard to a decedent dying on or after January 1, 2014, the appointment of an attorney ad litem for heirs whose names or locations are unknown is *mandatory*. See Estates Code, Section 202.009(a). That appointment may be expanded to include representation of an heir who is an incapacitated person if necessary to protect the heir's interests. Estates Code, Section 202.009(b). The court may appoint an attorney ad litem for certain other potential defendants. See Estates Code, Section 53.104(a).

The judgment is a final judgment, which may be appealed or reviewed on the same basis as other judgments in probate matters or corrected by bill of review. Estates Code, Sections 202.202 and 202.203. Since the Estates Code requires actual notice to nonresidents, a good-faith purchaser for value or any person delivering property to the heirs named in the judgment will be given protection against the risk of the later appearance of unknown heirs or the subsequent probate of a will. This protection does not appear to be available when an affidavit of heirship is used or when a proceeding is brought under Estates Code, Section 301.153. An affidavit of heirship probably vests defeasible title in the heirs, while a judgment in a proceeding to declare heirship probably vests merchantable title in the heirs. With slight modifications, the proceedings under Chapters 202 through 204 of the Estates Code are also used to determine heirship in a regular dependent administration (RDA) or an independent administration of an intestate estate by agreement (IBA).

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. Civil Practice & Remedies Code, Sections 37.004(a), 37.005(1), and 37.005(2). Declaratory judgments are beyond the scope of this System.

Procedures for proceedings to declare heirship begin at Item 25 of the Checkplan.

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SPECIAL INSTRUCTION 61—POWERS OF APPOINTMENT

A power of appointment is a right given in a will or a trust by one person (donor) to another person (donee) by which the donee obtains the right to name the ultimate recipient(s) of some portion of the donor's property. It is a power to dispose of property not owned by the donee and thus is an authority over property rather than an interest in property.

These powers of appointment may be general or limited. A general power of appointment may be exercised by the donee in favor of (to benefit) one or more of the donee, the donee's estate, the donee's creditors, or the creditors of donee's estate. All other powers of appointment are special or limited powers. General powers are subject to federal estate tax, but special or limited powers are not.

Some powers that otherwise would be regarded as general powers under the foregoing rules are not taxed as general powers if the donee's control is limited by an ascertainable standard relating to the health, education, maintenance, or support of the donee or if it is exercisable only in conjunction with the donor of the power or with a person who has a substantial interest in the property. Such powers are also treated as limited powers.

A power granted in a will is generally regarded as being created at the death of the testator, although there are exceptions for powers created by a will executed before October 22, 1942. Powers granted by a lifetime or inter vivos trust are generally regarded as being created on the date the trust takes effect.

The mere possession by a donee of a general power of appointment will cause the value of the property subject to the power on the date of the donee's death to be included in the donee's federal gross estate even though the donee did not own those assets at death and never directed their disposition. IRC, Section 2041.

If decedent was only one of several people who had a general power of appointment over the assets of the trust, the value to be included on Schedule H of IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for decedent's estate is the total value of such assets divided by the number of persons (including decedent) who could exercise the power.

A properly exercised power of appointment could affect the distribution of estate and unrelated trust assets and, therefore, should be carefully reviewed during the administration process. In analyzing either type of power of appointment, the first step is to find it. The first place to look is in a document creating a trust in which decedent was the present or prospective beneficiary or in which decedent was serving as a trustee. A valid exercise of a power of appointment in a will must be made through a specific reference to the power in the will or some other indication in writing that the testator intended to include the property subject to the power in the will and in accordance with the instrument granting decedent the power of appointment. Estates Code, Section 255.351. While Estates Code, Section 255.351, does not specifically require the probate of a will for the power of appointment to be validly exercised, a careful review of the document that created the power of appointment is necessary to determine the requirements for exercising the power.

Sample Description for General Power of Appointment

Interest in Marital Trust A created under the Last Will and Testament of Charlotte P. Green. Trustee is NBC, El Paso, Texas. Assets were subject to general power of appointment in favor of Decedent, and their values are listed on the attached schedule.	$108,388

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SPECIAL INSTRUCTION 62—ANNUITIES

Many so-called "annuities" are being sold and are owned by an increasing number of decedents. Basically, these are comparable to certificates of deposit whose interest is deferred until maturity. These instruments usually contain stiff penalties for early withdrawal. In this System, these "annuities" are treated as certificates of deposit.

In this System the term *annuity* refers to benefits such as a pension and not to those financial instruments that are similar to interest-bearing certificates of deposit that accrue interest tax free until maturity.

Typically, annuities have been contracts that provide for periodic payments, such as one provided to a retiring employee.

In the employment context, an annuity paid to an unmarried employee would be a single-life annuity with fixed payments to that employee until the employee dies. The payments end at the death of the employee.

Most pension benefits are paid by plans that are subject to the provisions of the federal Employee Retirement Income Security Act of 1974 (ERISA). If the employee was married, ERISA requires that the annuity must be a joint and survivor annuity unless the nonemployee spouse signs a waiver. This means that the payments will be made to one or both while both are alive and to the survivor after the death of the first to die. If a joint and survivor annuity is payable under an approved plan, the value of the annuity receivable by decedent's survivor is generally included in decedent's estate but is eligible for the marital deduction.

Even though an annuity is payable on the death of an employee, the surviving spouse might be able to elect to receive the value as a lump-sum distribution.

There are numerous rules and exceptions to rules governing annuities. Many of these are set forth in the IRS Instructions to Schedule I—Annuities for IRS Form 706. In a federally reportable estate, on the death of the first spouse, it is necessary to determine the value of the annuity to complete Schedule I of the U.S. Estate (and Generation-Skipping Transfer) Tax Return. The value of decedent's interest qualifies for the federal marital deduction. Since this is an asset that continues automatically to the surviving spouse and does not pass under decedent's will, it is not necessary to list it on the inventory of decedent's estate.

On the death of the surviving spouse, the annuity payments cease and there is no value to the annuity. However, the fact that this spouse was receiving an annuity is reported on Schedule I of that return for the surviving spouse's estate.

Personnel departments of larger corporations can provide most, if not all, of the required information and documentation. As might be expected, all plans differ to some degree, vesting and retirement dates vary, and employees make varying elections for personal and tax reasons. A careful review of the plan and its statements and of actions previously taken by decedent is mandatory. A good relationship with the personnel department is extremely helpful. Because of the wide variation in tax treatment, it is a good idea to work with an experienced accountant. This is not a job for amateurs.

To determine the value of the annuity payments, do the following:

1. Determine the annual IRC Section 7520 rate for the month of death and round to nearest 2/10th of 1 percent. To find the rate, see **www.irs.gov/businesses/small-businesses-self-employed/section-7520-interest-rates**.
2. Determine the amount of annuity payment and annualize it (e.g., 12 × monthly amount).
3. Determine the age of annuitant to nearest whole year.
4. Determine the annuity factor (IRC Section 7520 rate rounded) from *Actuarial Valuations Version 3A* (Rev. 5-2009), Table S, IRS Publication 1457, for age of annuitant.
5. Multiply the annual annuity by the annuity factor.
6. Determine the adjustment factor from *Actuarial Valuations Version 3A* (Rev. 5-2009), Table K, IRS Publication 1457, if annuity is paid other than annually.
7. Multiply item 5 by item 6. This is the full value of the annuity.
8. Divide full value of annuity (Item 7) by 2. This is the value of one-half community property interest in the annuity.

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Example

Nonannuitant spouse died August 6, 2007. Annuitant spouse's age was seventy-two years and nine months on that date. Section 7520 rate for August 2007 was 6.0 percent. Monthly annuity was $8,238, annualized to $98,856. Annuity factor from *Actuarial Valuations Version 3A* (Rev. 5-2009), Table S (6.0) was 7.4811. Adjustment factor for monthly payments was 1.0272.

Calculation

1.	Annual section 7520 rate	6%
2.	Annualized annuity	$98,856
3.	Age of annuitant (rounded)	73
4.	Annuity factor	7.4811
5.	Annuity (annual payment) [Line 2 × Line 4]	$739,551.62
6.	Adjustment factor for monthly payments	1.0272
7.	Full value of annuity [Line 5 × Line 6]	$759,667.42
8.	Community one-half [Line 7 ×.5]	$379,833.71

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SPECIAL INSTRUCTION 63—SMALL ESTATES (SE)

Two proceedings for "small estates" are authorized under the Estates Code. The first is the collection of small estates on affidavit as authorized by Estates Code, Chapter 205. This procedure is included in this System. The second is the order of no administration authorized under Estates Code, Chapter 451, which is not included in this System.

The collection of small estates by making an affidavit and following the procedures of Chapter 205 of the Estates Code is one simple method to entirely dispense with the administration of a small intestate estate. This procedure is limited to estates of decedents who died intestate. Estates Code, Section 205.001. If a decedent's eligible homestead is the only real property in the estate, title to the homestead may be transferred under the affidavit to a surviving spouse or minor child(ren). Estates Code, Sections 205.006(a), 205.009. Thus, a Chapter 205 affidavit generally is not available if a decedent had a will, and it transfers no real estate if decedent had any nonhomestead real property—for example, a mineral interest.

To qualify as a small estate, the gross (not net) value of the probate assets as of the date of the affidavit filed with the court, exclusive of eligible homestead and exempt property, cannot exceed $75,000. Additionally the value of the probate assets, exclusive of eligible homestead and exempt property, must exceed the known liabilities exclusive of liabilities secured by eligible homestead and exempt property. These are mandatory requirements, and unless the estate is within these limits this proceeding cannot be used. Estates Code, Section 205.001.

The utility of these procedures to adult children is limited. References in Chapter 205 to "homestead" or "exempt property" mean only those assets that would be "eligible" to be set aside under Estates Code, Section 353.051, if the estate were being administered. Estates Code, Section 205.009. Exempt personal property may be set aside for certain adult children (Estates Code, Section 353.051(a)(2)), but a homestead may not (Estates Code, Section 353.051(a)(1)). Because the "eligible" homestead excludes adult children, even if incapacitated or unmarried, only decedent's surviving spouse or minor children may transfer title to the homestead using this procedure. Worse, rarely is the homestead worth less than $75,000. If its value must be included absent a surviving spouse or minor child, adult children may qualify for a small estate affidavit only if there is no homestead.

This procedure cannot be used if a petition for the appointment of a personal representative is pending or has previously been granted, and in any event the affidavit cannot be filed until at least thirty days have elapsed since the date of death of decedent. Estates Code, Section 205.001(1), (2). This procedure does not transfer title to any real estate except the homestead. Estates Code, Sections 205.006(a) and 205.008(b).

Finally, this procedure should not be used if a survivorship action to recover damages is contemplated.

Not only must the affidavit include a complete listing of all known estate assets and liabilities (indicating which assets the applicant claims are exempt), but it also must include the names and addresses of the distributees and the relevant family history facts concerning heirship that identify and show the rights of all of the "distributees" (heirs, beneficiaries, devisees, or assignees of an interest in the estate) to receive money or property from decedent's estate, and the affidavit must be sworn to and signed by all of these people, the natural guardians or next of kin of minors, the guardians of any other incapacitated distributees, and two disinterested witnesses. Estates Code, Section 205.002.

Approval of this affidavit by the judge is normally routine and is frequently, if not generally, acted on without a hearing. However, approval is discretionary, giving the judge an opportunity to question the distributees and even to require that all debts be paid before the affidavit is approved. Estates Code, Section 205.003.

Many large counties have approved small estate affidavit forms available on their websites that should be used. Review the form thoroughly, as some counties require additional information such as specific facts detailing the community-property or separate-property characterization of each asset.

Once the affidavit has been approved by the judge, it is recorded as an official public record. Estates Code, Section 205.005. A certified copy of this affidavit and order is then obtained and is furnished to a debtor or transfer agent (Estates Code, Section 205.004), who may safely rely on the truthfulness of the representations contained in the affidavit in transferring funds or

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delivering assets to the distributees. Estates Code, Section 205.007. Section 205.007 also provides a means for the distributees to force payment in an action against any person who does not deliver the assets in accordance with the affidavit and order.

Procedures for collection of small estates on affidavit begin at Item 27 of the Checkplan.

The second possible small estate proceeding, generally referred to as an order of no administration, is not covered in this System. This procedure, permitted by Estates Code, Chapter 451, is an alternative method for avoiding an administration. It involves more judicial action than the collection of the estate on affidavit as described above.

The proceeding under Chapter 451 is available only if a decedent is survived by a spouse or minor children (or, if decedent died on or after September 1, 2011, adult incapacitated children), and then only if the value of the assets of the estate, exclusive of homestead and exempt property, does not exceed in value the amount of the family allowance to which the surviving spouse and children are entitled. Estates Code, Section 451.001(a). It is quite difficult to determine with certainty the amount of the family allowance before having a hearing, and this is one reason for the difficulty in determining if this procedure is applicable.

When this procedure is followed, the application is to be filed in a court having venue for purposes of administration in general and is to contain a request that the court fix the amount of the family allowance and enter an order that no administration is necessary. Estates Code, Section 451.001. This procedure may be used even if a proceeding for the appointment of a personal representative has already been filed but not granted. Although the court may hear the application at once and without notice (Estates Code, Section 451.002(a)), it is better practice to give notice and have a hearing to determine the appropriate facts. Citation should be required to permit creditors and others to have the opportunity to contest the family allowance or the claim that no administration is necessary.

If the court concludes that the facts contained in the application are true and that the expenses of the last illness, funeral charges, and expenses of the proceeding have been paid, the court must make a family allowance, and if the entire estate, not including homestead and exempt property, is exhausted, the court enters its order that no administration is necessary and that the entire estate is to be set aside to the surviving spouse and eligible children. Estates Code, Section 451.002(b). Since funeral expenses and expenses of last illness and of administration are the only expenses that take precedence over the family allowance, if nonexempt assets are consumed by these expenses and by the family allowance, there is no longer any need to have an administration for general creditors.

Although the proceeding under Chapter 451 of the Estates Code is available if a decedent dies with or without a will, we do not recommend following that procedure if there was a will.

Perhaps the biggest danger in the use of this second proceeding arises from the provisions of Estates Code, Section 451.004. This section authorizes a proceeding to revoke an order of no administration within one year after its entry on proper application by a creditor who can show that the property described was incorrectly valued, that property was omitted from the application, or that other property has been discovered. In such a case, the court will inquire into such claims. If the court sustains the claim of the creditor, the order of no administration can be set aside and a full administration of the estate can then be required. The problems thus created should be obvious.

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SPECIAL INSTRUCTION 64—TRANSFER ON DEATH DEEDS

A variety of deeds pass title to real estate on death without probate, including deeds retaining a life estate, deeds retaining a life estate with a power of appointment ("Lady Bird deeds"), and joint tenancy deeds. See "What Real Estate Attorneys Need to Know about Wills and Probate" by Patricia Flora Sitchler, 2015 Advanced Real Estate Law Course, State Bar of Texas; "Drafting Transfer on Death Deeds and Other Probate Avoidance Documents" by Pamela D. Orsak, 2021 Estate Planning and Probate Drafting Course, State Bar of Texas.

The Texas Real Property Transfer on Death Act authorizes a deed with unique characteristics that are markedly different from other deeds. See "Legislative Update" by Richard A. Crow, 2015 Advanced Real Estate Law Course, State Bar of Texas. The Act applies to only a deed that is executed and acknowledged on or after September 1, 2015, by a grantor who dies on or after September 1, 2015. Estates Code, Section 114.003. The Act expressly excludes prior deeds, as well as subsequent ones that do not comply with the Act. See Estates Code, Section 114.002(a)(6).

Unfortunately, this form is statutorily defined as a "transfer on death deed," inviting confusion with other deeds that enjoy none of its attributes. The Act neither invalidates nor enhances other deeds that transfer real property on death. Estates Code, Sections 114.002(a)(6) and 114.004.

In addition to the September 1, 2015, requirements described above, a statutory transfer on death deed must (1) contain the essential elements and formalities of a recordable deed, (2) state that the transfer of an interest in real property to the designated beneficiary is to occur at the transferor's death, and (3) be recorded before the transferor's death in the deed records where the property is located. Estates Code, Section 114.055.

In this System, "transfer on death deed" or "TOD deed" means the statutory transfer on death deed defined by Estates Code, Section 114.002(a)(6).

Contractual, not testamentary, capacity is required. Estates Code, Section 114.054(a). A TOD deed may not be created with a power of attorney. Estates Code, Section 114.054(b).

During the owner's lifetime, the beneficiary of a TOD deed has no interest in the property and the owner retains full power to transfer or encumber the property or to revoke the deed. Estates Code, Section 114.101. Divorce revokes a TOD deed in favor of a former spouse if the judgment is recorded in the deed records before the transferor's death. Estates Code, Section 114.057(c). Inter vivos transfers, including a subsequent TOD deed, effectively revoke a TOD deed if the conveyance or a memorandum is recorded in the deed records before the transferor's death. Estates Code, Section 114.102. A will, however, may not revoke a TOD deed. Estates Code, Section 114.057(b).

Passage of title to the designated beneficiary is subject to survival by 120 hours and other requirements. If the designated beneficiary fails to survive by 120 hours, the share lapses and passes in accordance with Estates Code, Chapter 255, Subchapter D, as if it were a devise made in a will. Estates Code, Section 114.103.

Title passes subject to all encumbrances. The TOD deed is considered recorded at death, allowing creditors to perfect liens even after the TOD deed is recorded. Estates Code, Section 114.104(a). Although property subject of a TOD deed is not considered a probate asset, the usual claims process applies to secured creditors. Estates Code, Section 114.104(b).

Property subject of a TOD deed is liable for the claims of unsecured creditors, expenses of administration, estate taxes, allowance in lieu of exempt property, and the family allowance, but only if the probate estate is insufficient. Proceedings to enforce those liabilities are subject to a two-year limitations period. Otherwise, property subject of a TOD deed is not considered a probate asset and is not subject to Medicaid Recovery. See Special Instruction 100—Needs-Based Benefits. Estates Code, Section 114.106.

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SPECIAL INSTRUCTION 65—ADMINISTRATION WITH DEPENDENT EXECUTOR (ADE)

Administration with a dependent executor (ADE) is the procedure used if an administration is necessary for the estate of a person who had a will that fails to name an *independent* executor or to provide for an independent administration of the estate, even though the person named in the will as executor would be able to qualify as such. Although other situations are possible, the procedure in this section assumes that the named executor is the applicant.

The proceedings for the appointment of a dependent executor are generally the same as those for the appointment of an administrator with will annexed and are similar to the appointment of an administrator in a regular dependent administration except that, in addition to the proof required in a regular dependent administration, the existence and validity of decedent's will must also be proved. The person appointed by the court is an executor and will receive letters testamentary. Procedures for administration with dependent executor begin at Item 29 of the Checkplan.

After a dependent executor qualifies, the administration of the estate proceeds in the same manner as in a regular dependent administration or in an administration with will annexed as governed by the rules applicable to administrations generally.

Even when a dependent administration is indicated, Estates Code, Section 401.002(a), provides that an independent administration of an estate may be created if all the distributees of decedent agree on and consent to the advisability of an independent administration with the court appointing the named person to be an independent executor rather than a dependent executor. See Special Instruction 88—Independent Administration by Agreement Where Decedent Left a Will (TBA).

In this System it is assumed that applications for letters testamentary in an original proceeding are filed within four years of decedent's death. In general, application for probate of a will and letters testamentary (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.

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SPECIAL INSTRUCTION 66—DISTRIBUTION DEEDS

Probate is effective to clear title to real property in the county where the proceedings are had. Title to real property in other Texas counties may be cleared by filing copies of the probate proceedings in the real property records there. See Item 200 of the Checkplan. Similar procedures apply if original probate was in another state or country. See Special Instruction 91—Ancillary Probate (AP) or Recording (RW) of Wills Previously Probated Elsewhere.

These procedures establish that decedent no longer owns the property, but they don't necessarily identify the new owner. The sole distributee of a pour-over will may be the trustee of a revocable trust. The trustee's identity is seldom public record, frustrating later title examiners. The will might leave the homestead "to my wife, if she survives me; otherwise to those of my children that survive me, in equal shares," which settles nothing without knowing who survived. The surviving spouse might be the primary beneficiary of a tax-planned will, subject to two or more testamentary trusts. Which trust gets the house? One, the other, both, or neither? Who knows?

Even when the will makes outright gifts to named persons—for example, "All to Michael and Sophie"—doubt remains. The executor might sell a property to pay creditors. The executor could make non–pro rata distributions—for example, the house to Michael and equivalent value of stock to Sophie.

Increasingly, title companies and property and casualty insurance companies are requiring deeds from the personal representative of the estate to the distributee.

Administrators and executors should not, and cannot, bind an estate with a general warranty of title, because to do so would impose a new contingent liability on the estate and delay indefinitely the close of administration. *Dallas County v. Club Land & Cattle Co.*, 66 S.W. 294, 297 (Tex. 1901); *Burlerson v. Whaley*, 299 S.W. 718, 721 (Tex. App.—Austin 1927, no writ).

In this System, the model deed (Form 117) contains a special warranty of title. A deed without warranty is sufficient to convey title to real property, but it conveys only the grantor's interest at the time of conveyance. An executor's duty is to distribute decedent's assets, subject to administration, and it's arguably a breach of fiduciary duty to convey something less if the only reason is to minimize the grantor's liability.

Title insurance is a related issue. Title insurance is regulated by the Texas Department of Insurance. Title underwriters have discretion whether to insure a property, but if they do, they must use an approved form. Insuring forms are revised periodically, and generalizations about title insurance coverage are unreliable. The terms of the title policy when issued determine coverage, not the terms of the current promulgated form. When in doubt, read the policy. Most of the literature discusses the Owner's Policy of Title Insurance (Form T-1), which is for nonresidential property. However, most decedents leave title insurance, if any, under a Texas Residential Owner's Policy of Title Insurance One-to-Four Family Residences (T-1R).

Historically, the warrantor's coverage expired after twenty-five years. If the decedent survived twenty-five years after buying a home, nothing remained of the policy for the executor or administrator to consider. Since about 1991, though, there is no set time limit. For executors and administrators, coverage lasts as long as their liability under their warranties in a deed, for example, a distribution deed. Before 2010, though, if the grantor gave no warranties, coverage often lapsed.

Imagine that decedent financed the purchase of a farm in 2001, closed through a title company, and purchased owner's title insurance. An enforceable mineral lease with surface access easements was recorded in the real property records, but the title company failed to discover it. Unaware, decedent built his retirement home over the easements and then died. The executor or administrator records a distribution deed with the usual exceptions for matters of record, for example:

> This conveyance is expressly made and accepted subject to all matters on the ground that a true and correct survey would reveal and all valid and subsisting easements, restrictions, reservations, covenants, conditions, and other matters relating to the Property to the extent that the same are valid and enforceable and affect the Property, as same are shown by instruments filed for record in the office of the County Clerk of _____ County, Texas.

Because the grantor had no liability under the distribution deed, title insurance coverage was lost. See "Property Taxes and Title Insurance: Issues and Answers for

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the Estate Lawyer" by Michael A. Wren, 2012 Advanced Estate Planning and Probate Course, State Bar of Texas, Appendix A, "Exceptions to Conveyance and Warranty" OPTION ONE.

Coverage could have been preserved if the grantor instead limited exceptions to matters the title company identified in Schedule B of the Owner's Policy, for example:

> This conveyance is expressly made subject to the following matters (the "Exceptions"), but only to the extent the same are valid and enforceable and affect the Property:
>
> (a)
>
> (b)
>
> (c)
>
> The Exceptions listed above are solely for the purpose of qualifying the estate conveyed herein and Grantor's warranty of title, and no reference or recital herein shall create, enlarge, extend, ratify, confirm, or be the basis for any right, title, estate, claim, or demand in favor of any party other than Grantor and Grantee, and their respective heirs, legal representatives, successors, and assigns.

These exceptions are more narrow and expose not only the title company, but necessarily also the grantor, to liability. Proper preparation of these exceptions requires reference to a copy of decedent's title policy. See Wren, Appendix A, "Exceptions to Conveyance and Warranty" OPTION TWO.

If the easement grantee demands demolition of decedent's construction, the executor or administrator will regret waiving title insurance coverage.

Title insurance is not available for mineral interests. If title insurance is not a consideration or no policy is found, the Exceptions to Conveyance and Warranty section may be completed following the OPTION ONE model.

If the executor or administrator locates an owner policy, use OPTION TWO to preserve coverage, unless a review of the policy confirms that it will survive the transfer regardless of the grantor's warranties. Read the policy definition of "Insured." If the definition encompasses your particular grantee, coverage will continue; otherwise, OPTION TWO is necessary to preserve title insurance.

The definition of "insured" was expanded for nonresidential (T-1) policies issued on or after May 1, 2008. Effective January 1, 2010, the Insurance Code was amended to expand the definition of "insured" for residential (T-1R) policies; however, the form itself was not updated for several years. The current T-1R residential owner's policy, effective January 3, 2014, appears to continue coverage for a decedent's heirs, but the language employed is more casual than that found in the T-1 for nonresidential property, and it's unclear that trust beneficiaries are always included.

If the grantee is to assume ad valorem taxes for the current year, consider having the grantee sign the deed to accept that obligation. Property taxes are billed in arrears and are the personal obligation of the person who owns the property on January 1. The grantee who accepts this distribution deed in September also accepts responsibility for property taxes from January through August but may not realize it before October, when tax bills are mailed. This result is not unfair to the surviving spouse or other family member who had possession of the property throughout administration of decedent's estate. In other cases, proration between the estate and the distributee may be in order.

Beginning ad valorem tax year 2020, the homestead exemption is no longer prorated for so-called heir property, whether acquired by will, transfer on death deed, or intestacy. Previously, the homestead property tax exemption was prorated if the resident owned less than 100 percent. Now, for example, two or more distributees, only one of whom will qualify for a homestead exemption, may split an interest in decedent's home or rent house, and that one distributee may enjoy 100 percent of the exemption despite owning only 50 percent of the property. *See* Texas Tax Code, Section 11.13. If all or part of the homestead will be distributed to a trust, the personal representative should confirm whether the trust satisfies the requirements of Texas Tax Code, Section 11.13(j)(3), to qualify for the homestead exemption. For an example of a qualifying trust provision that may be included in the deed, see "Drafting Deeds for Probate Avoidance Planning, Lifetime Gifts, Executors, and Trustees" by Newman F. Baker III ("Tree"), 2025 Estate Planning and Probate Drafting Course, State Bar of Texas.

For more thorough discussion and for additional considerations regarding mineral interests, see "Property Taxes and Title Insurance: Issues and Answers for the Estate Lawyer" by Michael A. Wren, 2012 Advanced Estate Planning and Probate Course, State Bar of Texas. Wren addresses T-1 (nonresidential) policies

through the May 1, 2008, revisions and T-1R (residential) policies through the January 1, 2010, revisions.

The current Texas Department of Insurance insuring forms are effective January 3, 2014. For more on the current forms as well as listing agreements and contracts of sale, see "Doing the Deed—Drafting Tips for Real Estate Documents" by Barton R. Bentley, 2014 Estate Planning and Probate Drafting Course, State Bar of Texas.

If a grantee has Medicaid issues, see "Where Real Estate and Estate Planning Collide" by Kristen Quinney Porter and Patricia F. Sitchler, 2014 Advanced Elder Law Course, State Bar of Texas.

The *Texas Real Estate Forms Manual* (2025 ed.), published by the State Bar of Texas, has sample clauses and forms. For example, to reserve a mineral interest, see form 5-7 ("Reservations from Conveyance"). To transfer a note and lien, see forms 10-1 ("Transfer of Note and Lien") and 10-25 ("Allonge").

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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

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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.

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SPECIAL INSTRUCTION 68—INDEPENDENT ADMINISTRATION (IA)

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.

In addition to or instead of naming one or more executors in a will, a testator may grant the authority to designate one or more persons to serve as administrators of the testator's estate. This authority may be granted to an executor named in the will or to another person identified by name, office, or function. Unless the will or the designation provides otherwise, the designated administrator has the same rights, powers, and duties as an executor named in the will. Estates Code, Section 254.006(a), (d). It is assumed in this System that neither the will nor the designation provides different rights, powers, and duties from those of a named executor. The term "independent executor" includes an independent administrator. Estates Code, Section 22.017.

Following decedent's death, the independent executor named in the will files the will for probate, has it admitted, and takes and files the oath. On filing the oath, the independent executor is qualified and, unless limited by the will, has the power to perform any act necessary to settle the estate that might be done under the authority of a court in an administration where no will existed. In addition to those powers, the independent executor has any additional discretionary authority granted by the will. 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 a will naming an independent executor has been probated and the executor has qualified by taking the oath, the executor must prepare and ordinarily must file an inventory, appraisement, and list of claims, to be approved by the court. Estates Code, Section 309.051. Alternatively, in some circumstances the independent executor still must prepare the inventory but may file an affidavit in lieu of filing the inventory. Estates Code, Section 309.056. Estates Code, Section 402.001, provides that after such approval or filing, as long as the estate is represented by an independent executor, 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, Chapters 308 and 404, are exceptions to that rule.

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

Dependent administration is the default procedure in Texas, but opportunities for an independent administration have been expanded.

Independent administration is available when provided for in the will. Estates Code, Section 401.001. It may be created by agreement in a testate estate where the will did not provide for independent administration or where it did but no named executor (or, presumably, designated administrator) is available or willing to serve. Estates Code, Section 401.002. See Special Instruction 88—Independent Administration by Agreement Where Decedent Left a Will (TBA). It may also be created in an intestate estate by agreement. Estates Code, Section 401.003. See Special Instruction 89—Independent Administration by Agreement Where There Is No Will (IBA). Some courts, however, may be unwilling to grant independent administration by agreement if there are minor beneficiaries. Attorneys should investigate local practice.

Under Section 401.001, a will provides for an independent administration if it states that "no other action shall be had in the probate court in relation to the settlement of the person's estate than the probating and recording of the will, and the return of any required inventory, appraisement, and list of claims of the person's estate." Less formal language can suffice—for

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example, naming a person "independent executor" or "executor without bond or any legal requirements." *In re Dulin's Estate*, 244 S.W.2d 242, 244 (Tex. App.—Galveston 1951, no writ); *Long v. Long*, 169 S.W.2d 763 (Tex. App.—San Antonio 1943, writ ref'd). If the named executor or alternate will not serve or fails to qualify, independent administration under Section 401.001 is not available. *Boone v. LeGalley*, 29 S.W.3d 614 (Tex. App.—Waco 2000, no pet.).

Even though the will provides for an independent executor, it is not always necessary to subject the estate to administration. If there are no debts or special assets to transfer, an alternative procedure is to probate the will as a muniment of title. When using this procedure, refer to Special Instruction 73—Muniment of Title (MT).

However, if there is a choice between an independent administration and a muniment of title proceeding, we lean toward the independent administration. If there are securities to be transferred, the independent administration is the preferred method. For more information, see "The Estate Administration Guide" by Sarah Patel Pacheco, 2025 Handling Your First (or Next) Transactional Matter Course, State Bar of Texas.

In this System it is assumed that applications for letters testamentary in an original proceeding are filed within four years of decedent's death. In general, application for probate of a will and letters testamentary (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.

Procedures for independent administration other than by agreement, including designated administrators, begin at Item 19 of the Checkplan. See Special Instruction 95—Authority to Designate Administrator for wording of forms if authority to designate an administrator is granted in the will.

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SPECIAL INSTRUCTION 69—REGULAR DEPENDENT ADMINISTRATION (RDA)

If there is no will, there can be no executor. If an administration is necessary, the person who handles the estate is called an administrator.

The regular dependent administration of an intestate estate is called "regular" because there are no shortcuts. It is called "dependent" because the ability of the administrator to act is dependent on orders of the court made in compliance with the Estates Code. This is the so-called "full-scale administration."

Every action of the administrator generally must be preceded by an application made to and approval given by the court. Since these procedures are expensive and time-consuming and result in delays in getting a decedent's property to the family, we do not recommend the use of the regular dependent administration unless none of the other procedures can be used, there is no will, there are two or more debts, there is a need for administration, and there is a lack of unanimous consent among the heirs for an independent administration. Even if a will exists, a regular dependent administration may be appropriate in cases involving anticipated disputes; potential insolvency; an unsuitable or inexperienced executor; minor, incapacitated, or unknown beneficiaries; complex or high-risk assets; or the need to shield the personal representative from liability through the court's oversight.

Procedures for regular dependent administration begin at Item 35 of the Checkplan.

Estates Code, Section 401.003, provides that an independent administration of an intestate estate may be created if all the distributees of decedent agree on and consent to the advisability of an independent administration with a court-appointed independent administrator rather than a dependent administrator. See Special Instruction 89—Independent Administration by Agreement Where There Is No Will (IBA).

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.

Throughout this System we have tried to guide you to the procedure that requires the least amount of activity to conclude the administrative process. This effort on our part is not to be taken as criticism of any of the procedures provided by the Code but is specifically designed to permit you to close the estate and get the assets to the family as rapidly and as inexpensively as possible.

Regardless of the particular procedure you follow, you should make every effort to conclude the process as soon as practical unless there are tax or other unusual reasons for keeping the estate open.

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SPECIAL INSTRUCTION 70—SUBCHAPTER S CORPORATIONS

Certain corporations may elect to be taxed like a partnership under the provisions of IRC, Chapter 1, Subchapter S. These are called "S Corporations" or "Subchapter S Corporations." The election to be so taxed is made by the corporation with the unanimous consent of its shareholders. Once the election has been properly made and approved by the IRS, it remains in effect unless (1) it is revoked with the consent of shareholders holding more than one-half of the shares, (2) the corporation has too many shareholders, (3) the corporation has an ineligible shareholder, (4) the corporation has more than one class of stock, or (5) the corporation receives too much passive income. IRC, Sections 1361(b) and 1362(d).

The estate of a decedent is a permitted shareholder. IRC, Section 1361(b)(1)(B). Income, deductions, loss, and credits from the corporation for the taxable year are prorated on a daily basis so that those items before death are reported on decedent's final income tax return and those after death are reported on the fiduciary income tax return for decedent's estate or by decedent's beneficiary. IRC, Sections 1366(a) and 1377.

If a corporation in which decedent was a shareholder desires to make such an election for the first time under IRC, Section 1362(a)(2), decedent's executor or administrator is the shareholder who must consent to the election. There is no need for decedent's executor or administrator to file an election to continue qualification for the corporation. IRC, Section 1362(d).

Ordinarily, when an estate distributes stock in an S Corporation, the pro rata share (on a per diem basis) of the income, loss, deductions, and credits of the corporation are divided between the estate and the distributee even though distributions from the corporation may be paid to only one or the other.

If the S Corporation has a fiscal year established before 1982, a 50-percent shift in ownership will cause it to lose the fiscal year and require adoption of a calendar year. The Subchapter S Revision Act of 1982 (1982 Act), Pub. L. No. 97-354, 96 Stat. 1669, 1982-2 C.B. 702 (Oct. 19, 1982), as amended by the Technical Corrections Act of 1982, Pub. L. No. 97-448, 96 Stat. 2365, 451 (Jan. 12, 1983). No shifting occurs when the stockholder dies and the executor or administrator becomes the owner. When the administration of the estate is complete, it is probable, but not certain, that the distribution of 50 percent or more to the distributee(s) would not cause the loss of the fiscal year.

If stock in an S corporation is to be distributed to a trust, care must be exercised to ensure that the trust qualifies as a shareholder and that the election is not terminated. In this regard IRC, Section 1361(d), defines and outlines the requirements for a qualified Subchapter S trust and IRC, Section 1361(e), defines and outlines the requirements for an electing small business trust. Further coverage is beyond the scope of this System. More coverage is provided in an article entitled "Avoiding S Corporation I.E.D.'s Including: LLC Conversions, S Terminations, Qualified S Trusts, Shareholder Agreements, and Community/Separate Property Issues" by Robert H. Kroney and M. Seth Sosolik, 2010 Advanced Estate Planning and Probate Course, State Bar of Texas.

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SPECIAL INSTRUCTION 71—APPORTIONMENT OF TAXES

When estate, inheritance, and other death taxes are due, the burden of paying them must be determined.

Ordinarily, gifts that qualify for estate tax deductions (marital and charitable) do not bear any of the death taxes, and, when they do, they are reduced to the extent of the tax burden.

If there is a single beneficiary, no apportionment is required since the entire burden of taxation falls on that beneficiary. Frequently wills provide for the payment of these taxes out of the residue of the estate. Decedent's will must be reviewed for specific provisions regarding the source of funds to be used for such payments.

Some beneficiaries may have received nonprobate, but otherwise taxable, assets such as life insurance proceeds or taxable gifts made years before decedent's death. One of the purposes of the apportionment statute (Estates Code, Chapter 124, Subchapter A) is to require certain beneficiaries to bear a proportionate share of the death taxes. The statute describes the procedure in great detail and requires decedent's executor or administrator to collect the taxes unless decedent's will directs otherwise. In fact, the executor or administrator is given the right to withhold the apportioned tax before making any distributions. Estates Code, Section 124.013.

Unless decedent's will directs otherwise, decedent's executor or administrator is entitled to recover a proportionate amount of estate taxes from beneficiaries of life insurance taxed in decedent's gross estate (IRC, Section 2206) and in certain other instances, from persons receiving property, such as when decedent failed to exercise, exercised, or released a general power of appointment (IRC, Section 2207), or had a retained interest in previously transferred property (IRC, Section 2207B), or was the beneficiary of a qualified terminable interest property (Q-TIP) trust (IRC, Section 2207A).

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SPECIAL INSTRUCTION 72—SPOUSAL LIABILITY

To deal with issues of spousal liability, a general understanding of community and separate property is necessary and can be found in Special Instruction 49—Marital Property Rights.

If decedent was not married, all of decedent's property is decedent's separate property. If decedent was married, then all property owned by decedent and by decedent's surviving spouse is marital property. There are five kinds of marital property: (1) husband's separate property, (2) husband's sole management community property, (3) joint management community property, (4) wife's sole management community property, and (5) wife's separate property.

The nature and extent of the liability of one or both of the spouses and whether or not particular property is subject to a debt or claim against one or both of the spouses depends on (1) the classification of the property, (2) whether the liability arose before or after the marriage, and (3) whether the liability arose out of a contract or out of a tort. The following chart summarizes the liability system. References are to Family Code, Section 3.202.

Further coverage may be found in "Handbook on Texas Marital Property Law for Estate Administration" by Thomas M. Featherston, Jr., 2023 Advanced Estate Planning and Probate Course, State Bar of Texas, and "Protecting the Surviving Spouse . . . and Protecting Yourself after *Belt v. Oppenheimer*" by Glenn M. Karisch, 2006 Advanced Estate Planning and Probate Course, State Bar of Texas.

Nature of Liability	H's S/P	H's Sole Management C/P	Joint Management C/P	W's Sole Management C/P	W's S/P
Contract of H - prior to marriage	Yes	Yes 3.202(c)	Yes 3.202(c)	No 3.202(b)(1)	No 3.202(a)
Contract of H - during marriage	Yes	Yes 3.202(c)	Yes 3.202(c)	No 3.202(b)(2)	No 3.202(a)
Tort of H - prior to marriage	Yes	Yes 3.202(c)	Yes 3.202(c)	No 3.202(b)(1)	No 3.202(a)
Tort of H - during marriage	Yes	Yes 3.202(c),(d)	Yes 3.202(c),(d)	Yes 3.202(d)	No 3.202(a)
Contract of W - prior to marriage	No 3.202(a)	No 3.202(b)(1)	Yes 3.202(c)	Yes 3.202(c)	Yes
Contract of W - during marriage	No 3.202(a)	No 3.202(b)(2)	Yes 3.202(c)	Yes 3.202(c)	Yes
Tort of W - prior to marriage	No 3.202(a)	No 3.202(b)(1)	Yes 3.202(c)	Yes 3.202(c)	Yes
Tort of W - during marriage	No 3.202(a)	Yes 3.202(d)	Yes 3.202(c),(d)	Yes 3.202(c),(d)	Yes

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SPECIAL INSTRUCTION 73—MUNIMENT OF TITLE (MT)

Sometimes when a person dies leaving a will there may be no need for an administration of the estate. When so, the court may find there is no necessity for an administration of the estate and admit the will to probate as a muniment of title only. In other words, the will is probated just as any other will is probated, but the court does not appoint an executor or administrator and there is no administration of the estate. The advantage of this procedure is that, on admission of the will to probate as a muniment of title, the estate is vested in the beneficiaries in the shortest possible time.

The application to probate the will cannot request the issuance of letters testamentary, and it must state that there are no unpaid debts other than those secured by liens on real estate or that for another reason there is no necessity for administration of the estate. Estates Code, Section 257.051(a)(10). The application must be filed within four years of the date of decedent's death. Estates Code, Section 257.054(2). However, if the application is filed more than four years after the date of decedent's death, the applicant must not be in default in failing to file within that time. Estates Code, Section 256.003(a). *See Ferreira v. Butler*, 575 S.W.3d 331 (Tex. 2019) (when person seeks probate in individual capacity, only applicant's conduct is considered in determining whether applicant was not in default in failing to present will for probate within four years). If filing for probate more than four years after decedent's death, the applicant must also give notice to the heirs as required by Estates Code, Section 258.051. The four-year limit does not apply to ancillary probate of foreign wills. Estates Code, Sections 256.003 and 501.001.

This procedure is useful when (1) the will fails to name an executor, (2) the will names an executor but that person is dead, is disqualified, or refuses to act and there is no living and qualified alternate executor named in the will, or (3) an executor is named in the will, but that person is not made an *independent* executor. If the debts are paid or matters are otherwise handled so that there is no need for any administration, a muniment of title proceeding can frequently save expense and inconvenience.

Many courts require testimony regarding whether decedent received Medicaid benefits after March 1, 2005. See Special Instruction 100—Needs-Based Benefits. Those benefits may be subject to a claim for recovery under the Medicaid Estate Recovery Program (MERP). If decedent received covered benefits, the Texas Department of Aging and Disability Services (DADS) must be contacted to determine whether a MERP claim has been or will be filed against the estate. The form found at **www.hhs.texas.gov/sites/default/files/documents/services/aging/txmerpcertificationform.pdf** should be submitted to obtain information about any claim. The form returned by DADS provides evidence concerning any such claim. Details about MERP, including claims procedures and exemptions, are found at Administrative Code, Title 1, Chapter 373.

The order admitting the will to probate is sufficient legal authority to each person who owes money or has property belonging to the estate to pay or transfer the applicable asset to the distributee without the necessity of administration. Estates Code, Section 257.102(a). Stock transfer agents, title companies, purchasers, and all other persons are fully protected by this procedure, and they may deal directly with the beneficiaries named in the will with full protection against claims of unknown creditors or unknown heirs.

Some attorneys have difficulty in dealing with out-of-state transfer agents and attorneys who are not familiar with this procedure, and in estates where there are many securities to be transferred, problems can arise. These problems can be resolved, but they take time and additional effort. Another possible disadvantage is that with this procedure there will not be an estate as a separate taxpaying entity for federal income tax purposes.

Although the Estates Code does not require the filing of an inventory, a few judges do.

Estates Code, Section 257.103, requires that, not later than the 180th day after the date the will was admitted to probate, the applicant file an affidavit stating specifically the terms of the will that have been fulfilled and the terms that have not been fulfilled. The court may waive the requirement or extend the time for filing the affidavit. Some courts will not waive the requirement if there are living beneficiaries other than the applicant.

Many attorneys believe that if you have a choice of filing the will as a muniment of title or opening an independent administration, you are best advised to open

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the independent administration. If all else is equal and there are securities to transfer, the independent administration is the preferred method.

We strongly recommend the muniment of title procedure when letters testamentary cannot be issued and when independent administration is not available. Of course, if there are debts that cannot be settled before the application is filed and there is no other reason that an administration will not be necessary, the muniment of title procedure is not available. Procedures for muniment of title begin at Item 22 of the Checkplan.

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 judgment actions are expressly authorized in a muniment of title proceeding, and without a personal representative. Estates Code, Section 257.101. Declaratory judgments are beyond the scope of this System.

Conversion of a Muniment to an Administration

A muniment proceeding may be converted to an administration with a personal representative. The original deadline for application for letters applies to the conversion application—that is, generally four years from date of death, but longer if necessary to receive or recover property. Estates Code, Sections 257.151 and 301.002. There is no unique application, procedure, or requirements for converting a muniment to an administration. If the need for an administration arises after the will has already been admitted as a muniment of title, refer to Worksheet 1 to determine the proper procedure. For muniment conversions, the application, proof, order forms, and testimony in this System may be edited to refer to the order admitting the will rather than repeating redundant information.

Following conversion of a muniment to an administration, the court's deadline for granting letters and the personal representative's deadline to give notice to beneficiaries and file the affidavit or certificate of notice run from the date of the personal representative's qualification rather than the date the will was admitted as a muniment of title. Estates Code, Section 257.152.

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SPECIAL INSTRUCTION 74—INCOME TAXATION OF ESTATE

Every personal representative should retain a CPA; those with larger estates should confirm the CPA's familiarity with fiduciary income principles and IRS Form 1041, U.S. Income Tax Return for Estates and Trusts.

A decedent's estate is treated as a separate taxable entity for income tax purposes. In practice, a personal representative is responsible for filing fiduciary income tax returns; however, when one has not been appointed, anyone acting in the fiduciary capacity must make a return of income on IRS Form 1041. See Treasury Regulations, Section 1.6012–3(a), (d).

An employer identification number (EIN) or "taxpayer number" may be necessary for the estate. See Special Instruction 75—Taxpayer Number (EIN) for Estate.

It is necessary for the executor or administrator to file a fiduciary income tax return on IRS Form 1041, U.S. Income Tax Return for Estates and Trusts, for each fiscal year in which the estate has gross income of $600 or more, or any amount of income if there is a nonresident alien beneficiary. IRC, Section 6012(a)(3), (5). In case of joint fiduciaries, a return is required to be made by only one of the fiduciaries. IRC, Section 6012(b)(4). A qualified revocable trust and an estate can file one consolidated fiduciary income tax return by making a timely Section 645 election so that the qualified revocable trust is treated as part of the estate for income tax purposes and both are reported on a single Form 1041. See IRC, Section 645. If an ancillary probate administration is opened in another state, both the domiciliary and ancillary representatives must file a return if the applicable income threshold is met. See Treasury Regulations, Section 1.6012–3(a)(3).

The return must be filed and the entire income tax liability paid on or before the fifteenth day of the fourth month following the close of the tax year (April 15 for a calendar-year estate). IRC, Section 6072(a). See also Special Instruction 19—Fiscal Years.

Estates in existence more than two years must pay estimated income taxes. IRC, Section 6654(*l*).

Whether there is an advantage to shifting income from the estate to individual beneficiaries must be determined through comparison of current effective tax rates. In general, if the beneficiary is in any tax rate bracket other than the highest, tax savings will probably result from distributions of income from the estate to the beneficiary. Even if the beneficiary is in the highest income tax bracket, the maximum income tax savings for using the estate as a separate taxpayer will likely be less than the cost of preparing tax returns and fiduciary fees.

Administration expenses that would not have been incurred if the property were not held in the estate or trust (for example, executor and fiduciary fees, certain attorneys' fees, and court costs) are deductible in computing the estate's or trust's adjusted gross income and are not treated as miscellaneous itemized deductions. See IRC, Section 67(e). Interest on estate taxes deferred under IRC, Section 6166, is not deductible, nor is interest on estate tax deferrals for reasonable cause. IRC, Sections 163(h)(2)(E), 2053(c)(1)(D). See also "Income Tax Issues in Estate Planning" by Mickey R. Davis and Melissa J. Willms, 2019 Advanced Estate Planning and Probate Course, State Bar of Texas.

A more complete overview is contained in "Income Tax Issues in Estate Administration" by Gary V. Post, 2011 Advanced Estate Planning and Probate Course, State Bar of Texas.

See also "Venn Diagrams: The Intersection of Estate & Income Tax (Planning in the ATRA-MATH)" by Paul S. Lee, 2015 Advanced Estate Planning Strategies Course, State Bar of Texas.

Further coverage is beyond the scope of this System.

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SPECIAL INSTRUCTION 75—TAXPAYER NUMBER (EIN) FOR ESTATE

In those proceedings in which an administration has been opened and an executor or an administrator has qualified (IA, TBA, IBA, ADE, AWA, RDA, and some TDA), it may be necessary to obtain an "employer identification number" (EIN) for the estate for several purposes, not the least of which is opening a bank account in the name of the estate.

Just as a power of attorney is ineffective when a decedent dies, so is decedent's individual Social Security number for conducting the administration of the estate.

To obtain an EIN, the executor or administrator should complete Form SS-4. It is found on the IRS website **www.irs.gov** as one of its most requested forms. Once the image of the form appears on the screen, it may be completed and submitted using the feature that permits you to fill in the blanks on the image on the screen.

Once Form SS-4 is completed, you may apply for an EIN through the IRS website: **https://sa.www4.irs.gov/applyein/**.

Care must be exercised to ensure that the Social Security number and the name(s) of decedent and the executor or administrator match the IRS database.

CAVEAT: Do not use any periods, commas, or other punctuation when completing the form. Particularly when applying for an EIN for a trust, the application may be rejected if the name is not unique. The application is typically approved if other identifying information is included, such as stating the trust was created under a will and providing the date the will was signed. You may use hyphens for this information. For example, if the will creates a trust named "Smith Family Trust," it may be necessary to include additional identifiers such as "Smith Family Trust uw dated 1-1-2025."

Once the form has been properly completed, submitted, and accepted, the number will appear on the screen.

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SPECIAL INSTRUCTION 76—REIMBURSEMENT

The Texas Family Code provides a remedy when funds of one marital estate benefit another marital estate. The different marital estates are the wife's separate property, the husband's separate property, and the community property of husband and wife.

A claim by a conferring estate might arise against the benefited estate in a variety of situations. For example, a husband could use his separate property to make principal payments on notes secured by the wife's separate property or by the community property. A wife could use her separate property in like manner. The spouses could use their community property to add a swimming pool to real property that is the separate estate of either or both of the spouses.

Such claims mature on the dissolution of the marriage or on the death of either spouse. In the latter situation, the rules concerning the remedies provided differ substantially, depending on whether decedent died before September 1, 2009; on or after September 1, 2009, and before September 1, 2023; or on or after September 1, 2023.

The rules providing these remedies do not affect the rule of inception of title or the right to manage, control, or dispose of marital property. Family Code, Sections 3.404(a) and 3.405.

The following rules apply for estates of decedents dying on or after September 1, 2009, and before September 1, 2023.

The Family Code provides for a claim for reimbursement between marital estates under certain circumstances. See Family Code, Sections 3.401 through 3.410.

The Family Code provides a nonexclusive list of claims for reimbursement: (1) payment by one marital estate of the unsecured liabilities of another marital estate; (2) inadequate compensation for the time, toil, talent, and effort of a spouse by a business entity under the control and direction of that spouse; (3) the reduction of the principal amount of a debt secured by a lien on property owned before marriage, to the extent the debt existed at the time of marriage; (4) the reduction of the principal amount of a debt secured by a lien on property received by gift or inheritance during a marriage, to the extent the debt existed at the time the property was received; (5) the reduction of the principal amount of that part of a debt, including a home equity loan, secured by a lien and incurred during the marriage for the acquisition of or capital improvements to property; (6) the reduction of the principal amount of that part of a debt incurred during the marriage, secured by a lien on property owned by a spouse, for which the creditor agreed to look for repayment solely to the separate marital estate of the spouse on whose property the lien attached, and incurred for the acquisition of or capital improvements to property; (7) the refinancing of the principal amount of debt described in foregoing items (3)–(6), to the extent that the refinancing reduces the principal amount in a manner described in those items; (8) capital improvements to property other than by incurring debt; and (9) the reduction by the community property estate of an unsecured debt incurred by the separate estate of one of the spouses. Family Code, Section 3.402(a).

Courts may not recognize a claim for reimbursement for (1) payment of child support, alimony, or spousal maintenance; (2) living expenses for a spouse or a child of a spouse; (3) contributions of property of nominal value; (4) payment of a liability of a nominal amount; or (5) student loans of a spouse. Family Code, Section 3.409.

The claim for reimbursement does not create an ownership interest in property but does create a claim against the property of the benefited estate in favor of the contributing estate. The claim matures on the death of either spouse or on the dissolution of the marriage. Family Code, Section 3.404(b).

A claim for reimbursement may result in an equitable lien on the benefited property. In the case of the dissolution of a marriage, the statute provides that the court may impose an equitable lien on that property. Family Code, Section 3.406(a).

At the death of a spouse, the court is not involved unless an application for a claim for reimbursement is brought by the surviving spouse, the personal representative of the estate of the deceased spouse, or any other person interested in the estate. If such a claim is properly presented and proved, the court may impose an equitable lien on the property of a benefited estate to secure a claim for reimbursement against that property by a contributing marital estate. Family Code, Section 3.406(b).

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The court must resolve a claim for reimbursement by using equitable principles, including the principle that claims for reimbursement may be offset against each other if the court finds that appropriate. The party seeking an offset has the burden of proof with regard to the offset. Family Code, Section 3.402(b), (e).

Benefits for use and enjoyment of property may be offset against a claim for reimbursement, except that a spouse's separate estate may not claim an offset for use and enjoyment of a primary or secondary residence owned wholly or partly by the separate estate against contributions made by the community estate to the separate estate. Family Code, Section 3.402(c).

Reimbursement for funds expended by a marital estate for improvements to another marital estate are measured by the enhancement in value to the benefited estate. Family Code, Section 3.402(d).

The following rules apply for estates of decedents dying on or after September 1, 2023.

Provisions for claims for reimbursement between marital estates are found in the Family Code, Sections 3.401 through 3.411. A claim for reimbursement exists when one or both spouses use property of one marital estate to confer on the property of another marital estate a benefit which, if not repaid, would result in unjust enrichment to the benefited estate. Family Code, Section 3.402(a).

The Family Code provides a nonexclusive list of claims for reimbursement: (1) payment by one marital estate of the debt, liability, or expense of another marital estate that in equity and good conscience should have been paid from the benefited estate's property; (2) use of property by one marital estate to make improvements to the real property of another marital estate, which resulted in the enhancement in the value of the real property; and (3) use of the time, toil, talent, or effort of one or both spouses to enhance the value of the property of a spouse's separate estate beyond that which was reasonably necessary to manage and preserve the spouse's separate property, and for which the community marital estate did not receive adequate compensation. Family Code, Section 3.402(c).

Courts may not recognize a claim for reimbursement for (1) payment of child support, alimony, or spousal maintenance; (2) living expenses for a spouse or a child of a spouse; (3) contributions of property of nominal value; (4) payment of a liability of a nominal amount; or (5) student loans of a spouse. Family Code, Section 3.409.

The claim for reimbursement does not create an ownership interest in property but does create a claim against the property of the benefited estate in favor of the conferring estate. The claim matures on the death of either spouse or on the dissolution of the marriage. Family Code, Section 3.404(b).

A claim for reimbursement may result in an equitable lien on the benefited property. In the case of the dissolution of a marriage, the statute provides that the court may impose an equitable lien on that property. Family Code, Section 3.406(a).

At the death of a spouse, the court is not involved unless an application for a claim for reimbursement is brought by the surviving spouse, the personal representative of the estate of the deceased spouse, or any other person interested in the estate. If such a claim is properly presented and proved, the court may impose an equitable lien on the property of a benefited estate to secure a claim for reimbursement against that property by a conferring marital estate. Family Code, Section 3.406(b).

The elements to prove a claim for reimbursement to a marital estate are: (1) that the spouse or both spouses used property of the marital estate to confer a benefit on the property of another marital estate; (2) the value of the benefit described in (1); and (3) that unjust enrichment of the benefited estate will occur if the benefited estate is not required to reimburse the conferring estate. Family Code, Section 3.402(b). The value of the benefit conferred is measured as of the date of a trial's commencement. Family Code, Section 3.402(d). The court must resolve a claim for reimbursement by using equitable principles, including the principle that claims for reimbursement may be offset against each other if the court finds that appropriate. Family Code, Section 3.402(f).

The value of the benefit is measured as follows: (1) if the benefit resulted from the use of the conferring estate's property to pay a debt, liability, or expense that in equity and good conscience should have been paid from the benefited estate's property, then the value of the benefit conferred is measured by the amount of the debt, liability, or expense paid by the conferring estate; (2) if the benefit resulted from the use of the conferring estate's property to make improvements on the benefited estate's real property, then the value of the benefit conferred is measured by the enhancement in the value of the benefited estate's real property that resulted from the improvements; or (3) if the benefit resulted from the use of time, toil, talent, or effort to enhance the value of property of a spouse's separate estate, then the value of the benefit conferred is measured by the value of the time, toil, talent, or effort beyond that which was reasonably necessary to manage and pre-

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serve the spouse's separate property. Family Code, Section 3.402(d).

A claim for reimbursement may be offset by (1) the value of the use and enjoyment of the property by the conferring estate, except that the separate marital estate of a spouse may not claim an offset for use and enjoyment of a primary or secondary residence owned wholly or partly by the separate marital estate against contributions made by the community marital estate to the separate marital estate; (2) income received by the conferring estate from the property of the benefited estate; and (3) any reduction in the amount of any income tax obligation of the conferring estate by virtue of the conferring estate claiming tax-deductible items relating to the property of the benefited estate, such as depreciation, interest, taxes, maintenance, or other deductible payments. Family Code, Section 3.402(g). The party seeking an offset to a claim for reimbursement has the burden of proof with respect to the offset. Family Code, Section 3.402(h).

These remedies are nonexclusive and are in addition to any other remedy provided by law. Family Code, Section 3.411.

> *Note:* Different rules apply to claims against estates of decedents dying before September 1, 2009.

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SPECIAL INSTRUCTION 77—FILING IRS FORMS

The IRS designates different offices to process the forms and payments encountered in administration of decedents' estates, from powers of attorney and notices of fiduciary relationship to income and estate tax returns.

An otherwise timely filed form or payment may be late if mailed to the wrong address. You can also file electronically to avoid these concerns. Filing electronically has a timing advantage (see below).

The specific address for mailing may change from time to time, and it is essential to consult the current IRS instructions for particular forms to determine the mailing address. Also, the version of each form should be confirmed (don't use the 2012 Form 1040 for a 2011 income tax return).

For the latest forms and publications, as well as past revisions, visit the IRS at **www.irs.gov/forms-instructions**.

IRC, Section 7502, gives taxpayers the benefit of the so-called "mailbox rule." Filings and payments are considered timely, though received by the IRS after the deadline, if postmarked by the deadline, postage prepaid, and properly addressed to the required office. IRC, Section 7502(a).

If the deadline falls on a Saturday, Sunday, or legal holiday, it is extended until the next business day. "Legal holiday" means a legal holiday in the District of Columbia. If a document or payment is due at a federal office in another internal revenue district, local statewide legal holidays further extend the deadline. IRC, Section 7503; Treasury Regulations, Section 301.7503–1 (D.C. Code Ann. 282701 determines the legal holidays in the District of Columbia).

The taxpayer may use regular U.S. mail but has the burden of proving compliance, an uncertain proposition if the mail is lost or postmarked after the deadline. The uncertainty is eliminated and expense minimized by registered or certified mail. If sent registered mail, the date of registration is treated as the postmark, even if earlier than the actual postmark. IRC, Section 7502(c)(1). If sent certified mail, the date of the sender's receipt controls. Treasury Regulations, Section 301.7502–1(c)(2).

The mailbox rule does not apply to (1) any court other than Tax Court, (2) currency or other payment not actually received and accounted for, or (3) documents or payments required to be delivered by any method other than mailing. IRC, Section 7502(d). Special rules govern the mailing of deposits. IRC, Section 7502(e).

The IRS has extended the mailbox rule to designated private delivery services (PDS). IRC, Section 7502(f); Treasury Regulations, Section 301.7502–1(c)(3). For a current list, visit the IRS at **www.irs.gov/filing/private-delivery-services-pds**. Forms filed by PDS must be sent by specific services. Follow the specific IRS form instructions, as alternate addresses for PDS are often required. A UPS receipt is ineffective for certified U.S. mail. In other words, take U.S. mail to the U.S. Postal Service. Even if a designated PDS, UPS does not have authority to postmark U.S. mail. For additional proof, include a cover letter requesting a file-stamped copy and enclose a copy of the first page of the return and a self-addressed stamped envelope. The IRS will usually return the copy stamped "Received."

The mailbox rule also applies to electronic postmarks from authorized return transmitters. IRC, Section 7502(c)(2); Treasury Regulations, Section 301.7502–1(d). Thus, there is no advantage to mail when electronic delivery is authorized.

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SPECIAL INSTRUCTION 78—DEATH OF A LAWYER

When a lawyer who practices in a large "institutional" firm dies, closing that lawyer's practice often does not require much more than simply removing the personal items from the lawyer's office. The firm notifies the affected clients, retains client files, reassigns the responsibilities, and continues on.

Not so when a solo practitioner dies. That lawyer's executor or administrator must deal with myriad complex issues, not the least of which are the results of well-meaning efforts to "protect the client." Under the banner of protecting the client, Texas has adopted the "entire file rule." *See Resolution Trust Corp. v. H__, P.C.*, 128 F.R.D. 647 (N.D. Tex. 1989).

The "entire file rule" means that the entire file belongs to the client and that a lawyer cannot destroy that file or any of its contents without the client's consent. Today it is routine to have a written engagement letter that deals specifically with rights to the file on termination of the matter. Busy lawyers and longtime practitioners don't always get around to covering that issue, and over time they find that they have accumulated hundreds of old files.

Unlike most businesses and other professions, Texas lawyers do not have the benefit of a bright line that determines when old files can be destroyed. There is no concept of abandonment of old client files, and this, coupled with the rule that the client owns the entire file, creates a serious problem for clients as well as for those who are trying to close a law practice. A lawyer instinctively knows if the file contains documents or information likely to be useful in the future. Years after the file is created, when there has been no further contact from the client, abandonment is clearly de facto, but unfortunately it is not de jure.

Ultimately the matter boils down to whether those files will be destroyed by a lawyer who is sensitive to confidentiality or destroyed by a nonlawyer who views those files as so much trash to haul out to the curb.

Transferring the ownership of a law practice in Texas remains exceedingly and unreasonably complicated by the fact that only Texas and two other states have failed to adopt a disciplinary rule that affirmatively permits the sale of a practice.

It is difficult, time-consuming, and expensive—not to mention frustrating—for the lawyer's family or other survivors to attempt to locate those former clients whose long-forgotten files remain required storage for the lawyer who once served them so well so many years ago. It is even more frustrating to the family faced with all the other burdens that come with the death of one of their own.

There are other challenges, but without changes, the current situation places big-firm lawyers and their families in a highly advantageous position in contrast to solo practitioners and their families.

In the nature of law practice, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from apparent conflict between a lawyer's responsibilities to clients, to the legal system, and to the lawyer's own interests.

It would seem clear that the overriding consideration should be to protect the client's best interests and to do so as promptly, efficiently, and inexpensively as possible.

Some of the Texas Disciplinary Rules of Professional Conduct ("the DRs") tend to complicate things involving clients, leave open issues for the lawyer's family, and raise serious potential problems for lawyers who are involved in winding down another lawyer's practice, especially the practice of a deceased solo practitioner.

In determining the proper process, it is important to realize that one size does not fit all and that handling the estate of a solo is far more complicated than handling the estate of a lawyer whose firm will continue to practice and to represent all of that lawyer's clients.

In addition to the DRs, you must consider the applicability of (1) the Rules of Disciplinary Procedure (reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G, app. A-1 (West 2013)), particularly Rules 13.01, 13.02, 13.03, and 17.10; (2) barratry (Penal Code, Section 38.12); (3) limitations on disclosure to criminal defendants (Code of Criminal Procedure, Sections 35.29 and 39.14(f); and (4) ethics opinions, especially Opinions 118 (delivering file to client), 395 and 411 (attorney's lien), 464 and 655 (sale of accounts receivable), 479 (disclosing clients' names and amounts owed), 495 and 652 (use of collection agency), 556 (borrowing employees of collection agency), 652 (making bad report to credit bureau), 266 (sale of practice), 185 (listing deceased lawyer's name in yellow pages), 375 and 640 (firm names), 602 (delivering

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unclaimed trust funds to comptroller), and 646 and 657 (nondisclosures to criminal defense clients).

It seems clear that all rules, regulations, and limitations imposed on lawyers presume that the lawyer is not married and that the law practice is not community property. Obviously this is not always the case. It also seems clear that those same rules, regulations, and limitations neither apply to nor govern the conduct of a nonlawyer spouse, heir, executor, or administrator. Very little guidance has been written about the community-property or other rights of the nonlawyer spouse, although it is quite likely that those issues are frequently encountered and just as frequently ignored.

Many executors and administrators have found that letters testamentary or letters of administration are not enough to induce some financial institutions, particularly nationwide banks, to release funds in accounts of lawyers that are designated as IOLTA or client trust funds. The rationale is that the funds do not belong to the estate. The real issue is that the owners of those funds are creditors of the estate and that the executors and administrators have a duty to handle creditor claims and to return unearned funds to the clients.

Chapter 456 of the Estates Code imposes a duty on those institutions to deliver the funds if certain procedures are followed. The Code also provides a private cause of action should there be a violation of Estates Code, Section 456.003. The text of Chapter 456 is found in Form 131, and the procedural steps are covered in Item 76u of the Checkplan.

The Law Practice Management Program of the State Bar of Texas provides an invaluable resource, the Succession Planning Toolkit, which may be found at **www.texasbarpractice.com/law-practice-management/the-succession-planning-toolkit-2nd-edition**. This resource includes information on determining in advance who will serve as successor attorney. It is best practice to use these resources and designate a custodian attorney.

When filing an application for the court to designate someone to close decedent's law practice in accordance with Texas Rules of Disciplinary Procedure, Rule 13.02, we recommend filing that application and completing the appointment process even before filing the pleadings to commence the administration of decedent's estate. Proceedings under Rule 13.02 will not necessarily be in the court with probate jurisdiction. Any interested person has standing to petition the district court where the deceased attorney resided. Texas Rules of Disciplinary Procedure, Rule 13.02. Also, where there is no statutory probate court or statutory county court, the judge with probate jurisdiction may transfer contested matters to another court. See, e.g., Estates Code, Sections 32.003 and 32.004.

For detailed coverage of these and other issues, also see "Closing a Law Practice—Yours or Someone Else's" by James E. Brill, 2014 Essentials for the General Practitioner Course, State Bar of Texas; "What Can Be Done with All These Old Files?" by James E. Brill, 2017 Advanced Real Estate Law Course, State Bar of Texas; "Ethical Issues When Transitioning or Selling a Practice and Disposing of Client Files" by Gregory W. Sampson and Lillian B. Hardwick, 2018 Updates for Solo Practitioners and Small Firms Course, State Bar of Texas; and "Rights of the Non-Lawyer Spouse to the Practice of the Lawyer Spouse in Case of Divorce or Death" by James E. Brill and Warren Cole, 2013 Advanced Estate Planning and Probate Course, State Bar of Texas.

Further coverage is beyond the scope of this System.

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SPECIAL INSTRUCTION 79—NOTICE TO TESTAMENTARY BENEFICIARIES

Estates Code, Chapter 308, Subchapter A, provides the method by which certain personal representatives are to give notice to beneficiaries that decedent's will has been admitted to probate.

Independent executors and independent administrators (IA and TBA), dependent executors (ADE), and administrators with will annexed (AWA) are the personal representatives who are required to give notice to all beneficiaries within sixty days of the date the order admitting the will to probate is signed unless an exception applies as discussed below. Estates Code, Section 308.002(a). Additionally, these personal representatives must file an affidavit with the court within ninety days confirming that notice was given to all beneficiaries or explaining why it was not given. The attorney may file a certificate of notice with the court in lieu of the affidavit of the personal representative. In either case, the filing must be made within ninety days after the order admitting the will to probate is signed. Estates Code, Section 308.004. Failure to timely file the affidavit or certificate is a ground for removal of the personal representative. Estates Code, Sections 361.052 and 404.0035.

This notice is to be given to "each beneficiary named in the will whose identity and address are known to the representative or, through reasonable diligence, can be ascertained." Estates Code, Section 308.002(a). A beneficiary is "a person, entity, state, governmental agency of the state, charitable organization, or trustee of a trust entitled to receive property under the terms of a decedent's will, to be determined . . . with the assumption that each person who is alive on the date of the decedent's death survives any period required to receive the bequest as specified by the terms of the will." The term does not include those who would be entitled to receive property on the occurrence of a contingency that has not occurred as of the date of decedent's death. Estates Code, Section 308.001.

The notice to beneficiaries must contain the following: the name and address of the beneficiary and of the personal representative, decedent's name, a statement that decedent's will has been admitted to probate, and a statement that the beneficiary receiving notice is named as a beneficiary in the will. It must also include either (1) copies of the will (along with any codicils) and the order admitting it to probate or (2) a summary of the gifts to the beneficiary under the will and specified information about the proceeding. Estates Code, Section 308.003.

The notice to beneficiaries must be sent by registered or certified mail, return receipt requested, or other qualified delivery method with proof of delivery on or before the sixtieth day after the will is admitted to probate. Estates Code, Section 308.002(a), (d). Your office will want to coordinate the sending of the notices along with the tracking of the return receipts or proof of delivery receipts in preparation for the filing of the affidavit or certificate. Worksheet 9 provides an easy way to keep track of this process.

There are exceptions to mailing the notice or delivering it with a courier or designated private delivery service. Estates Code, Section 22.0295. The notice need not be given to a beneficiary who has appeared in the probate proceeding before the will was admitted to probate, who has waived notice, who is entitled to receive aggregate gifts valued at $2,000 or less, or who has already received all gifts to which the beneficiary is entitled. Estates Code, Section 308.002(c).

For the waiver of notice to be effective, the waiving beneficiary must have received a copy of the will admitted to probate or the written summary of the gifts to the beneficiary under the will and have signed a waiver that acknowledges receipt of a copy of the will or summary of gifts. Each such waiver must be filed with the court. Estates Code, Section 308.002(c)(4).

All affidavits and certificates must confirm the facts relating to giving the notice, the appearance by any beneficiary, the name of any other beneficiary to whom notice was not required to be given, and also the name of each beneficiary whose identity or address could not be ascertained and any other information necessary to explain the inability to give notice. Estates Code, Section 308.004(a).

On or before the ninetieth day after the will is admitted to probate, the sworn affidavit of the personal representative or certificate of the attorney must be filed with the clerk's office. Estates Code, Section 308.004(a). The statement filed by the attorney may be unsworn. All waivers should be filed at the same time.

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For a more detailed discussion of these provisions, see "Probate Procedures and Alternatives 2025" by Steve M. King, 2025 Handling Your First (or Next) Transactional Matter Course, State Bar of Texas.

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SPECIAL INSTRUCTION 80—FEDERAL ESTATE TAX

For years, Congress struggled over whether to repeal or reform the estate tax. The 2001 Tax Relief Act (EGTRRA) scheduled the estate tax for repeal in 2010 but revival in 2011, in hopes the budget would eventually allow permanent repeal. The 2010 Tax Relief Act extended the 2009 scheme for two more years, but with a higher exemption amount. The 2012 American Taxpayer Relief Act provided a $5 million exemption amount, indexed for inflation from 2011. The Tax Cuts and Jobs Act of 2017 doubled the gift and estate tax exemption to $10 million and kept the inflation index. The 2017 Act's gift and estate tax provisions apply to estates of decedents who die after December 31, 2017. The 2017 Act was set to expire December 31, 2025, but was extended under the One Big Beautiful Bill Act in 2025. This Act set the estate tax exemption amount to $15 million, effective for decedents dying on or after January 1, 2026, with an annual inflation index for decedents dying on or after January 1, 2027.

Year	Estate Tax Exempt Amount
2001	$675,000
2002–2003	$1,000,000
2004–2005	$1,500,000
2006–2008	$2,000,000
2009	$3,500,000
2010	REPEALED*
2011	$5,000,000
2012	$5,120,000
2013	$5,250,000
2014	$5,340,000
2015	$5,430,000
2016	$5,450,000
2017	$5,490,000
2018	$11,180,000
2019	$11,400,000
2020	$11,580,000
2021	$11,700,000
2022	$12,060,000
2023	$12,920,000
2024	$13,610,000
2025	$13,990,000
2026	$15,000,000

*The 2010 Act was signed December 17, 2010. Although the 2001 Act repealed the estate tax in 2010, the 2010 Act reinstated it retroactively but gave executors of 2010 decedents the option to choose carryover basis over the estate tax. The Carryover Basis Election was due January 17, 2012, with a six-month extension in certain circumstances. By default, 2010 decedents' estates received a new basis but were subject to the estate tax, albeit with a $5 million exemption.

This Special Instruction uses the term "executor" when referring to the person filing an estate tax return on behalf of decedent's estate, but there may be instances in which no executor is appointed. The instructions to the United States Estate (and Generation-Skipping Transfer) Tax Return (IRS Form 706) define "executor" as the executor, personal representative, or administrator of decedent's estate. If there is no executor, personal representative, or administrator appointed, qualified, and acting in the United States, the term applies to every person in actual or constructive possession of any of decedent's property. In providing this definition, the IRS seems to contemplate that a probate proceeding may have not been necessary (all assets were distributed according to a revocable trust, nonprobate designations, or other transfers, for example). IRC, Section 2203.

For future estate tax exemption amounts, search **www.irs.gov** for "inflation adjustment." For the latest legislative changes, see **www.irs.gov/businesses/small-businesses-self-employed/whats-new-estate-and-gift-tax**.

The 2010 Act introduced portability of the Deceased Spousal Unused Exclusion (DSUE) amount, which, for decedents dying January 1, 2011, or later, enables a surviving spouse to preserve the decedent's remaining gift and estate tax exemption with an election on an estate tax return. The 2012 Act made portability permanent. As a result, even without a tax-planned will or bypass trust, children may have the benefit of two estate tax exemption amounts, provided the surviving parent elects portability. Thus, though fewer estates are now taxable, more executors should consider filing an estate tax return as a postmortem planning technique, especially when the decedent left no bypass trust.

A portability election can be made only if decedent was married at the date of death and applies only to

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decedent's *last* deceased spouse. In that situation, the personal representative should investigate whether the surviving spouse would benefit from the election and what the cost would be to prepare the federal estate tax return. We recommend that you notify the personal representative (whether the surviving spouse or another person or entity) of the option of making the portability election and get the representative's decision in writing to be placed in the file.

The only method by which a surviving spouse can make a portability election is for the executor of the deceased spouse's estate to timely file a United States Estate (and Generation-Skipping Transfer) Tax Return (IRS Form 706). Fortunately, under certain circumstances a "full and complete" return is not required. If a return is not otherwise required, and if any property included in the gross estate qualifies for the marital deduction (under IRC, Section 2056 or 2056A) or the charitable deduction (under IRC, Section 2055), the executor does not have to report the value of those assets, but only the "description, ownership, and/or beneficiary of such property," together with information sufficient to support its qualification for the marital or charitable deduction. If certain exceptions exist, however, the property values must be provided. Treasury Regulations, Section 20.2010–2T(a)(7)(ii)(A). However, even if the procedure applies, the executor must exercise due diligence to estimate the fair market value of the gross estate and provide a range of values within the executor's "best estimate," rounded to the nearest $250,000. Treasury Regulations, Section 20.2010–2T(a)(7)(ii)(B).

The IRS had been receiving numerous requests for letter rulings to grant an extension of time to elect portability under IRC, Section 2010(c)(5)(A), in cases where an estate was not otherwise required to file an estate tax return but had missed the filing deadline to make a portability election. Apparently, a number of these requests were for estate tax returns not timely filed but still within five years of decedent's date of death. To ease the administrative burden of responding to such requests, the IRS issued Rev. Proc. 2022-32, 2022-30 I.R.B. 101, to extend the period within which the estate of a decedent may make the portability election on a filed estate tax return to on or before the fifth anniversary of decedent's date of death. When filing under Rev. Proc. 2022-32, the executor must state at the top of Form 706 that the return is "FILED PURSUANT TO REV. PROC. 2022-32 TO ELECT PORTABILITY UNDER § 2010(c)(5)(A)."

The preparation of IRS Form 706, the United States Estate (and Generation-Skipping Transfer) Tax Return, is beyond the scope of this System. For basic information, visit the IRS at **www.irs.gov/businesses/small-businesses-self-employed/filing-estate-and-gift-tax-returns** or see IRS Publication 559, Survivors, Executors, and Administrators. IRS Publication 950, Introduction to Estate and Gift Taxes, remains helpful but has not been updated since 2011.

Various software products are available for preparing Form 706. The Gillett Estate Management Suite (GEMS), available from Gillett Publishing (**www.gillettpublishing.com**), is one of the more popular ones. Learning to use the software requires a time commitment. That software is not always intuitive and does not always deal well with community property. Nevertheless, it is fabulous when you are facing a filing deadline and your client brings you changes and new additions.

After experiencing much difficulty in obtaining proper calculation data from stockbrokers (who always seem to provide only the closing price rather than the average of the high and low prices), we started to use valuation software. The program we use (EVP EstateVal, **www.evpsys.com/group/estateval**) is an online automated valuation service and is the same one currently used by the Internal Revenue Service. This program works best when you have CUSIP numbers. These are found on the stock and bond certificates or online, or your stockbroker can furnish them to you. It also works with the trading symbols.

Accessing the valuation service is simple. All it takes is an account, the number of shares, and the CUSIP number or trading symbol. You go online and send an inquiry, and the data is retrieved and sent automatically to you to be printed and attached to Schedule B of the return. With the push of a button, that data can be integrated with the estate return software to prepare the data for Schedule B and thus eliminate the need to make further calculations or to retype any of the data.

Other online databases exist for valuing publicly traded limited partnerships (**https://spardata.com/**) and U.S. savings bonds (**www.treasurydirect.gov/savings-bonds**).

For understandable and in-depth coverage, see "Portability in the New Age of Estate Planning" by Brian D. Cororve, 2014 Advanced Estate Planning and Probate Course, State Bar of Texas; "56-706-5495-8971-Hut! Tackling Estate Tax Returns and Related Forms" by Lora G. Davis, 2016 Advanced Tax Law Course, State Bar of Texas; "Gift and Estate Tax Returns: Nuts, Bolts, & Some Monkey Wrenches, Too" by Tina R. Green and Nikki L. Laing, 2012 Tax Law 101, State Bar of Texas; "Preparing and Filing the Form 706:

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Who, What, How, When and Where" by Glen A. Yale, 2005 Advanced Estate Planning and Probate Course, State Bar of Texas; and "Preparing Estate Tax Returns, Wills, and Other Documents for Portability" by Brian D. Cororve, 2023 Estate Planning and Probate Drafting Course, State Bar of Texas.

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SPECIAL INSTRUCTION 81—IDENTIFICATION INFORMATION IN PLEADINGS

An application for the probate of a will, for the probate of a will as a muniment of title, or for letters of administration when no will is alleged to exist must state the last three numbers of each applicant's driver's license number and Social Security number if the applicant has been issued one. Estates Code, Sections 256.052, 257.051, and 301.052. The last three numbers of the driver's license number and Social Security number of the testator, or of the intestate decedent, if known, are also required. *See* Estates Code, Sections 256.052(a)(2–a), 257.051(a)(2–a), and 301.052(a)(2–a). Driver's license numbers and Social Security numbers are generally not public record. However, Transportation Code, Section 730.007(a)(2)(D), apparently authorizes disclosure of driver's license numbers for use in anticipation of litigation. Every decedent's Social Security number is promptly published in the Social Security Administration's master death file. If the information is not known and can't be ascertained, contact the clerk of the court to get further guidance on how the application should be structured.

Texas Rules of Civil Procedure, Rule 21c, provides privacy protection for that identification information and for financial account numbers, home addresses, birth dates, and the names of persons who were minors when an underlying suit was filed. Unless inclusion of this sensitive data is required by statute, court rule, or administrative regulation, the data must be redacted, for example, from an exhibit, before the document is filed. If the document must contain sensitive data that may not be redacted, the clerk must be notified upon filing. This is accomplished by designation of sensitive data in the e-filing system.

Practitioners have reported difficulties e-filing documents with sensitive information. Because practices vary significantly, always check local rules.

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SPECIAL INSTRUCTION 82—E-FILING

Generally, all documents in probate cases must be e-filed, except wills. Texas Rules of Civil Procedure, Rule 21(f)(4). Read alone, Rule 21 permits but does not mandate e-filing of wills, but most courts appreciate, if not require, a copy of the will to be e-filed with the application. Regardless, the original will should always be filed with the court clerk. Estates Code, Section 252.201. After an application to probate a document as an original will is filed, the original will must be filed with the clerk within three business days. Texas Rules of Civil Procedure, Rule 21(f)(12). The clerk may designate an electronically filed document as the official court record and is generally not required to keep both paper and electronic versions; however, the clerk must retain an original will filed for probate in a numbered file folder. Texas Rules of Civil Procedure, Rule 21(f)(13).

E-filed documents may be signed with either (1) an electronic or scanned digital image of the signature or (2) "/s/" and name typed in the space where the signature would otherwise appear. Texas Rules of Civil Procedure, Rule 21(f)(7).

Some documents must still be signed by hand. Even if e-filing, "/s/" and a typed name do not suffice for notarized or sworn documents. Texas Rules of Civil Procedure, Rule 21(f)(7)(A).

If the hearing is held in person rather than remotely, counsel may need to return to the office to e-file executed proofs and oaths if the court clerk does not routinely file these documents after the hearing. Most courts instead have the clerk e-file those documents, enabling the continued practice of signing and filing proofs and oaths in the courtroom following the hearing.

Documents e-filed before midnight in the court's time zone are considered filed that day, except, if transmitted on a Saturday, Sunday, or legal holiday, the document is deemed filed on the next business day. Texas Rules of Civil Procedure, Rule 21(f)(5).

E-filed documents must be in PDF format, text searchable, and, if possible, printed to PDF rather than scanned. Texas Rules of Civil Procedure, Rule 21(f)(8).

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SPECIAL INSTRUCTION 83—DIGITAL ASSETS

Digital assets include email, voicemail, websites, social media (blogs, Facebook, Twitter), music, photos, and files (iTunes, iCloud, Dropbox), online backups (Mozy, Carbonite, Skydrive), and the online accounts to manage offline assets and liabilities such as bank accounts, investments, U.S. savings bonds, employee benefits, life, health, and property insurance, frequent flyer and other rewards programs, PayPal, debit and credit cards, Social Security, and recurring expenses like phone, Internet, gas, water, electric, and alarm systems, newspaper and magazine subscriptions, mortgage and credit payments, and prescription drugs. Some digital assets may have considerable inherent value; for example, some websites and domain names have sold for substantial amounts. These assets frequently go undervalued in divorces and probate inventory (if they are listed, characterized, and valued at all). See "Digital and Virtual Assets in Divorce" by Chris Meuse in *Headnotes* (blog), Dallas Bar Association, February 1, 2014, last modified June 26, 2015, **www.dallasbar.org/book-page/digital-and-virtual-assets-divorce**. There are websites available to help value digital assets and, if any of those assets are found to be particularly valuable, to sell them.

The user IDs and passwords to access these things ("credentials") are themselves valuable digital assets. Letters testamentary do not always enable access to decedent's credentials. Social media terms of service may prohibit postmortem access to a user's account. State and federal privacy laws may require the user's consent; if so, not even a fiduciary's consent may suffice. Some hosts rely on private key encryption technology: they never possess decedent's credentials in the first instance.

The Texas Revised Uniform Fiduciary Access to Digital Assets Act ("TRUFADAA") allows for the disclosure of digital assets to a fiduciary, including the personal representative of a decedent's estate, and for the termination of accounts. TRUFADAA, which can be found in title 4 of the Texas Estates Code, became effective September 1, 2017. Procedures under TRUFADAA are discussed below, but more timely access to decedent's digital assets may be possible through other, less formal means.

The need for access can be acute. Rewards programs may be documented online and nowhere else. Decedent may have elected paperless statements for investment or retirement assets. Recurring payments may need to be cancelled online. Blog or other copyrighted material can waste if infringers run rampant before the content is removed. Social media invites postmortem identity theft, including financial transactions through applications linking one site to others that have stored decedent's credit card (for example, Facebook Connect).

Some credentials expire every sixty days, others survive until the autorenew finally fails, perhaps a year or more following death or cancellation of decedent's debit and credit cards. An executor may be tempted to ignore digital assets, but it's important to assert control before someone malevolent does. Until each of decedent's accounts can be closed, the executor should log in and replace each of decedent's credentials with new ones, including user IDs, passwords, email addresses, challenge questions, mailing address, and phone number. Gaining control of decedent's email accounts is highest priority, because (1) inbox messages can identify other digital assets and (2) an email address is often sufficient to reset passwords to other accounts (thank the ubiquitous "Forgot password" button).

A thoughtful decedent will have used a password manager (LastPass, 1Password, KeePass) and left those credentials in a safe deposit box, enabling access to all of the decedent's digital assets. Others may use escrow services such as Legacy Locker or AssetLock, especially for confidential content such as an unpublished book or software. Finally, always look for a typed or handwritten list of credentials.

Some decedents leave all their credentials in a password-protected file on their computer. A data recovery consultant may be able to find and unlock those files to recover the credentials within. In a contested case, a digital forensics expert should be used instead, to preserve the admissibility of any evidence developed.

Commercial password recovery software is available at modest prices—for example, Passware Kit Standard at **www.passware.com/kit-standard** (resets Outlook, Adobe, Excel, and Word passwords; recovers email login details). Such software allows anyone to search for protected files and unlock them, even if the name and location of decedent's password file is unknown.

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When resetting passwords, be aware the new credentials may be mailed to decedent's address. For that reason, a forwarding order or change of address with the U.S. Postal Service should be in place first.

If passwords cannot be recovered, social media hosts should be informed of decedent's death. If nothing else, the terms of service may compel the host to restrict account access and to suspend financial transactions.

If decedent or the estate is in litigation, the executor may have a duty to retrieve and retain social media and other digital assets and to instruct vendors to preserve data. *See* Joshua Briones & Ana Tagvoryan, *Social Media as Evidence: Cases, Practice Pointers, and Techniques* ch. 2 (2013) (Retrieval and Retention of Social Media Data).

Every executor is challenged with how to identify, marshal, administer, safeguard, and distribute digital assets. Resources on estate planning with digital assets are thus equally relevant to estate administration, for example, *Cyber Estate Planning and Administration* (Dec. 29, 2021) by Gerry W. Beyer (available at SSRN: **https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2166422**), and Jim Lamm's **www.digitalpassing.com**.

Computer-savvy executors will find a password manager—for example, LastPass at **www.lastpass.com**—the most efficient, safest way to manage an estate's digital assets. Best practice is to use multifactor authentication—for example, a YubiKey—so that something more than a user ID and password is required to access all the estate's credentials.

Disclosure of Digital Assets through TRUFADAA

A digital asset is defined in TRUFADAA as "an electronic record in which an individual has a right or interest." The term doesn't include an underlying asset or liability unless the asset or liability is itself an electronic record. Estates Code, Section 2001.002(8). "Electronic" means "relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities." Estates Code, Section 2001.002(9). "Record" means "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." Estates Code, Section 2001.002(20).

Before TRUFADAA, access to these assets was controlled by the individual terms of use agreed to by the user. TRUFADAA provides a procedure to request not only that the account of the user (decedent) be memorialized or terminated, but also that the content of the data be disclosed if in the scope of the fiduciary's duties. This access is of particular importance for websites and photo-sharing sites, which may be deleted (and data lost) when inactive for a long period.

A user may use an online tool to direct the company with the digital asset (the "custodian") to disclose or not to disclose to a designated person some or all of the user's digital assets. *See* Estates Code, Section 2001.051(a). This practice is becoming more popular but requires the user to individually contact each social media or email account and designate a person to receive the information. Facebook, for example, allows a user to designate a "legacy contact" who may memorialize or permanently delete the account. However, this process is less useful when needing access to the data on the account (for example, Facebook messages), because a legacy contact will have no access to the data or log-in information. This option really depends on the company policy for each particular digital asset. As another example, Gmail *will* give access to the data if the user sets up an "Inactive Account Manager," which automatically contacts a designated person after a certain period of inactivity. If the online tool allows the user to change or delete a direction about disclosure at any time, the direction made in the online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record. *See* Estates Code, Section 2001.051(a).

If the user did not use an online tool to direct the custodian regarding disclosure to a designated recipient, or if no online tool is available to do so, reading the will for relevant language regarding digital assets is the next step. TRUFADAA allows the user to allow or prohibit disclosure to a fiduciary of some or all of the user's digital assets, including content, in a will, trust, power of attorney, or other record. *See* Estates Code, Section 2001.051(b).

Disclosure concerning digital assets of a deceased user may be made to the personal representative of the user's estate under certain conditions. The personal representative may be an executor or independent executor; an administrator, independent administrator, or temporary administrator; a successor to such an executor or administrator; or a person who performs functions substantially similar to those performed by those persons. Estates Code, Section 2001.002(17).

Content of electronic communication

Estates Code, Section 2001.101, provides the procedures for disclosure of content of electronic communications of a deceased user if the deceased user consented to or a court directs the disclosure. The custodian shall disclose to the personal representative the content of an electronic communication sent or

received by the user if the representative gives the custodian (1) a written request for disclosure; (2) a certified copy of the death certificate; (3) a certified copy of letters testamentary or of administration, small estate affidavit, or other court order; and (4) unless otherwise provided for in an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of an electronic communication if the user consented to the disclosure. Estates Code, Section 2001.101(a).

The personal representative shall provide additional information if requested by the custodian: (1) a number, username, address, or other unique subscriber or account identifier; (2) evidence linking the account to the user; or (3) a court finding that the user had the specific account, that disclosure won't violate any laws, that the user consented to the disclosure, or that the disclosure is reasonably necessary for administration of the estate. Estates Code, Section 2001.101(b).

In this System, Letter 131 is used to request full access to the account.

Because most wills don't address digital assets, much less authorize disclosure, a court order will customarily be required to obtain disclosure of the content of decedent's electronic communications. Gerry Beyer has sample forms that may be helpful. "Pleading" and "Court Order," sections E and F in appendix B in *Cyber Estate Planning and Administration* (available at SSRN: **https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2166422**). That procedure is beyond the scope of this System.

Catalog of electronic communications

Unless the deceased user prohibited disclosure or the court directs otherwise, a custodian shall disclose to the personal representative a catalog of electronic communications sent or received by the user and digital assets, other than the content of an electronic communication, of the user if the representative gives the custodian (1) a written request for disclosure; (2) a certified copy of the death certificate; and (3) a certified copy of letters testamentary or of administration, small estate affidavit, or other court order. Estates Code, Section 2001.102(a).

The personal representative shall provide additional information if requested by the custodian: (1) a number, username, address, or other unique subscriber or account identifier; (2) evidence linking the account to the user; (3) an affidavit stating that the disclosure is reasonably necessary for administration of the estate; or (4) a court finding that the user had the specific account or that the disclosure is reasonably necessary for administration of the estate. Estates Code, Section 2001.102(b).

A catalog of decedent's communications may prove helpful in revealing other assets. For example, email is often used to remind account holders when a paperless statement is available, indirectly disclosing the existence of brokerage, bank, and other accounts. In this System, Letter 131 is used to request a catalog.

Termination of account

The personal representative may also terminate decedent's account used to access digital assets licensed to the user. The personal representative must provide (1) a written request for termination; (2) a certified copy of the death certificate; and (3) a copy of letters testamentary or of administration, a small estate affidavit, or other court order. The personal representative shall provide additional information if requested by the custodian: (1) a number, username, address, or other unique subscriber or account identifier; (2) evidence linking the account to the user; or (3) a court finding that the user had the specific account. Estates Code, Section 2001.202. In this System, Letter 131 is used to terminate the account.

Compliance by custodian

The custodian shall comply with the request to disclose digital assets or terminate an account under TRUFADAA within sixty days. If the custodian fails to comply, the personal representative may apply to the court for an order directing compliance. Estates Code, Section 2001.231(a). However, if the custodian finds that there was lawful access to the account following the receipt of the request, it can be denied. Estates Code, Section 2001.231(d). A custodian's good-faith compliance with chapter 2001 is immune from liability. Estates Code, Section 2001.232.

In disclosing digital assets, the custodian may, at the custodian's sole discretion, grant the personal representative or designated recipient full access to the user's account or partial access sufficient to perform the tasks with which the personal representative or recipient is charged, or it may provide the personal representative or designated recipient a copy in a record of any digital asset that, when the custodian received the request for disclosure, the user could have accessed if alive and with full capacity and access to the account. The custodian may assess a reasonable administrative charge for the cost of disclosure. Estates Code, Section 2001.053(a), (b).

A custodian does not have to disclose a digital asset if it has been deleted by a user. Estates Code, Section

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2001.053(c). If the request or direction is for some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregating them would impose an undue burden on the custodian. If the custodian believes the request or direction would impose an undue burden, the custodian can seek an order from the court that would allow the custodian to disclose (1) a subset limited by date of the user's digital assets; (2) all of the user's digital assets to the personal representative; (3) none of the user's digital assets; or (4) all of the user's digital assets to the court for review in camera. Estates Code, Section 2001.053(d).

Personal representative's duties and authority

The personal representative owes the same legal duties as those imposed on a fiduciary charged with managing tangible property, including the duties of care, loyalty, and confidentiality. The personal representative's authority with respect to the digital assets is subject to the applicable terms of service and other applicable law, is limited by the scope of the representative's duties, and may not be used to impersonate the user. A personal representative with authority over the tangible property of a decedent has the right to access the property and any digital asset stored in it and is an authorized user for the purpose of applicable laws concerning computer fraud and unauthorized computer access. Estates Code, Section 2001.201. Both dependent and independent representatives may request an order enforcing disclosure. Estates Code, Sections 351.106 and 402.003.

Delivery Method for TRUFADAA Requests

Online request processes

Major digital custodians maintain designated online request processes for fiduciary access requests:

- Google: **https://support.google.com/accounts/troubleshooter/6357590** (Inactive Account Manager; deceased user requests)
- Meta (Facebook/Instagram): **www.facebook.com/help/150486848354038** (memorialization; special requests)
- Apple: **https://support.apple.com/digital-legacy** (Digital Legacy; deceased user requests)
- Microsoft: **https://support.microsoft.com** (next-of-kin process)

Recommended approach

When available, use the custodian's designated online request process. These portals are designed to expedite review and typically produce faster responses than mailed requests. Retain confirmation numbers and screenshots for documentation.

Mailed requests

If mailing a TRUFADAA request (because no online process exists or online process was unsuccessful):

1. Use a qualified delivery method as defined in Estates Code, Section 22.0295: hand delivery with receipt; certified mail, return receipt requested; or IRS-designated private delivery service.
2. The sixty-day response period in Estates Code, Section 2001.101, runs from "receipt of request." Proof of delivery is essential if enforcement becomes necessary under Estates Code, Section 2001.132.
3. Address requests to the custodian's legal or compliance department. Many custodians publish specific addresses for legal process.

Enforcement timeline

The TRUFADAA sixty-day period is measured from the custodian's receipt, not mailing date. Qualified delivery method establishes receipt date:

Delivery Method	Receipt Date Evidence
Certified mail, return receipt requested	Return receipt signature date
Private carrier	Tracking delivery confirmation date
Online portal	Submission confirmation time stamp

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SPECIAL INSTRUCTION 84—EXECUTION OF DOCUMENTS

Administration of an estate requires execution of documents by the executor or administrator, individual distributees, and sometimes heirs, trustees, and the surviving spouse, to name a few.

The same individual—for example, the surviving spouse—may play multiple roles. Matters are further confused when individuals sign for corporations and other business entities.

When executing documents, care is needed to distinguish the capacity of the individual signing and to avoid technical errors that bring the transaction into question. Each document begins with the challenge, "How do we sign this?"

The answer is complicated by the human condition, which includes the foreign, the disabled, the blind, the illiterate, minors, the bankrupt, and, recently, the digital.

Estate administration also requires scrutiny of others' documents to answer the question, "Is this signature effective?"

Subscription, acknowledgment, delivery, acceptance, and completeness all bear examination, but few attorneys know what to look for.

An executor's counsel needs a desk reference and a trouble-shooting manual. A strong starting point is "Execution of Documents" by James Noble Johnson and MarJuana Bush Williams, 2021 Advanced Real Estate Law Course, State Bar of Texas. Be sure to check the Online Library at **www.texasbarcle.com** for the most current version. Another useful resource is "Drafting for Remote or Electronic Document Execution" by William Pargaman, 2023 Estate Planning and Probate Drafting Course, State Bar of Texas.

A useful complement, especially for distribution deeds, is the *Texas Title Examination Standards*, by the Title Standards Joint Editorial Board of the Section of Real Estate, Probate and Trust Law and the Oil, Gas and Energy Resources Law Section of the State Bar of Texas. The *Texas Title Examination Standards* may be found in the Cumulative Annual Pocket Part to 1 Vernon's Texas Codes Annotated, Property Code, and at **https://static.legalsolutions.thomsonreuters.com/static/pdf/texas/TXTitleExamStandards.pdf**.

Family settlement agreements present particular challenges. They may secure beneficiaries' consent to an independent administration or settle a will contest or trust suit. Proper parties may include named beneficiaries, heirs at law, successor trustees, and contingent, unborn, and unascertained beneficiaries. Mistakes in identifying parties and defining capacities, critical elements of any agreement, may prove fatal. For a thorough discussion with detailed examples, including signature blocks, see "Settlement Agreements: Considerations when Negotiating, Drafting and Enforcing Settlement Agreements Involving Probate, Trust and Guardianship Disputes" by Sarah Patel Pacheco and Mickey R. Davis, 2009 Advanced Estate Planning and Probate Course, State Bar of Texas. Further coverage is beyond the scope of this System.

A basic model for execution of documents by the estate's personal representative:

Identification

I, **2.45 or 2.76**, as **2.85** of the Estate of **6.02**, Deceased

Subscription

_____

2.45 or **2.76**, as **2.85** of the Estate of **6.02**,
Deceased

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Acknowledgment

STATE OF TEXAS)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on
_____ by **2.45 or 2.76**, as **2.85** of the Estate of **6.02**, Deceased.

_____
Notary Public, State of Texas

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SPECIAL INSTRUCTION 85—WILLS NOT PRODUCED

If the original will is not available, additional information and steps are required for probate. Estates Code, Sections 256.054 and 257.053 (application), 258.002 (citation), 256.156 (proof), and 256.203 (findings).

The basic procedure for each application is generally still followed, but the will proponent must supplement this System's application, proof, and order forms and offer additional evidence.

For particulars on citation and waiver unique to wills not produced, see Special Instruction 16—Citation and Notice.

When a lost will was last seen in the testator's possession, additional evidence that the will was not revoked is required to overcome the presumption of revocation. Estates Code, Section 256.152(a)(1); *In re Estate of Glover*, 744 S.W.2d 939 (Tex. 1988).

If a lost will was self-proved (see Special Instruction 36—Execution of Wills), additional proof that the will was validly executed is not required. Estates Code, Section 256.152(b).

Once a will not produced is admitted, certified copies of the contents as established by the order have the same dignity as certified copies of original wills and may be recorded in other counties and used in evidence. Estates Code, Section 256.203.

These rules apply only where the will is offered for probate. A will not produced may be offered in evidence to prove revocation of a prior will even if it cannot be admitted to probate. Estates Code, Sections 253.002 and 256.156; *In re Estate of Page*, 544 S.W.2d 757, 761 (Tex. App.—Corpus Christi–Edinburg 1976, writ ref'd n.r.e.).

For wills not produced, the application forms in this System must be supplemented with (1) the reason the will cannot be produced, (2) the contents of the will, and (3) the name, address, and relationship to decedent of each devisee and of each heir at law and whether the person is an adult or a minor. *See* Estates Code, Sections 256.054 and 257.053.

The proof forms in this System must be supplemented with (1) the cause of nonproduction and (2) the contents of the will. The cause of nonproduction must satisfy the court that the will cannot be produced by any reasonable diligence. Contents must be proved by testimony from someone who read the original or a copy of the will, heard it read, or can identify a copy. Estates Code, Section 256.156. If the will was last seen in the testator's possession or in a place to which the testator had ready access, evidence that the will was not revoked should also be included. *Glover*, 744 S.W.2d 939.

"Reasonable diligence" generally includes searching the testator's books and papers, searching any safe deposit box, reviewing a copy of the will for the drafting attorney (the State Bar may have an address and phone number for the attorney or the law firm), reviewing a copy of the will for the notary (the secretary of state may have an address or insurance agency for the notary), checking with each county clerk where the testator resided after making the will, and checking with clerks of each court that may have jurisdiction of the testator's estate.

Clerks accept wills under a variety of statutes. No search is exhaustive that stops with the county clerk where the testator resided at death. Estates Code, Section 252.001, allows a testator to deliver his will to the county clerk of the testator's then-current residence. Post mortem, Estates Code, Section 252.201, requires the custodian to deliver the will to the clerk of the court with jurisdiction of the testator's estate. Where a safe deposit box is examined under court order, Estates Code, Section 151.002, requires delivery of the will to the clerk of the court with probate jurisdiction where the examination order issued. Where a safe deposit box is examined without court order, Estates Code, Section 151.004, permits delivery to the named executor or else to the clerk of the court with probate jurisdiction where the testator resided.

The order forms in this System must be supplemented with the contents of the will. *See* Estates Code, Section 256.203.

When a copy of the will exists or can be printed, a paper copy must be deposited with the clerk of the court subject to the same rules as if it were an original will. Estates Code, Section 256.202. To facilitate proof of the contents of the will, a copy may be attached to the application and order and incorporated by reference. *See* Estates Code, Section 256.156(b)(2).

Special Instruction 18—What to Do at Hearing remains a useful model but should be modified accordingly and edited to include testimony establishing (1)

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the cause of nonproduction (and the futility of any reasonable diligence), (2) that the will was not revoked, and (3) the contents of the will. For example:

Q. Are you Mrs. Harry D. Green, the decedent's widow?

A. Yes.

Q. Do you have your husband's original will?

A. No.

Q. Why not?

A. I can't find it.

Q. Where was it last seen?

A. In my husband's desk drawer at home. He filed it there the day we signed it, and he showed me where.

Q. Did you and your husband live in that same house until the day he died?

A. Yes.

Q. Did you look in the desk drawer after he died?

A. Yes, but all I found was the copy.

Q. Where else did you look?

A. We looked everywhere. The kids and I looked in his office, in our safe deposit box, and we went through the entire house.

Q. Did you ask anyone about the will?

A. Yes, I called our lawyer, I talked to his banker, and I even spoke with his doctor.

Q. I now show you a document dated July 10, 2007, which purports to be a copy of Mr. Green's will. Do you recognize this document?

A. Yes, it is a copy of his will.

Q. How do you recognize this document?

A. It's similar to the one I signed the same day, and I recognize my husband's signature.

Q. Did Mr. Green mean to revoke this will?

A. No. When he was in the hospital the last time he told me that I would get everything and that I would find his will in his desk drawer.

Too often, lulled by decedent's reassurances, family is confident the original will is safe, only to discover a copy instead of the original. This testimony includes evidence required when the will was last seen in the testator's possession—that is, that the will was not revoked.

Absent a court order to examine a safe deposit box, the testimony that the testator did not change his residence precludes the possibility that the clerk of another court might have been authorized to accept the testator's will.

Note: Imagine that the widow Green did not probate her husband's will and, following her death, her children consult you regarding both husband's and wife's wills. If probate of Mr. Green's will proves unnecessary, you should advise the children of their duty to deliver the original to the clerk of the probate court that has jurisdiction of Mr. Green's estate. Estates Code, Section 252.201. The same advice applies to both wills if the children do not retain you.

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SPECIAL INSTRUCTION 86—SIGNATURE BLOCKS

Pleadings signed by attorneys must name the attorney and identify the attorney's State Bar number, address, phone, and fax. Texas Rules of Civil Procedure, Rules 57 and 191.3(a)(1).

If the pleading is e-filed, the attorney's email address is also required. Texas Rules of Civil Procedure, Rule 21(f)(2).

E-filed documents may be signed with either (1) an electronic or scanned digital image of the signature or (2) "/s/" and name typed in the space where the signature would otherwise appear. Texas Rules of Civil Procedure, Rule 21(f)(7).

Some documents must still be signed by hand. Even if e-filing, "/s/" and a typed name do not suffice for notarized or sworn documents. Texas Rules of Civil Procedure, Rule 21(f)(7)(A).

Basic formats for signature blocks for a law firm and for a solo attorney appear below.

As the client's role (applicant, movant, executor, and so forth) changes, so should the description of the client in the signature block. Refer to each form to determine the appropriate description.

A basic format for the solo attorney's e-filing signature block:

/s/ **5.02**

5.02
Attorney for Applicant
State Bar No. **5.03**
5.08A
5.05
5.06
5.07
Fax **5.08**

A basic format for the law firm's e-filing signature block:

5.01

By: /s/ **5.02**

5.02
Attorneys for Applicant
State Bar No. **5.03**
5.08A
5.05
5.06
5.07
Fax **5.08**

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SPECIAL INSTRUCTION 87—CAPTIONS AND TITLES

Pleadings begin with the cause number, the parties, the court, the county, and a title.

The caption contains the cause number, parties, court, and county. Concerning decedent's name, see Special Instruction 8—Death, Birth, Marriage, and Divorce Records regarding diacritical marks, including accents, tildes, graves, umlauts, and cedillas (for example, á, ñ, è, ü, and ç).

The title identifies the document—for example, *Original Application for Probate of Will and Issuance of Letters Testamentary*. If supplemented or amended, the title must reflect the change, so the court and other parties can order the pleadings—for example, *First Supplemental Original Application for Probate of Will and Issuance of Letters Testamentary*, or *First Amended Application for Probate of Will and Issuance of Letters Testamentary*. Texas Rules of Civil Procedure, Rules 78, 64, and 83.

In some courts the form is prescribed by law—for example, divorce or adoption in the family courts. Family Code, Sections 6.401(a) and 102.008(a). In probate, custom and the local rules are the main guides. Texas has 254 counties. Consult Government Code, Title 2, Subtitle A ("Courts"), for particulars of each one. Chapter 24 addresses district courts ("county courts at law," also known as "statutory county courts;" and "statutory probate courts"), and chapter 26 addresses constitutional county courts. The jurisdictions of all statutory county courts, beginning with Anderson County, are found at Government Code, Sections 25.0041 through 25.2512.

A basic format for the caption and title in uncontested probate matters:

	No. **6.01**	
	§	
IN THE ESTATE OF	§	
	§	IN THE **6.03** OF
6.02,	§	
	§	**6.04** COUNTY, TEXAS
DECEASED	§	

ORIGINAL APPLICATION FOR PROBATE OF WILL AND ISSUANCE OF LETTERS TESTAMENTARY

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SPECIAL INSTRUCTION 88—INDEPENDENT ADMINISTRATION BY AGREEMENT WHERE DECEDENT LEFT A WILL (TBA)

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.

Unless the will provides that no independent administration may be allowed, independent administration may be created by agreement in a testate estate where the will did not provide for independent administration or where it did but no named executor or designated administrator is available or willing to serve. *See* Estates Code, Sections 254.006, 401.001(b), and 401.002.

Where the will names a qualified executor or provides for a qualified designated administrator but does not provide for independent administration, the court may allow independent administration and appoint the named executor or administrator as independent executor or administrator, provided all the distributees agree and consent. *See* Estates Code, Sections 254.006 and 401.002(a).

Where no executor is named, or, if named, is not available or qualified, and no available and qualified administrator is designated, the court may allow independent administration and appoint any qualified person agreed by the distributees as independent administrator. *See* Estates Code, Sections 254.006 and 401.002(b).

The term "independent executor" includes an independent administrator. Estates Code, Section 22.017.

If the applicant is not named in the will as executor or alternate executor, the proceeding is an "independent administration with will annexed." *See, e.g.*, Estates Code, Sections 306.002 and 361.152.

Note: Although this System reserves its administration with will annexed (AWA) 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. 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—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.

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.

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.

Following decedent's death, the independent executor or administrator appointed under these provisions files the will for probate, has it admitted, and takes and files the oath. On filing the oath, the independent executor or administrator is qualified and, unless limited by the will, has the power to perform any act necessary to settle the estate that might be done under the authority of a court in an administration where no will existed. In addition to those powers, the independent executor or administrator has any additional discretionary authority granted by the will. 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.

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After the will has been probated and the executor or administrator has qualified by taking the oath, the executor or administrator must prepare and file an inventory, appraisement, and list of claims, to be approved by the court. Estates Code, Section 309.051. Alternatively, in some circumstances the independent executor or 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 executor or 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.

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

In this System it is assumed that applications for letters testamentary or of independent administration in an original proceeding are filed within four years of decedent's death. In general, application for probate of a will and letters testamentary or 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.

Procedures for independent administration by agreement in a testate estate begin at Item 38 of the Checkplan.

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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.

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, appraisement, and list of claims, to be approved by the court. Estates Code, Section 309.051. Alternatively, in some circumstances 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

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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.

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SPECIAL INSTRUCTION 90—MISSING HEIRS

Following the court's settlement of the final account, the executor or administrator is ready to make distributions of the assets remaining in the estate. From time to time, however, an heir is missing and cannot be located. This is especially likely if decedent was elderly, died without a will, and had a large family or multiple marriages.

Assuming that the estate assets have been liquidated and the only asset remaining is cash, the easiest method of distribution is to obtain cashier's checks from the estate's bank for the heirs who can be located. Good practice indicates mailing the checks and proposed receipt and release by certified mail, return receipt requested, to all known heirs. When a receipt and release is returned, it will be filed with the court.

If a check is returned unclaimed, or if heirs are unknown or cannot be located, further steps are required. The court must order the executor or administrator to deposit in the court's registry all money to which a person who is unknown or missing is entitled. Estates Code, Section 362.011(c).

If an heir (other than a resident minor without a guardian) has not demanded that heir's share within six months after the date of the settlement of the final account, the court must order the executor or administrator to pay to the Comptroller of Public Accounts that heir's share, including any portion that had been deposited in the court's registry. Estates Code, Section 551.001. The executor or administrator must obtain from the comptroller a receipt for the payment, with an official seal attached, and file the receipt with the clerk of the court. Estates Code, Section 551.006(a). Failure to pay the funds to the comptroller within thirty days after the date of the order subjects the executor or administrator to a significant penalty. *See* Estates Code, Section 551.102.

If the estate assets have not been liquidated before the order to deposit funds into the court's registry, the court must order the executor or administrator to convert into money any remaining nonmonetary assets to which a missing or unknown heir is entitled. Estates Code, Section 362.011(b). This procedure for conversion of nonmonetary assets is not covered in this System.

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SPECIAL INSTRUCTION 91—ANCILLARY PROBATE (AP) OR RECORDING (RW) OF WILLS PREVIOUSLY PROBATED ELSEWHERE

The will of a decedent who was not domiciled in Texas at the time of death may be admitted to probate in Texas pursuant to Estates Code, Chapters 501 and 502, if the will affects property in Texas, including litigation here. Estates Code, Sections 501.001(1) and 502.001(a)(1). If administration is necessary and the will has been probated in another state or a foreign country, it may be admitted to ancillary probate in Texas. *See* Estates Code, Chapter 501 (Ancillary Probate of Foreign Will). Original probate is also available in certain circumstances. *See* Estates Code, Chapter 502 (Original Probate of Foreign Will), and the discussion in Special Instruction 15—Jurisdiction and Venue.

If no administration is necessary and the only concern is to have the Texas real property records reflect the ownership of bequeathed real estate, a simple procedure for recording a will that has been probated in another state or a foreign country can be used. *See* Estates Code, Chapter 503 (Recording of Foreign Testamentary Instrument).

Informative coverage of considerations and procedures involving foreign wills is contained in both"Administration of the Estate with Cross Border Issues" by R. Glenn Davis, 2014 Advanced Estate Planning and Probate Course, State Bar of Texas, and "The Hitchhiker's Guide to Multijurisdictional Estate Administration: Interstate" by R. Shaun Rainey, 2024 Advanced Estate Planning and Probate Course, State Bar of Texas.

Ancillary Probate

The will of a decedent who was not domiciled in Texas at the time of death that would affect any real or personal property in Texas may be admitted to ancillary probate at any time on proof that it was probated or otherwise established in another state or a foreign country. Estates Code, Section 501.001. The general four-year limit does not apply to a foreign will. Estates Code, Section 256.003. The procedure for ancillary probate depends on whether the will was probated in the jurisdiction in which decedent was domiciled at time of death or in another jurisdiction. Ancillary probate of a will probated in a nondomiciliary jurisdiction is beyond the scope of this System.

If the will was admitted to probate in decedent's domiciliary jurisdiction, the application need only indicate that Texas probate is requested on the basis of the authenticated copy of the foreign probate proceedings, and no citation or notice is required. Estates Code, Sections 501.002(a) and 501.003(a). The application must include a copy of the foreign will and the order admitting it to probate, attested and certified as required by Estates Code, Section 501.002(c).

The clerk must record in the judge's probate docket, without the necessity of a court order, the foreign will and evidence of its probate. Estates Code, Section 501.004(a), (c). When the foreign will has been filed and recorded in the probate docket, it is considered to be admitted to probate and has the same effect as if the original will had been admitted to probate by a Texas court. Estates Code, Section 501.005.

When dealing with foreign estates or beneficiaries, U.S. banks, brokers, and life insurance companies may insist on an apostille or acknowledgment before a U.S. consular official before distributing nonprobate assets to named beneficiaries. Either an apostille or acknowledgment before a U.S. consular official is also sufficient when authenticating a will or order from another country. It is permissible, and simpler, however, to use a local notary. Whenever a will, order, or other document is in a foreign language, attach sworn translations of the document and each notarial certificate or stamp. *Cf.* Civil Practice & Remedies Code, Section 121.001; Property Code, Section 11.002. More cumbersome procedures will be necessary in a contest, where the rules of evidence may be strictly enforced. See "Administration of the Estate with Cross Border Issues" by R. Glenn Davis, 2014 Advanced Estate Planning and Probate Course, State Bar of Texas, at 9 ("Probate of Wills Written in a Foreign Language").

An executor named in a foreign will admitted to ancillary probate in Texas is entitled to ancillary letters testamentary on proof that the executor has qualified in the foreign jurisdiction and is not disqualified from serving in Texas (Estates Code, Section 501.006(a)(1), (2)) and that there is a necessity for administration in

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Texas. If the will is admitted to ancillary probate in Texas after the fourth anniversary of decedent's death, proof must also be made that the executor continues to serve as executor in the foreign jurisdiction. Estates Code, Section 501.006(a)(3). A court order directing issuance of ancillary letters testamentary to the executor is to be entered when that proof is made. Estates Code, Section 501.006(b). This System calls for attaching to the application for ancillary letters an authenticated copy of the letters testamentary from the original jurisdiction to prove the executor's qualification. Other facts may be established by affidavit. Local practice may require a hearing. The Estates Code does not.

If the will does not appoint the executor as an independent executor but the foreign jurisdiction allowed the personal representative to serve independently, the Texas court generally will also allow an independent administration. If the foreign jurisdiction does not allow independent administration but independence is warranted, the appropriate procedure would be to obtain consent of all the distributees pursuant to Estates Code, Sections 401.002 and 401.004 through 401.006.

The Code is unclear, but this System assumes that on issuance of ancillary letters testamentary to the executor the usual requirements and exceptions apply for an oath, bond, inventory, and notice to beneficiaries and creditors.

Following ancillary probate under Estates Code, Section 501.002, a foreign personal representative need not apply for letters testamentary under Estates Code, Section 501.006, to prosecute a wrongful death or survival action. Civil Practice & Remedies Code, Sections 71.012 and 71.022. If ancillary letters are not sought, the relevant forms, letters, and procedures in the System must be altered accordingly.

Procedures for ancillary administration begin at Item 44 of the Checkplan.

Recording in Deed Records

A copy of a will that conveys or disposes of Texas real estate and that has been probated in another state or a foreign country, together with a copy of the order admitting it to probate in the foreign jurisdiction, may be filed in the deed records in any Texas county in which the real estate is located. Estates Code, Section 503.001(a). Certified copies are inadequate. Instead, both the will and the order should be authenticated according to Estates Code, Section 501.002(c). Estates Code, Section 503.001(b). If written wholly or partially in a language other than English, such authenticated copies may be filed if a correct English translation is recorded with the authenticated copies and the accuracy of the translation is sworn to before an officer authorized to administer oaths. Estates Code, Section 503.002(a). The recording operates as constructive notice of the existence of the instrument and the title or titles conferred by it. Estates Code, Section 503.002(b). The recorded documents function as a conveyance and as notice of title. Estates Code, Sections 503.051 through 503.052.

Review "Ancillary Probate," above, for considerations in authenticating and, if necessary, translating the will and order.

If the recorded will gives the executor the power to sell property located in Texas, no court order is needed to authorize a sale and conveyance by the executor, although any specific directions in the will concerning the sale of estate property must be followed unless annulled or suspended by court order. Estates Code, Section 505.052.

Procedures for recording the will in the deed records are at Item 45 of the Checkplan.

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SPECIAL INSTRUCTION 92—DUTY TO INSURE

Executors and administrators have a duty of care and must manage estate property prudently. Estates Code, Section 351.101. "[I]t is almost an inviolate rule to insure any property with the usual and customary coverage—fire, windstorm, hail, extended coverage." *Frost Nat'l Bank v. Kayton*, 526 S.W.2d 654, 661 (Tex. App.—San Antonio 1975, writ ref'd n.r.e.) (discussing Probate Code, Section 230, now Estates Code, Section 351.101).

Every representative, including temporary ones, is liable for failure to obtain reasonable insurance, even if the power was not expressly granted in the court's order of appointment. See Section 452.001 cmt. of *Johanson's Texas Estates Code Annotated* (2022 ed.) by Stanley M. Johanson, published by Thomson Reuters (citing *Kayton*, 526 S.W.2d 654). The personal representative generally has the power to obtain liability and property insurance, and without court order. *Cf.* Estates Code, Sections 351.052(a)(4)–(5). A temporary administrator may not secure insurance unless expressly authorized. *See* Estates Code, Section 452.101.

Fiduciary relationships may arise casually—for example, through an implied agency agreement or an informal fiduciary relationship. *See generally* "Implied Contract for Agency," section 32 in "Agency" in 3 *Texas Jurisprudence* (3rd ed. 2025), published by Thomson Reuters, and commentary in "Question and Instruction—Existence of Relationship of Trust and Confidence," PJC 104.1 in *Texas Pattern Jury Charges—Business, Consumer, Insurance & Employment* (2024), published by the State Bar of Texas. Thus, one consideration regarding procedures in lieu of administration is the liability of the casual fiduciary if the estate's insurance needs cannot be met without appointment of a personal representative.

The standard of review is negligence. A fiduciary is not an insurer in all cases and is obliged only to use reasonable care. If insurance is unavailable, failure to obtain it is not a breach of duty. *Lawyers Surety Corp. v. Snell*, 617 S.W.2d 750, 752 (Tex. App.—Houston [14th Dist.] 1981, no writ) (house uninsurable given neighborhood's reputation). However, if insurance is unavailable or too expensive, the duty of care may compel sale of the property. *Cf.* Estates Code, Section 356.051(a), (c)(1) (expense or disadvantage to the estate; duty of care a consideration).

Do not assume decedent's insurance is adequate or even in force. Decedent may have carried homeowner's or automobile property insurance but then dropped it once notes were paid off. Premiums due the final weeks or months of life may have gone unpaid. Coverage under the standard homeowner's policy is suspended while a home is vacant and void once an insured resides elsewhere, such as with a child or at a nursing home, as is common during a last illness or extended infirmity. Key coverages—for example, personal property coverage—may lapse by design on an insured's death.

At a minimum, an executor or administrator should inform each agent of the insured's death and ask the agent to review the estate's insurance needs. Unless the personal representative is the surviving spouse, it's typically necessary to name the executor or administrator as an additional or coinsured to extend to the executor or administrator the decedent's rights to add or modify coverage or adjust policy limits. Regardless, a named, deceased insured should remain on the policy until the decedent's interest has been transferred out of the estate.

Insurance agents do not have a duty to advise when coverage is inadequate or to provide the least expensive policy. However, if specific insurance is requested, the agent cannot substitute a different policy but must provide the requested coverage or timely inform the client it is unavailable. This is helpful when a contract (construction, mortgage, lease, agreement incident to divorce, and so forth) requires particular insurance. If those specific requirements are communicated, the agent will share liability with the fiduciary for losses that should have been covered.

To identify the insurance types and amounts appropriate for the high-net-worth estate, consult an insurance analyst, sometimes marketed as a private risk advisor. Like "mere" agents, their compensation tends to come exclusively from the insurer. However, the competition for wealthy clients, access to multiple insurers, and the greater overall compensation per client lead to fuller disclosure and more robust advice. An insurance analyst may have a professional credential such as Chartered Property Casualty Underwriter (CPCU), Certified Insurance Counselor (CIC), Associate in Risk Management (ARM), or Certified Risk Manager (CRM). Their typical profile client has an expensive

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home, domestic employees, watercraft, a farm or ranch, art or other collections, or an alternate ownership structure (a trust, limited liability corporation, family limited partnership). Insurance analysts tout their superior knowledge and skills, and they usually carry errors and omissions insurance.

The highest risk estates—for example, those with ongoing construction, entertainment events, or a large number of employees—should consider a risk manager. Risk managers are familiar with contractual indemnities and waivers and are capable of identifying, quantifying, and transferring risks. Risk managers are compensated by the insured and will sign a contract expressly assuming the duty to advise. Forms for one-time and for ongoing insurance analysis engagements are found at "Agreement for Insurance Analysis in Letter Form" and "Agreement for Continuing Insurance Analysis Services in Contract Form," sections 56.301[2] and 56.302[2] in 10 *Texas Transaction Guide* (2024) by Herbert S. Kendrick and John J. Kendrick, Jr., published by Matthew Bender.

Delegating to an Insurance Advisor

Even if an insurance advisor—whether an insurance agent, an insurance analyst, or a risk manager—agrees to assume a duty to advise, the executor or administrator does not necessarily avoid liability for losses that should have been insured. Without more, at best the fiduciary merely shares liability with the insurance advisor.

Trust law may provide a model to delegate responsibility. The personal representative of an estate is held to the same fiduciary standards in administering an estate as a trustee. *Humane Society v. Austin National Bank*, 531 S.W.2d 574, 577 (Tex. 1975). *See generally* commentary in "Breach of Duty by Personal Representative—Other Than Self-Dealing," PJC 232.1 in *Texas Pattern Jury Charges—Family & Probate* (2024), published by the State Bar of Texas.

A trustee may delegate management decisions—for example, insurance and risk management—and avoid liability for the agent's decisions. Property Code, Section 117.011. *See generally* "Delegation to Non-Trustees," section V.D. in "Defending the Trustee" by Sarah Patel Pacheco and C. Vance Christopher, 2017 Advanced Estate Planning Strategies Course, State Bar of Texas. Reasonable care, skill, and caution is required in selecting the agent, defining the scope of the agent's duties consistent with the trust, and periodically reviewing the agent's actions. Property Code, Section 117.011(a). Diligence in selecting an agent might include investigating the agent's credentials (performance history, experience, and financial stability), verifying the agent's professional license and registration, and confirming that the agent is bonded and insured. "Delegation to Non-Trustees," Pacheco and Christopher. The trustee does not avoid liability if the agent is an affiliate of the trustee, the engagement contains an arbitration clause, or the engagement reduces the limitations period otherwise applicable to trustees. Property Code, Section 117.011(c).

Whether similar principles protect the executor or administrator is uncertain. Some commentators feel an executor (and presumably an administrator) is held to a higher standard than a trustee to preserve the estate for distribution. See "Executors," section II.C.2.b. in chapter 10 in *Wills Road Map: Practical Considerations in Will Drafting* (4th ed. 2025), published by the State Bar of Texas (citing *Humane Society*, 531 S.W.2d 574, 580 (primary duty of executor is to preserve estate for distribution)).

The Attorney's Role

Ideally, before an executor or administrator's appointment is requested, some diligence is completed in anticipation of promptly determining and meeting the estate's insurance needs. What are the estate's assets and activities? Are any prohibited or restricted by will or statute? What were decedent's insurance and indemnity obligations? Are there others with insurable interests in estate property (homesteader or life tenant, remainderman, landlord, tenant, and so forth)? Will the executor or administrator have full or limited power to manage all? Will the power to insure be granted or restricted? What court orders, if any, will be required? Is diversification of the estate's assets required, limited, or prohibited? What is the anticipated distribution plan for estate assets? What is the timetable for finalizing an investment or distribution plan? Is it reasonable for the executor or administrator to consult an insurance analyst or a risk manager?

An executor or administrator is responsible for taking reasonable care and should not necessarily use an attorney for every task. It is a matter of judgment whether the attorney or the personal representative communicates with each insurance agent. In the smallest, simplest estates, it seems unreasonable to use an attorney. In larger or more complex estates, particularly where contract and other obligations impose specific insurance requirements beyond the duty of care, an attorney may be needed to identify those provisions and communicate them to the insurance agent. This System provides a form letter to the agent, Letter 130, for use if requested by the client.

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SPECIAL INSTRUCTION 93—PROOF OF EXECUTION OF WILL (NOT SELF-PROVED)

Self-proving affidavits simplify probate hearings. Proof of certain elements is excused, and subscribing witnesses need not attend the hearing. See Special Instruction 36—Execution of Wills, "Is the Will Self-Proved?"

Self-proving affidavits resolve proof problems that can be daunting, if not insurmountable. Without one, the applicant must prove the testator executed the will with the required formalities, and at the time was of sound mind and had legal capacity. Estates Code, Section 256.152(a)(2). Procedures for proving the execution of attested and holographic wills that lack a self-proving affidavit are provided by the Code, as discussed below.

Attested Wills

Although the Texas Rules of Civil Procedure and the Texas Rules of Evidence generally apply in probate (Estates Code, Sections 53.107 and 54.051), the Estates Code relaxes the rules to accommodate attested wills without a self-proving affidavit (1) by allowing witnesses without personal knowledge of the execution, provided they recognize the testator's or a subscribing witness's signature, and (2) by enabling an interrogatory in lieu of depositions. Specifics vary, depending on whether the subscribing witnesses are deceased, unavailable, or in the military and on whether the will is contested. Estates Code, Section 256.153.

An attested will has three signatures: the testator's and those of two subscribing witnesses. A will must be in writing and signed by the testator or by another person under his direction and in his presence. Estates Code, Section 251.051(1), (2). A will generally must also be attested by two or more credible witnesses who are at least fourteen years of age and who subscribe their names to the will in their own handwriting in the testator's presence. Estates Code, Section 251.051(3). Exceptions are made for holographic wills, which need not be attested, and foreign wills that meet the requirements of the relevant foreign jurisdiction. Estates Code, Sections 251.052 and 251.053. Each witness both "attests" (observes the testator sign) and "subscribes" (himself or herself signs) the will. The "attesting witness" and the "subscribing witness" are the same person.

Estates Code, Section 256.153, addresses different scenarios in which the will is attested but not self-proved: (1) at least one subscribing witness is available; (2) no subscribing witness is both a resident of the county and able to attend court; and (3) all subscribing witnesses are deceased or in the military and beyond the court's jurisdiction.

The first scenario under Section 256.153 is straightforward: if available, one subscribing witness is enough to prove the will by sworn testimony or an affidavit in open court. *See* Estates Code, Section 256.153(b).

The second and third scenarios address subscribing witnesses who will not or cannot attend court. Depositions on written questions, called "interrogatories" in places, are authorized, and a handwriting witness without personal knowledge of the execution may substitute for the subscribing witness.

In the second scenario, where all the subscribing witnesses are nonresidents of the county or unable to attend court, (1) the subscribing witness may be deposed according to Estates Code, Section 51.203, or the Texas Rules of Civil Procedure; (2) absent opposition to the will, two witnesses to the signature of either an attesting witness or the testator, if the testator signed, may be deposed or may appear in open court; and (3) one witness to either the attesting witness's or the testator's signature will suffice if it is shown to the court's satisfaction that only one witness can be found. Estates Code, Section 256.153(c).

Finally, if the subscribing witnesses are deceased or in the military and beyond the court's jurisdiction, the will may be proved by testimony in open court or through written or oral deposition by two witnesses to the signatures of one or both of the subscribing witnesses or the testator, if the testator signed, regardless of whether the application is contested. One such witness will suffice if it is shown to the court's satisfaction that only one witness can be found. Estates Code, Section 256.153(d).

In situations where no subscribing witness will be used to prove the execution of the will, it is recommended that you be prepared to prove to the court that all subscribing witnesses are unavailable—that is, if addresses for the witnesses are provided in the will, you should attempt to make contact with the witnesses.

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If only one witness to a signature is located, it is recommended that you contact the court to discuss the situation well before any hearing. The statute always allows the court to demand more diligence.

Holographic Wills

Although a holographic will is not required to be attested (Estates Code, Section 251.052), it may be. If it is not self-proved but is attested, it may be proved as described above. Whether or not attested, it may be proved by two witnesses to the testator's handwriting. If the witnesses are nonresidents of the county or are unable to attend court, interrogatories in lieu of depositions are permitted. Estates Code, Section 256.154.

Witnesses

In all cases, best practice prefers the witnesses to be disinterested, meaning that they do not have a financial interest in the estate—that is, that they are neither beneficiaries nor creditors. The Estates Code does not specifically disallow interested parties from serving as witnesses to prove a will, but it does not specifically allow them, either. "[T]he prudent practitioner will continue to avoid beneficiary-witnesses at all costs." "Corroboration of Testimony of Interested Witnesses—Current Law," section IV.C.4.f. in chapter 1 in *Wills Road Map: Practical Considerations in Will Drafting* (4th ed. 2025), published by the State Bar of Texas.

Depositions

Depositions generally require notice by actual service on the deponent and the other parties in the lawsuit. Texas Rules of Civil Procedure, Rules 199.2(a) ("Procedure for Noticing Oral Deposition") and 200.1(a) ("Procedure for Noticing Deposition Upon Written Questions"). Depositions according to the rules of civil procedure are beyond the scope of this System.

However, Estates Code provisions substitute posting by the sheriff or constable for notice under the rules of civil procedure when an application to probate a will is uncontested or in other probate matters when there is no opposing party or attorney on whom notice may be served. The interrogatories must also be filed with the probate court clerk. Following ten days after posting, the deposition may be taken, and the judge may file cross-interrogatories if no person appears. Estates Code, Sections 51.203, 51.053, and 256.155. When filing a notice of intent to take deposition on written questions, take care to request and pay for citation by posting. Since the advent of e-filing, clerks no longer ask the attorney whether to post notice, which can lead to anguish when the judge points out the lapse at your hearing.

While written depositions are an option, the process typically takes longer and leaves more room for error, as neither the attorney nor the judge has the ability to request the witness to clarify the answers. If you must use depositions on written questions, you should discuss the questions and answers in Form 10 (for a subscribing witness), Form 140 (for a witness to a signature), and Form 142 (for a handwriting witness for a holographic will) with the witness. If the subscribing witnesses have zero recollection of signing the will, their testimony will not be helpful; however, the testimony of a witness who received a signed check from the testator every month would be beneficial.

When citation or notice is required on a person who survived decedent but has since died, the procedure is modified by Estates Code, Section 51.057.

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SPECIAL INSTRUCTION 94—TIMESHARES

Rare is the distributee who shares the decedent's enthusiasm for a timeshare. The location and amenities are unappreciated, resale values are low, and fees and assessments are high. Several narrow but practical opportunities exist to avoid or limit a timeshare's liabilities before the personal representative distributes interests or pays assessments. Special Instruction 54—Claims of Creditors touches on elements of the claims process that may be helpful. Other approaches discussed below are beyond the scope of this System.

Whatever the approach, the executor or administrator must resolve the estate's liability. For example, a distributee might disclaim a timeshare. Without more, that does not relieve the estate's representative of liability for amounts due on the date of death or that accrue during administration.

Regulation and Nature

Timeshare contracts entered on or after August 26, 1985, are governed by the Texas Timeshare Act. Property Code, Chapter 221. The Act regulates properties located in Texas or offered for sale in Texas. Property Code, Section 221.003(a). Without more, execution of a contract in Texas can subject a timeshare to the Act. *See* Property Code, Sections 221.034(a)(7) (foreign property) and 221.034(a)(8) (nonresident purchaser).

The Act was extensively revised in 2005, and the Texas Real Estate Commission was given more regulatory authority over the timeshare industry. Timeshare programs in existence before January 31, 2005, are eligible for exemption from the Act, if documented by written determinations from the Commission. Property Code, Section 221.003(e).

Violations of the Texas Timeshare Act may implicate the Texas Deceptive Trade Practices–Consumer Protection Act, Texas Contest and Gift Giveaway Act, and federal securities law. See sections 88.91 through 88.93 (timeshares) in 21 *Texas Transaction Guide* (2024) by Herbert S. Kendrick and John J. Kendrick, Jr., published by Matthew Bender.

Title or interest in a timeshare may be recorded. Property Code, Section 221.012. A timeshare may be either real property or personal property. "Timeshare interest" means a timeshare estate or timeshare use. Property Code, Section 221.002(25). A "timeshare estate" includes an interest in real property. Property Code, Section 221.002(24). A "timeshare use" does not. Property Code, Section 221.002(30).

Escheat and Abandonment

Neither escheat nor abandonment offers a reasonable prospect of relief from the unwanted timeshare.

Property Code, Chapter 71, addresses escheat of real and personal property. A timeshare will not escheat to the state at an executor's or administrator's convenience. Neither real nor personal property is subject to escheat unless the decedent died intestate and without heirs. *See* Property Code, Section 71.001.

Property Code, Chapters 72 through 77, address abandonment of personal property. Texas makes no provision for abandonment of real property. Personal property is presumed abandoned if the owner's existence and location are unknown to the holder for more than three years. Property Code, Section 72.101. Though a timeshare developer or manager may not know of a distributee's existence or location at the owner's death, the personal representative, not the developer or manager, is arguably the holder. *Cf.* Property Code, Sections 72.001(e)(1), (2) ("[H]older is a person . . . who is . . . in possession of property that belongs to another [or] a trustee."); Estates Code, Section 101.003 (executor or administrator has right of possession and holds estate in trust).

The holder is exempt from all liability when abandoned property is delivered to the comptroller. Should the personal representative conceal his or her appointment from the developer or manager to force abandonment? It won't help. Only the one delivering the property to the comptroller is exculpated, and even then only if acting in good faith. Exculpation is not available to the fiduciary in breach of trust or to one acting unreasonably. *See* Property Code, Section 74.304.

Resale

In a dependent administration, personal property that would be an expense or disadvantage to the estate must be sold following approval of the inventory. Estates Code, Section 356.051. Though not mandatory, an order of sale of personal or real property is also available when in the estate's best interest. Estates Code, Sections 356.101 (personal property) and 356.251 (real property).

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Enough scams have targeted those desperate to sell timeshares that the Texas Timeshare Act, Subchapter J, has regulations unique to the resale of timeshares. Property Code, Sections 221.101 through 221.111. Timeshare interests, whether an "estate" or merely a "use," above, are also subject to the Real Estate License Act, though timeshare exchange programs, below, are not. Property Code, Section 221.011(c). For more information, search **www.trec.texas.gov** for "timeshare."

The Texas Real Estate Commission does not maintain a list of licensed brokers and agents that specialize in timeshare sales. An internet search of "licensed Texas timeshare broker" returns a variety of resale brokers and agents, licensed and not.

Be careful to comply with both the Texas Timeshare Act and the Real Estate License Act to avoid liability on the sale of a timeshare. In the worst case, it is possible to retain liability for past fees and assessments, add liability to the developer or manager for future fees and assessments, and add liability to a buyer for all manner of statutory violations.

Cancellation

Purchasers have an absolute six-day right of cancellation. The cancellation period runs from the date the purchaser signs and receives a copy of the purchase contract or receives the required timeshare disclosure statement, whichever is later. A contract purporting to waive the right to cancel is voidable at any time. Property Code, Section 221.041. Certain contract and timeshare disclosure provisions are mandatory. *See* Property Code, Sections 221.032 and 221.043. Aside from a contract purporting to waive the right to cancel, it is unclear whether defects in contracts render a purchase voidable or merely give rise to other remedies. The reference in Property Code, Section 221.041, to a "*required* timeshare disclosure statement" (emphasis added) suggests that inadequate timeshare disclosures do not start the six-day right-of-cancellation period.

Do not confuse a timeshare disclosure statement with an exchange disclosure statement. An exchange disclosure statement is required when a prospective timeshare purchaser is offered an exchange program (allowing a timeshare owner to use another's timeshare interest in a different property). Property Code, Section 221.033. The right of cancellation does not extend to the exchange disclosure statement. *See* Property Code, Section 221.041.

Cancellation procedures and refund requirements are set out at Property Code, Section 221.042.

If you need a copy of the contract or disclosure statement, be aware that owner access to certain books and records is mandated by Property Code, Section 221.077.

Preferred Debt and Lien Status

Secured creditors must receive specific notice within two months of the issuance of letters. Absent a timely election by the creditor, the claim is treated as a preferred debt and lien, which allows the creditor to foreclose on the collateral but also immunizes the estate's other assets. On the other hand, a particularly nimble developer or manager may elect to have its claim treated as a matured secured claim to be paid in the course of administration, relieving neither the personal representative nor any distributee. See Special Instruction 54—Claims of Creditors.

Negotiated Settlements

The developer or manager may agree to compromise its claim in exchange for the executor's or administrator's cooperation. Examples include (1) a short sale, where the debtor assigns sale proceeds to the creditor; (2) an agreed foreclosure; and (3) a deed in lieu of foreclosure. For particular considerations with each strategy, see "Negotiated Plans for Liquidation of Collateral," section 3.4 in *Texas Foreclosure Manual* (3rd ed. 2014 & Supp. 2019), published by the State Bar of Texas. Any deed in lieu of foreclosure should be limited to a special warranty, further claims and any deficiency should be released, and the grantee should sign to confirm acceptance. *Cf.* "Deed in Lieu of Foreclosure," form 5-13 in *Texas Real Estate Forms Manual* (2023 ed.), published by the State Bar of Texas, and "Warranty Deed in Lieu of Foreclosure" and "Agreement for Deed in Lieu of Foreclosure," forms 3-10 and 3-11 in *Texas Foreclosure Manual* (2023 ed.), published by the State Bar of Texas.

Several national services purport to negotiate timeshare settlements—for example, Timeshare Exit Team and Resort Exit Team.

Insurance

Pending a timeshare's disposition, the executor or administrator may be responsible for insurance. See Special Instruction 92—Duty to Insure. The timeshare developer or manager is required to maintain property insurance and liability insurance for the benefit of purchasers. Property Code, Section 221.072. An insurance advisor can determine whether the statutory requisites are adequate for a particular estate and interpret the timeshare project's certificate of insurance. See Special Instruction 92—Duty to Insure.

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The Distributee's Options

Before accepting distribution of a timeshare, a distributee may disclaim it. Although the distributee avoids the timeshare, this does not relieve the executor or administrator from related claims.

The distributee who wants the timeshare—but realizes his own heirs do not—might update the distributee's estate plan to give the timeshare back to the developer or manager on his death.

The distributee who accepts a timeshare but later regrets it could resell the timeshare. See the sections titled "Resale" and "Cancellation" above regarding regulation of timeshare sales.

Timeshare rentals can mitigate maintenance fees, if permitted by the timeshare contract.

Charities may accept a timeshare donation. An income tax deduction may be available for a timeshare estate, but not for a timeshare use. As with timeshare sales, donation services exist but are the target of numerous consumer complaints. A common complaint is that the donation service charges a large fee now, and the IRS disallows the suggested deduction later.

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SPECIAL INSTRUCTION 95—AUTHORITY TO DESIGNATE ADMINISTRATOR

In addition to or instead of naming one or more executors in a will, a testator may grant the authority to designate one or more persons to serve as administrators of the testator's estate. This authority may be granted to an executor named in the will or to another person identified by name, office, or function. Unless the will or the designation provides otherwise, the designated administrator has the same rights, powers, and duties as an executor named in the will. Estates Code, Section 254.006(a), (d). It is assumed in this System that neither the will nor the designation provides different rights, powers, and duties from those of a named executor.

An effective designation must be in writing and acknowledged before an officer authorized to take acknowledgments and administer oaths. Estates Code, Section 254.006(b).

Unless the will provides otherwise, a person designated to serve as administrator may serve only if each named executor is deceased, is disqualified to serve, or files an affidavit with the appropriate county clerk indicating that he is unable or unwilling to serve as executor. Further, the designation must be effective and the person must not be disqualified from serving under Estates Code, Section 304.003. Estates Code, Section 254.006(c). It is assumed in this System that authority to designate an administrator under Estates Code, Section 254.006, is granted either instead of naming an executor or to be exercised only if no named executor is willing, able, and qualified to serve.

The designated administrator may apply for appointment as such. Application for appointment of an administrator may be made if the designated administrator is disqualified, refuses to serve, is dead, or resigns or if an authorized person other than the executor has not designated any person to serve as designated administrator when the application is filed and the applicant notifies the court that the authorized person has no intention of doing so. Estates Code, Section 301.051.

Wording of Forms If Authority to Designate an Administrator Is Granted in the Will

If authority to designate an administrator has been granted in the will, adapting pleadings, proofs, and orders may be necessary to reflect that fact. The language suggested below may be used in pleadings and adapted for proofs and orders.

If the will named one or more executors but none will serve, the paragraph pertaining to those named executors may be reworded as follows:

> The [Will/Codicil] named **2.43** to serve without bond or other security as [independent] [executor/executrix/executors/co-executors/executor and independent executrix, respectively/executrices]. **2.43** is [deceased/unable to serve as such/not willing to serve as such/unqualified to serve as such] [**include if applicable:** and desires to waive the right to be so appointed]. [**Include if applicable:** The [written waiver of the right to be appointed/affidavit indicating [inability/unwillingness] to serve] as [independent] executor of **2.43** will be filed with the clerk of this Court.]

The following paragraph may be used if the authorized person designated an administrator who will serve:

> The [Will/Codicil] granted **2.44C** the authority to designate one or more persons to serve [without bond or other security] as [independent] administrator of the estate. Pursuant to that authority, **2.44C** designated **2.45**, who would not be disqualified by law from serving as such or from accepting letters of administration.

The following paragraph may be used if the authorized person designated an administrator who will not serve:

> The [Will/Codicil] granted **2.44C** the authority to designate one or more persons to serve [without bond or other security] as [independent] administrator of the estate. Pursuant to that authority, **2.44C** designated **2.44N**, who [is deceased/refuses to serve as such/is disqualified to serve as such]. [**Include if applicable:** The affidavit of **2.44C** indicating refusal to serve as administrator will be filed with the clerk of this Court.]

The following paragraph may be used if the authorized person has failed to designate an administrator and does not intend to do so:

> The [Will/Codicil] granted **2.44C** the authority to designate one or more persons to serve [without bond or other security] as [independent] administrator of the estate. **2.44C** has not desig-

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nated any administrator and has no intention of doing so.

Titles of Forms

The usual titles for applications and orders relating to the appointment of a designated administrator should be supplemented with “with Will Annexed.”

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SPECIAL INSTRUCTION 96—IDENTITY THEFT

A widely reported 2012 study concluded that nearly 2.5 million deceased Americans' identities are misused each year. More than two-thirds are inadvertent—that is, a criminal abused another's identity, unaware the owner had died. Of the remainder, about a third involved intentional identity theft of the dead.

It can be months after a person dies before credit reporting agencies, the Social Security Administration, and the IRS receive, share, or register death records. In the meantime, identity thieves may obtain new credit cards, access existing accounts, or make fraudulent tax refund requests.

Family should avoid publishing too much information about decedent in newspaper and online obituaries—for example, full name, date of birth, maiden name, mother's maiden name, home address, and employment and education history.

Identity theft is preempted by informing custodians of decedent's death. In this System, that is accomplished in the course of administration by various letters or forms directed to the Social Security Administration, the Department of Veterans Affairs, the Internal Revenue Service, employers, life insurance companies, banks, brokers, and others.

Absent administration, family should send the IRS a copy of the death certificate, inform Social Security of decedent's death, and contact each credit card company and financial institution to inform them of decedent's death and instruct them whether to close the account or, if jointly owned, transfer it to the surviving owner. Joint credit card accounts may be closed once an issuer is informed of either owner's death. If possible, transfer credit cards and other joint accounts before placing a deceased alert.

On request, credit reporting bureaus will put a "deceased alert" on decedent's credit report.

Equifax, **www.Equifax.com**, 800-525-6285

Experian, **www.Experian.com**, 888-397-3742

TransUnion, **www.TransUnion.com**, 800-680-7289

With or without an administration, decedent's surviving spouse may request a credit freeze on his or her own credit report.

When reviewing decedent's credit report for secured or unsecured creditors, also look for questionable activity, both inter vivos and postmortem. If available, compare the surviving spouse's credit report to decedent's.

For more information, visit the Federal Trade Commission, **https://IdentityTheft.gov**; the Internal Revenue Service, **www.irs.gov/newsroom/taxpayer-guide-to-identity-theft**; the Social Security Administration, **https://blog.ssa.gov/10-ways-to-protect-your-personal-information/**; and the Texas Attorney General, **www.texasattorneygeneral.gov/consumer-protection/identity-theft**.

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SPECIAL INSTRUCTION 97—UNSWORN DECLARATIONS

Civil Practice & Remedies Code, Section 132.001, provides that an unsworn declaration may be used in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by a rule, order, or requirement adopted as provided by law. This provision does not apply to a lien required to be filed with a county clerk, an instrument concerning real or personal property required to be filed with a county clerk, or an oath of office or an oath required to be taken before a specified official other than a notary public.

Such an unsworn declaration must be in writing and subscribed by the declarant as true under penalty of perjury.

A number of the affidavits, proofs, and oaths involved in a probate proceeding that are contained in this System would fall under these provisions allowing the use of an unsworn declaration, but at least one probate court will not accept them. Check with the court before preparing the document.

For a document prepared as an unsworn declaration, the following jurat meets the requirements of the statute:

> My name is [**name**], my date of birth is [**date**], and my address is [**address, including street, city, state, zip code, and country**]. I declare under penalty of perjury that the facts stated in this document are true and correct.
>
> Executed in [**county**] County, [**state**], on _____.
>
> _____
> [**Name of declarant**]

Estates Code, Section 305.002, provides that, to qualify, a personal representative may either take an oath or make and sign a declaration. Prescribed wording for such a declaration is contained in Estates Code, Section 305.051 through 305.053. Use of a declaration is not covered in this System; it is assumed that each personal representative will take an oath.

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SPECIAL INSTRUCTION 98—CORPORATE TRANSPARENCY ACT

The Corporate Transparency Act was enacted in 2021 and sought to require many entities created in or registered to do business in the United States to report information about their beneficial owners—the individuals who ultimately own or control a company—to the Financial Crimes Enforcement Network ("FinCEN"), a bureau of the U.S. Department of the Treasury. The Corporate Transparency Act did not have smooth implementation and was the subject of many legal challenges and injunctions. As of January 2026, there is no active filing requirement for U.S. domestic companies while the regulations are being finalized and clarified with the Act focusing more on foreign entities registered in the U.S. Should the regulations be finalized, there is a possibility of new reporting deadlines and requirements. Best practice is to check the FinCEN website for updates: **www.fincen.gov**. See below for additional discussion on what it would mean for clients in the context of probate administration if these rules are finalized.

FinCEN published the *Small Entity Compliance Guide* (2023), available at **https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide_FINAL_Sept_508C.pdf**, to assist the small business community in complying with the beneficial ownership information reporting rule.

This requirement does not extend to trusts and general partnerships, but it does reach many corporations, limited liability entities, limited partnerships, and other entities created by filing a document with a secretary of state or similar office. Owning or controlling 25 percent or more of a reporting company, or simply exercising substantial control, can trigger significant penalties absent annual reports. Although CPAs are in the best position to help preexisting companies, a thirty-day deadline for a new company's initial FinCEN report may put the burden on the attorney forming the company. A private compliance service may be the best option for most beneficial owners, provided they learn of the need in time.

Note page 45 of the guide: "When a beneficial owner dies, resulting in changes to the reporting company's beneficial owners, report those changes within 30 days of when the deceased beneficial owner's estate is settled." It is important to review all entities of which the deceased may be a beneficial owner (defined in the guide) and advise the client that there may be reporting requirements due to FinCEN. Although the requirements state that the update to FinCEN is due "within 30 days of when the deceased beneficial owner's estate is settled," it remains to be seen what deadline will be imposed for independent administrations, which are oftentimes not formally closed. Failing to report or provide updated information to FinCEN may result in civil or criminal penalties, so it is best practice to advise new beneficial owners to update FinCEN as soon as possible if the business will be ongoing. There is no requirement to report a company's termination or dissolution.

See generally "Identifying Beneficial Owners under the Corporate Transparency Act" by John R. Strohmeyer, 2023 Estate Planning and Probate Drafting Course, State Bar of Texas.

Further coverage is beyond the scope of this System.

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SPECIAL INSTRUCTION 99—LIMITATIONS

A lawyer's duty to communicate includes keeping a client reasonably informed about the status of a matter, to enable informed decisions. Texas Disciplinary Rules of Professional Conduct, Rule 1.03. Liability can be imposed on the lawyer who fails to advise a prospective or current client of impending deadlines.

If considering representation of a potential plaintiff, determine when the incidents occurred giving rise to the claim and when the statute of limitations will expire. Human nature being what it is, prospects are often aware of the deadline and seek counsel at the last minute without disclosing the urgency. If the prospect is a defendant, review citation and the court's file.

If declining to represent a prospective plaintiff, calculate deadlines for your internal risk management, but communicate them at your peril. If wrong, you may be liable. The statute of limitations for personal injury and other torts is generally two years. Civil Practice & Remedies Code, Section 16.003. Limitations for breach of contract is four years. Civil Practice & Remedies Code, Sections 16.004 and 16.051.Tolling defenses are available that can extend both deadlines. *See, e.g.,* Civil Practice & Remedies Code, Section 16.063 (defendant's absence from the state).

> *Note:* In ordinary civil litigation, the statute of limitations does not implicate jurisdiction. In suits against a governmental unit, however, a plaintiff must plead that suit was filed and served within the limitations period as a jurisdictional prerequisite to establish the court's subject-matter jurisdiction. *Texas State University v. Tanner*, 689 S.W.3d 292, 296, 302 (Tex. 2024). Incorrectly informing a client or prospect that limitations already passed is also malpractice.

Decline engagements in writing, advising rejected prospects to seek other counsel promptly, and explain that the passage of time will cut off any claims or defenses. *See, e.g.,* the sample letters declining employment in app. F in *A Guide to the Basics of Law Practice* (Beryl P. Crowley and Mitchel L. Winick eds., 10th ed. 2004), available from the Texas Center for Legal Ethics at **www.legalethicstexas.com/resources/ebooks/a-guide-to-the-basics-of-law-practice/**.

If agreeing to represent a prospect, expressly exclude known matters the firm will not accept, for example, a survival action, a claim for breach of fiduciary duty, or a suit to quiet title. Calendar limitations, answer, and other litigation deadlines within the scope of the agreed representation. For a comprehensive limitations list, see "Statutes of Limitations Chart," *O'Connor's Texas CPRC Plus* (2026 ed.) by David J. Beck, published by Thomson Reuters.

Estate administration implicates a variety of limitations. The general rule is that a will may be admitted to probate within four years of death. Estates Code, Section 256.003(a). Letters may issue after four years if the probate application was filed timely. Estates Code, Section 256.003(b). There is no limitations period for admission of a foreign will to ancillary probate. Estates Code, Section 501.001.

A two-year period limits a bill of review to correct an error in a probate order or judgment. Estates Code, Section 55.251(b). Limitations to cancel a will for forgery or fraud is two years from discovery. Estates Code, Section 256.204.

A four-year period governs breach of fiduciary duty (Civil Practice & Remedies Code, Section 16.004); suit on the bond of an executor, administrator, or guardian (Civil Practice & Remedies Code, Section 16.004(b)); and recovery of trust property (Civil Practice & Remedies Code, Section 16.051).

There is no limitations period on a declaration of heirship. Estates Code, Section 202.0025. Nor is there one on removal of a trustee. Property Code, Section 113.082(a).

Once one will is admitted to probate, an application to probate a later will is subject to the usual four-year limitations period. However, an action to set aside a probated will in favor of an *earlier* one is considered a contest and is subject to the two-year limitations period. *Klein v. Dimock*, 705 S.W.2d 405, 407 (Tex. App.—Fort Worth 1986, ref. n.r.e.).

See also "Statutes of Limitation—General Considerations," part III in chapter 17 in *Texas Collections Manual* (2025 ed.), published by the State Bar of Texas.

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SPECIAL INSTRUCTION 100—NEEDS-BASED BENEFITS

When administering an estate that involves either a decedent who received needs-based benefits or a beneficiary who does, special care should be taken to either preserve the estate from the Texas Medicaid Estate Recovery Program (MERP) or prevent disqualification of a beneficiary from their needs-based benefits. This Special Instruction is not intended to be a treatise on needs-based benefits but instead is designed to help the practitioner issue spot and seek appropriate resources as needed.

MERP requires the state to attempt to recover from a decedent's estate assets equal to the amount of money spent by the Medicaid program on the decedent's care. The recovery is limited to estate assets, so all nonprobate transfers are exempt from recovery. Standard Medicaid planning will involve shifting assets from probate estate status to nonprobate assets through use of a Lady Bird or transfer on death deed and contractual beneficiary designations. Texas Health and Human Services has a guide to the program including a MERP authorization form to obtain claim information and application for waiver. See **www.hhs.texas.gov/regulations/legal-information/your-guide-medicaid-estate-recovery-program**.

Texas is *not* a lien state, and MERP claims are a Class 7 creditor. Estates Code, Section 355.102. If an executor or administrator has a piece of real estate in an estate to be sold to satisfy creditors, beware of the title company who insists on paying a MERP claim directly out of sales proceeds. All proceeds from the sale of the property should be given over to the executor or administrator, whose responsibility it is to handle the MERP claim. For an excellent discussion on MERP claims, see "What All Estate and Probate Attorneys Need to Know About Medicaid Estate Recovery" by Jennifer L. Coulter, 2023 Estate Planning, Guardianship and Elder Law Conference, University of Texas.

Transfer on Death Deed

Authorized by Estates Code, Chapter 114, the transfer on death deed is a nonprobate transfer of real property. The real property covered by a transfer on death deed is specifically exempted from recovery by MERP by statute. Estates Code, Section 114.106(b). The wise practitioner will check the property records for a transfer on death deed whenever a MERP claim is received.

Lady Bird Deed

Another tool in the Medicaid planner's toolbox is the Lady Bird deed, which is better called an enhanced revocable life estate deed and is a nonprobate transfer of real property. Lady Bird deeds and transfer on death deeds are not limited in use to homestead property, though a person receiving Medicaid rarely has real property other than a homestead. A Lady Bird deed is a creature of case law rather than statute, but its use was recently reinforced in *Anderson v. Campbell*, No. 12-24-00075-CV, 2025 WL 52668, at *1 (Tex. App.—Tyler Jan. 8, 2025, no pet.). As with a transfer on death deed, the wise practitioner will check the property records for a Lady Bird deed whenever a MERP claim is received.

Will Reformation

When a decedent left a gift to a recipient of needs-based benefits and there is a will, check for a contingent trust that can be used to create a third-party supplemental needs trust for that beneficiary. If there is not, turn to Estates Code, Section 255.451(a)(2), to assess the option for a judicial will reformation to qualify a distributee for government benefits. A will reformation is necessary to maintain a beneficiary's qualification for needs-based benefits and must be requested by the executor of the estate. When facing a will reformation to create a third-party supplemental needs trust, the practitioner must first have the executor appointed and then request the reformation. The application and the order combine to constitute the trust agreement.

Distributees on Needs-Based Benefits

If a decedent was intestate and a distributee on needs-based benefits receives an inheritance, the probate practitioner is limited in what they can do to protect the benefits. This System recommends referring the distributee to a Medicaid attorney who can advise the distributee on reporting requirements for the Social Security Administration and the Health and Human Services Commission and potential spend-down options. Certain transfers of property are permitted by policy and statute, but the wise practitioner should seek experienced counsel before attempting to advise without careful study of the *Medicaid for the Elderly and People with Disabilities Handbook* and the Social Security Program Operations Manual System.

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SPECIAL INSTRUCTION 101—APPOINTMENT OF SUCCESSOR PERSONAL REPRESENTATIVES

The Estates Code provides that a successor personal representative can be appointed on application if the person who was initially appointed as personal representative fails to qualify or, after qualifying, dies, resigns, or is removed. Estates Code, Section 361.102(a). The court may appoint a successor representative without citation or notice if the court finds that the immediate appointment of a successor representative is necessary. Estates Code, Section 361.102(b).

If appointment is sought for the next named representative in the probated will, some Texas courts will consider the appointment upon application and affidavit without the necessity for an additional hearing. For appointment of a successor personal representative, the application, order, and proof forms in this System should be supplemented with the reason for the vacancy, such as the personal representative failed to qualify, died, resigned, or was removed, and with a statement that there is a continued need for further administration of the estate. The sworn affidavit will need to include, at a minimum, (1) a statement describing how the vacancy came to be, (2) a statement that there still exists a need for administration and an immediate appointment, and (3) a statement that the individual to be appointed is qualified and not disqualified to serve in that capacity. If the successor appointee will be dependent, the affidavit should also include information regarding the estate's assets for the purpose of determining the bond. See Form 154—Affidavit of Successor Personal Representative. Further coverage is beyond the scope of the System.

If a will names an independent executor, but that executor and all named successors are unable or unwilling to serve, and the will does not name anyone else to act, all of decedent's distributees must join in an application to continue independent administration and to have a qualified person, firm, or corporation appointed as successor independent administrator; otherwise, the estate will proceed under a court-supervised dependent administration. Estates Code, Section 404.005.

If appointment is sought for a person who is not a named executor in the will, notice and hearing is required unless the appointment is an emergency. Estates Code, Section 361.152. If filing under Estates Code, Section 404.005, notice and hearing may not be necessary. Local practices may vary.

After appointment, the successor personal representative administers the estate as if the successor administration were a continuation of the former administration. The successor, if named in the will, has all the rights, powers, and duties given by the will. If the successor personal representative is not named in the will, the successor's powers are limited to those conferred on personal representatives by the Estates Code. Estates Code, Section 361.153. See Estates Code, Section 404.004, if additional powers are to be sought from the court.

The successor must account for all estate property that came into the predecessor's possession and can obtain any order or remedy that the court could give to enforce delivery of that property and the predecessor's liability (for example, compelling turnover or asserting claims against the prior representative or their surety). Practically, this means that the successor must determine what assets and records the prior representative held. See Estates Code, Sections 361.153 and 361.154.

After qualifying as successor personal representative, the personal representative must file an inventory or affidavit in lieu (if independent representative) before the ninety-first day following qualification using valuations as of the date of qualification if an inventory has been previously filed in the estate. If no inventory has previously been filed for the estate, the personal representative must file an inventory with date-of-death valuations before the ninety-first day. Estates Code, Sections 309.051, 309.052, and 361.155.

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SPECIAL INSTRUCTION 102—REVOCABLE TRUSTS

Decedent or the surviving spouse may have created a revocable living trust, allowing assets to be transferred to the trust during the grantor's lifetime. If fully funded—all assets titled in the trust or subject to a beneficiary or payable-on-death designation—probate may not be required. If the trust was not fully funded, probate is required to transfer remaining assets. Most revocable trust–based plans include a pour-over will directing probate assets to the trust, but the pour-over will does not eliminate the need for probate; it merely determines the destination of probate assets.

When a revocable trust is identified, determine whether any assets were not funded into the trust or lack a beneficiary designation. The form of administration depends on whether the decedent left a valid will; if not, intestate administration applies.

> *Note:* The estate inventory includes only assets passing through probate. See Special Instruction 23—Inventory, Appraisement, and List of Claims. If the trust was fully funded and no assets pass through probate, this System does not apply.

This System serves the executor who also happens to be trustee—not the trustee who happens to have some probate involvement. Trust administration duties (distributions, modifications, accountings, termination, trustee compensation, and trust proceedings) are outside the scope of this System and must be disclaimed in engagement letters.

Revocable trust assets are included in decedent's gross estate under IRC, Sections 2036 and 2038, even though they are not probate assets. See IRC, Sections 645 (qualified revocable trust election); 2002, 2036, and 2038 (estate tax liability and gross estate inclusion); and 6324(a)(2) (transferee liability for unpaid estate tax); Property Code, Chapters 113, 114, and 117 (trustee duties and liabilities); Estates Code, Section 308.002(b)(1) (notice to trust income beneficiaries when personal representative is also trustee).

Beneficiary Notice

Estates Code, Section 308.002(a), requires the personal representative to give notice of probate to each named will beneficiary within sixty days of the order admitting the will.

If the will distributes to a trust, notice ordinarily goes to the trustee. If the personal representative *is* the trustee, however, notice must instead be given to the person or class of persons first eligible to receive trust income, determined as if the trust were in existence on the date of death. Estates Code, Section 308.002(b)(1).

If the personal representative and trustee are the same person, flag at intake that notice must go to the current income beneficiaries of the trust instead of the trustee, with the exception, under Estates Code, Section 308.002(b)(1), that notice to a purely discretionary income beneficiary is not required if notice has been given to an ancestor with a similar interest and no apparent conflict exists.

Notice must be sent by a qualified delivery method. Estates Code, Section 308.002(d). An affidavit or certificate of compliance must be filed with the court clerk not later than the ninetieth day after the order admitting the will. Estates Code, Section 308.004.

Tax Coordination

Form 706 reporting

Revocable trust assets are reported on Schedule G (Transfers During the Decedent's Lifetime) of IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. For dual-role clients, coordination is internal; for estates with a separate trustee, use Letter 139—Executor to Trustee (IRS Form 706 Coordination). Request trust asset information for Form 706 preparation, citing the executor's personal liability under IRC, Section 2002. Request a complete list of assets with date-of-death values, the trust instrument and all amendments, valuation-period account statements, and generation-skipping transfer (GST) information.

GST allocation

If the trust includes generation-skipping provisions or skip-person beneficiaries, coordinate GST exemption allocation. Affirmative allocation at death is reported on Form 706, Schedule R.

Portability election

Trust assets affect computation of the deceased spousal unused exclusion (DSUE). Form 706 must be timely filed (including extensions) to elect portability even if no estate tax is owed.

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IRC Section 645 election

The executor and trustee may elect to treat a qualified revocable trust as part of the estate for income tax purposes. IRC, Section 645. The election requires agreement of both parties and must be made by the due date of the estate's first Form 1041. The election period ends on the earlier of two years after death or the date the estate distributes all assets.

Asset Discovery for Trust Assets

The executor's authority to obtain trust asset information depends on whether Form 706 is required and whether the governing documents contain coordination provisions. Under IRC, Section 2002, the executor is personally liable for the entire gross estate tax, which includes trust assets under IRC, Sections 2036 and 2038—creating a legitimate discovery basis when Form 706 is required. Well-drafted instruments strengthen this authority through expense allocation provisions; tax election language conditional on no executor being appointed; and IRC, Section 645, election references.

> *Note:* For discovery letter procedures and the three-capacity authorization framework (personal representative, surviving spouse, trustee), see Special Instruction 103—Asset Discovery Procedures.

Engagement and Closing Letter Considerations

On engagement, include the following in Letter 3 (and corresponding letters for other proceeding types) when the client serves or will serve as trustee:

> We understand that you [will] also serve as trustee of [**name of trust**]. Our representation in this probate matter does not include representation in trust administration. We assume no responsibility for trust distributions, trust modifications, trust accounting, trustee compensation, trust termination, or trust proceedings.
>
> However, because assets held in a revocable trust may be included in Decedent's gross estate for federal estate tax purposes, coordination between the probate estate and the trust may be required. Our services include—
>
> 1. identifying trust assets included in Decedent's gross estate,
> 2. coordinating regarding date-of-death values,
> 3. addressing expense apportionment between the probate estate and the trust, and
> 4. assisting with asset discovery for gross estate assets held by custodians.

On closing, Letters 134, 135, and 136 contain existing nonprobate asset language that is generally adequate. For clients serving as both trustee of a revocable trust and personal representative of a decedent's probate estate, add the following:

> Although we assisted with coordination between the probate estate and the revocable trust, our representation did not include trust administration. Trust administration may or may not be complete; that determination is between you and your trust counsel, if any. This closing letter addresses only the probate estate.

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SPECIAL INSTRUCTION 103—ASSET DISCOVERY PROCEDURES

This Special Instruction addresses procedures for discovering unknown assets of decedent and decedent's spouse, if any. It supplements existing collection letters (which process known assets) with discovery letters designed to identify assets the personal representative, surviving spouse, or trustee may not know exist. Discovery requests seek information regarding all assets within decedent's gross estate for state or federal income, gift, estate, or generation-skipping transfer tax purposes.

The personal representative's duty under Estates Code, Section 351.101 et seq., includes identifying all estate assets. The surviving spouse's right to community property under Estates Code, Section 453.001, includes identifying what community property exists. The trustee's duty under Property Code, Sections 113.051 and 117.001, includes identifying all trust assets. All three may have potential tax liability as "persons in possession" of gross estate property under IRC, Sections 2002, 2203, and 6324. Discovery efforts support these duties and protect against surcharge claims.

Discovery letters identify unknown assets; collection letters process known assets. In the largest estates, discovery may precede collection in the typical workflow; for most estates, formal discovery is never pursued absent an uncooperative custodian. Discovery letters are broader in scope than collection letters and may be sent to institutions where assets are merely suspected.

Three categories of persons may send discovery letters, each with independent authority derived from different but overlapping sources.

Personal Representative

A court-appointed personal representative has the broadest discovery and enforcement authority, extending to all assets within decedent's gross estate for state or federal income, gift, estate, or generation-skipping transfer tax purposes. For further research see the following:

1. Federal tax obligations—IRC, Section 2002, personal liability for estate tax; gross estate inclusion under IRC, Sections 2036 through 2042; transferee liability under IRC, Section 6324(a)(2).
2. State fiduciary duties—Estates Code, Sections 309.051 (inventory), 351.101 (care and loyalty), and 359.001 (accounting).
3. Enforcement authority—Estates Code, Section 351.151 (subpoena power).

See Form 2—Authorize Third Parties to Furnish Information.

Surviving Spouse

The surviving spouse has discovery authority derived from community-property law and potential tax liability, and without invoking the jurisdiction of any court. However, unlike with a court-appointed personal representative, enforcement privileges are limited without a pending administration of decedent's estate. For further research see the following:

1. Community administrator—Estates Code, Section 453.001 et seq., authorizes management of community property without court supervision.
2. Person in possession—IRC, Sections 2002 and 6324, impose potential liability on persons in possession of decedent's property.
3. Tax obligations—final joint return, portability, and transferee liability.

The surviving spouse's authority as community administrator is not to the exclusion of any other privileges, for example, to conduct presuit discovery to determine whether administration is necessary. Once a personal representative of decedent's probate estate is appointed and letters issue, the community administration terminates. If the surviving spouse is the one appointed personal representative, the community administrator capacity effectively merges into the personal representative capacity.

Trustee

The successor trustee (or surviving cotrustee continuing as sole trustee) of decedent's revocable trust has independent discovery authority derived from trust fiduciary duties. Enforcement privileges require a related interest in pending trust or probate proceedings. For further research see the following:

1. Trust fiduciary duties—Property Code, Sections 113.051 (duty of loyalty) and 117.001 et seq. (trustee powers); the trustee steps into the

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deceased trustee's position with the same authority over trust assets.

2. Federal tax exposure—when the trust was revocable, assets are includible in the gross estate under IRC, Section 2038; the trustee is the "person in possession" with potential liability under IRC, Sections 2002, 2203, and 6324.
3. Coordination duties—may need to coordinate with the personal representative for gross estate reporting, generation-skipping transfer tax allocation, and expense apportionment.

Community Property Implications

All discovery letters use spouse-inclusive language, for example, "decedent or decedent's spouse, if any, including surviving, predeceased, or former spouse." This language applies regardless of known marital status because (1) marital property is presumed community (Family Code, Section 3.003); (2) assets in a spouse's name may be community property includible in decedent's gross estate; and (3) prenuptial agreements, separate property tracing, and mixed-character assets create complexity that discovery should surface.

Discovery Sources

Identify potential custodians through (1) check registers and bank statements; (2) prior tax returns (1099-INT, 1099-DIV, 1099-B, 1099-R, and K-1s); (3) mail monitoring; (4) safe deposit box contents; (5) digital device review through the Texas Revised Uniform Fiduciary Access to Digital Assets Act (TRUFADAA); (6) personnel files and employer records; (7) financial planning documents (for example, the will, any trusts, and insurance policies); (8) the MIB Policy Locator Service; and (9) state unclaimed-property databases.

Search services include the MIB Policy Locator Service (**www.mib.com**; fee of approximately $75), which searches participating insurers for life insurance applications within the past twenty-five years. The Texas Department of Insurance (**www.tdi.texas.gov**) also maintains a policy locator. The National Association of Unclaimed Property Administrators (NAUPA; **https://unclaimed.org**) offers a multistate unclaimed-property search tool. Pension Benefit Guaranty Corporation (PBGC; **www.pbgc.gov**) provides a tool for finding unclaimed federally insured pension plans.

Enforcement

Formal discovery is seldom necessary for most estates, but anticipating requisite notices and deadlines can expedite the process when informal requests fail.

Stage 1: discovery letter (twenty-one days; sixty days for TRUFADAA digital assets).

Stage 2: second request by certified mail (fourteen additional days).

Stage 3: subpoena duces tecum, Estates Code, Section 351.151, and Texas Rules of Civil Procedure, Rules 176 and 205—requires a pending court case.

Stage 4: application for order to show cause, Texas Rules of Civil Procedure, Rule 252.202, or motion to compel, Texas Rules of Civil Procedure, Rule 215, based on theories that can include TRUFADAA.

Before escalating to enforcement, consider the likelihood of assets, estimated value, enforcement cost, fiduciary duty balanced against cost to the estate or trust, and alternative approaches (direct contact with custodian management, regulatory complaint). Discovery efforts should be scaled to estate size and complexity—comprehensive discovery is most appropriate for taxable estates; targeted discovery focused on known asset classes and check register review is often sufficient for smaller estates. Documented discovery efforts provide fiduciary defense regardless of outcome.

Trustee and Surviving Spouse Enforcement Limitations

Unlike the personal representative, neither the trustee nor the surviving spouse has direct subpoena authority without a pending court proceeding. Options when a custodian refuses voluntary compliance are (1) to open a probate proceeding using this System; (2) to initiate a trust proceeding under Texas Property Code, Chapter 115; or (3) when a client declines to initiate any court proceeding, a personal representative or trustee willing to do so may coordinate with the client. This limitation does not affect discovery authority—discovery letters are informal requests that require no court authority. Further coverage of trust proceeding initiation is beyond the scope of this System.

Discovery letters to custodians are informal requests to nonparties requiring neither a pending judicial proceeding nor a statutory delivery method. Any method creating proof of mailing or other delivery receipt is more than sufficient; if enforcement is needed, proof of prior delivery will only enhance the strength of your case. For TRUFADAA digital asset requests, use a qualified delivery method to establish the receipt date from which the sixty-day response period runs. See Special Instruction 83—Digital Assets.

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REMEMBER: When date for future action has been determined, be sure to enter it in your calendar or other tickler system. Those marked with an asterisk (*) are critical dates. We recommend that you also prepare reminders for one month, one week, and one day before due dates for the inventory and for estate and income tax returns. As a date is determined, it should also be entered at the indicated place in the Master Information List (MIL) and on the Probate Chart (Worksheet 15).

SIGNIFICANT DATE LIST (SDL)

NAME OF DECEDENT (D) _____

Determination of Date of Document, Event, or Action	Actual Date
1. Date of will—as shown on will itself (Item 2.02 of MIL).	_____
Note: **Item 1 is not applicable to RDA, IBA, or PDH**	
2. Date of codicil—as shown on codicil itself (Item 2.17 of MIL).	_____
Note: **Item 2 is not applicable to RDA, IBA, or PDH**	
3. Date of death—as shown on death certificate (Item 1.07 of MIL).	_____
4. Date exactly ten years before date of D's death—This is the beginning date of the period for credit for previously taxed property.	_____
5. Date exactly three years before date of D's death—This is the beginning date for including taxable gifts made by D, and the gift tax thereon, in the gross valuation of D's estate for federal estate tax purposes.	_____
6. Date five days (actually one hundred and twenty hours) after date of D's death—This is the date to which D's heirs and beneficiaries (including life insurance beneficiaries) must have survived or they will be deemed to have predeceased D unless D's will directs otherwise.	_____
7. Date thirty days after date of D's death—This is the earliest date on which the small estate affidavit may be filed with clerk of court.	_____
7A. Date three months after date of D's death—This is the date by which D's spouse, children, or parents must bring an action for wrongful death. Civil Practice & Remedies Code, Section 71.004.	_____
8. Date six months after date of D's death—Enter this date as Item 26.22 of MIL. This is the date for—	_____
a. Determining the alternate valuation of D's assets for federal estate tax purposes.	
b. Beginning to prepare United States Estate (and Generation-Skipping Transfer) Tax Return.	
c. Determining whether necessary to prepare and file Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes (FF 11).	
Note: **If requesting an extension to pay the tax, this application should be filed at least forty days before due date (Item 26.28 of MIL). If requesting only an extension to file the return, the application may be filed on or before the due date.**	
*9. Date nine months after date of D's death—Enter this date as Item 26.28 of MIL. This is the date for—	_____

a. Delivering a tax-qualified disclaimer to executor or administrator.

b. Filing the United States Estate (and Generation-Skipping Transfer) Tax Return and paying the taxes unless an extension is granted.

(1) First extended date (Item 26.29 of MIL). *Note:* A filing extension generally requires both a request and timely payment of the estimated estate tax. _____

c. Filing D's final gift tax return unless due on an earlier date (refer to Items 59 and 60 of this SDL).

10. Date one year from last day of calendar month before date of D's death—This is the last possible date for the end of the first fiscal year for D's estate. _____

11. Date of fiscal year end for estate—as established by executor or administrator and as used on initial federal income tax return filed for estate on IRS Form 1041 (Item 26.14 of MIL). _____

12. Date sixty-five days after fiscal year end—This is the date by which an executor or administrator may elect to have certain distributions made during these first sixty-five days treated as having been made on the last day of the previous fiscal year. _____

13. Date one year from end of first fiscal year for D's estate—If D's estate has not been closed by this date, estimated income tax payments may be required for all future years. _____

14. Date one year after date of D's death—This is the last date for obtaining family allowance and the last possible date on which the statutes of limitation are no longer suspended for suits by or against D. _____

14A. September 30 of year following D's death—This is the beneficiary finalization date for individual retirement arrangement. _____

14B. December 31 of year following D's death—This is the deadline for creating separate IRA accounts. _____

15. Date two years after date of D's death—Payment of estimated income taxes by estate will be required for all fiscal years ending after this date. _____

16. Date three years and nine months after date of D's death—This is the date on which the statute of limitations generally runs with respect to an unextended, timely filed United States Estate (and Generation-Skipping Transfer) Tax Return. _____

17. Date four years after date of D's death—Except for foreign wills, this is generally the last date on which an application for original letters testamentary (IA, TBA, or ADE) or letters of administration (AWA, TBA, IBA, or RDA) may be filed, the last date on which letters can be authorized (unless the application was filed within the four-year period), the last date on which a request can be filed for the court to determine whether a necessity for administration exists (PDH), and the last date for filing D's will as a muniment of title unless good cause can be shown. _____

17A. Date four years and nine months after date of D's death—This is the date on which the statute of limitations generally runs with respect to an extended, timely filed United States Estate (and Generation-Skipping Transfer) Tax Return. _____

17B. Date foreign will and evidence of foreign probate recorded in Texas judge's probate docket (AP)—This is the date on which the will is considered to be admitted to probate in Texas. _____

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18. Date of filing application (IA, TBA, IBA, MT, PDH, ADE, AWA, RDA, or AP) or small estate affidavit and order (SE) (Item 6.23 of MIL). _____

    Note: **For SE, this date must be after the date shown in Item 7 of this SDL.**

19. Date one hundred and twenty days after filing application—This is the date following which fees must be paid for all instruments filed with the clerk of the court if inventory has not been approved previously. See also Item 61 of this SDL. _____

20. Return date for citation by posting—First Monday following expiration of ten days' notice by posting. _____

21. If there is a citation by publication, earlier of date newspaper in which application to declare heirship is published (as shown in newspaper) or date of publication on public information Internet website. _____

22. Return date for citation by publication—First Monday following expiration of ten days from date in Item 21. _____

23. Date that is the later of Items 20 and 22—No hearing may be held before this date. _____

24. Date scheduled for hearing on application—as scheduled by clerk of court (Item 6.24 of MIL). _____

25. One business day before scheduled date for hearing on application—Call witnesses on this date. _____

26. If hearing on application is rescheduled—Enter new date and remember to remind witnesses one business day before new date. _____

27. Actual date of hearing on application—as furnished by attorney who appeared in court (Item 6.25 of MIL). _____

28. Date of order or judgment—as shown on order or judgment signed by judge (Item 6.26 of MIL). _____

*29. Date twenty days after date of order or judgment—All oaths and bonds must be filed with the clerk of the court by this date. _____

30. Date six months after date of order granting letters as shown in Item 28—This date relates to claims of creditors. See Item 49 of this SDL. _____

31. Date sixty days after date of order admitting D's will to probate as shown in Item 28 (IA, TBA, ADE, AWA) or date foreign will and evidence of foreign probate recorded as shown in Item 17B (AP)—Enter this date as Item 6.69 of MIL. This is the last day to give notice to beneficiaries under D's will and codicil(s). _____

32. Date ninety days after date of order admitting D's will to probate as shown in Item 28 (IA, TBA, MT, ADE, AWA) or date foreign will and evidence of foreign probate recorded as shown in Item 17B (AP)—Enter this date as Item 6.69A of MIL. _____

    a. If MT, this is due date for filing the inventory, if required, unless time is extended. Complete Item 6.85 of MIL. If time is extended, enter new date(s) below.

       (1) Extended due date. _____

       (2) Second extended due date. _____

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b. If IA, TBA, ADE, AWA, or AP, this is the last day to file the affidavit or the certificate of giving notice to devisees and legatees under D's will and codicil(s).

33. Date one hundred and eighty-one days after date D's will was admitted to probate as MT as shown in Item 28—This is the last date to file a sworn affidavit stating the terms of the will that have been fulfilled and those that have not been fulfilled. If time is extended, enter new date below. Enter this date as Item 6.69B in MIL. _____

a. First extended due date. _____

34. - 35. (Reserved)

36. Date of filing all oaths—as shown by clerk's file stamp (Item 6.38 of MIL). _____

Note: **This is the date of qualification for independent executors or independent administrators.**

37. Date of filing bond—as shown by clerk's file stamp (Item 6.36 of MIL). _____

38. Date of approval of bond by judge—as shown on order signed by judge (Item 6.37 of MIL). _____

39. Date that is the latest of Items 36, 37, and 38—This is the date of qualification of executor or administrator (Item 6.39 of MIL). _____

39A. Date that is the earlier of Items 14 and 39—This is the date on which the statutes of limitation are no longer suspended for suits by or against D. _____

40. Date that clerk first issues letters testamentary or letters of administration—as determined from clerk of court. _____

41. (Reserved)

42. Date one month after date that clerk first issues letters as shown in Item 40—This is the last date for publishing notice to creditors and furnishing copy to Comptroller of Public Accounts (Item 21.23 of MIL). _____

43. Date two months after date that clerk first issues letters as shown in Item 40—This is the last date for giving notice to secured creditors (Item 7.35 of MIL and Section 21.0 of MIL). _____

44. Date notice was actually sent to secured creditor. _____

45. Date notice was received by secured creditor—as determined from mailing return receipt or proof of delivery receipt. _____

45A. Date fifteen months after date that clerk first issues letters as shown in Item 40—This is the date following which an independent personal representative can be required to make an accounting under Estates Code, Section 404.001. _____

45B. Date two years after date that clerk first issues letters as shown in Item 40—This is the date following which an independent executor or independent administrator can be required to make an accounting and distribution under Estates Code, Section 405.001. _____

46. Date ninety days after date of qualification shown in Item 39 (Item 6.39 of MIL)—This is the due date for filing the inventory or affidavit in lieu thereof unless the time is extended. Complete Item 6.85 of MIL. If time is extended, enter new date(s) below: _____

a. First extended due date (complete Item 6.86 of MIL). _____

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b. Second extended due date (revise Item 6.86 of MIL). _____

47. Date four months after date notice was received by secured creditor as shown in Item 45. _____

48. Date six months after date of qualification shown in Item 39 (Item 6.39 of MIL)—This is the last date for an executor or administrator to file an individually owned claim against D's estate or the claim will be barred. _____

49. Date that is the later of Items 30 and 47—This is the last date for a secured creditor to notify an executor or administrator of the creditor's election to have claim approved as a matured secured claim to be paid in the course of administration. _____

50. Date one year and sixty days after date that clerk first issues letters as shown in Item 40—This is the last date for filing the first annual account with the court in a dependent administration unless time is extended (Item 6.144A of MIL). See also Item 78 of this SDL. If time is extended, enter new date(s) below. _____

a. First extended due date (complete Item 6.144A of MIL). _____

b. Second extended due date (revise Item 6.144A of MIL). _____

51. Date two years and sixty days after date that clerk first issues letters as shown in Item 40—This is the due date for the second annual account in a dependent administration if the estate has not been closed unless time is extended (Item 6.144B of MIL). See also Item 79 of this SDL. If time is extended, enter new date(s) below. _____

a. First extended due date (complete Item 6.144B of MIL). _____

b. Second extended due date (revise Item 6.144B of MIL). _____

52. Date three years after date that clerk first issues letters as shown in Item 40—This is the date on which the executor or administrator in a dependent administration can be removed if final settlement of the estate has not been made unless time is extended. _____

53. Date three years and sixty days after date that clerk first issues letters as shown in Item 40—This is the due date for the third annual account in a dependent administration if the estate has not been closed unless time is extended (Item 6.144C of MIL). See also Item 80 of this SDL. If time is extended, enter new date(s) below. _____

a. First extended due date (complete Item 6.144C of MIL). _____

b. Second extended due date (revise Item 6.144C of MIL). _____

*54. Fifteenth day of fourth month following end of first fiscal year for estate (April 15th if tax year is calendar year)—This is the last date to file the first federal income tax return for the estate on IRS Form 1041. Note that payment of tax in quarterly installments is no longer permitted. _____

a. Date one year following above date. This is the due date for the return for the following year. _____

b. Date one year following date in Item 54a. This is the due date for the return for the next following year. _____

c. Date one year following date in Item 54b. This is the due date for the return for the next following year. _____

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55. Ending date of second fiscal year for estate (one year after date shown in Item 11)—For fiscal years commencing after this date, estimated tax payments are required. If fiscal year is a calendar year, these payments will be due on April 15, June 15, September 15, and January 15 next following this ending date. If fiscal year is not a calendar year, corresponding months of the fiscal year are substituted. _____

    a. First installment due (fifteenth day of fourth month). _____

    b. Second installment due (fifteenth day of sixth month). _____

    c. Third installment due (fifteenth day of ninth month). _____

    d. Fourth installment due (fifteenth day of thirteenth month). _____

56. Date of expiration of D's leases.

    a. Residence _____

    b. Office _____

    c. Other _____

57. Date of current fiscal year end of a Subchapter S corporation in which D was a shareholder (Item 10.12 of MIL). _____

58. Date two months and fifteen days after date of current fiscal year end of Subchapter S corporation as shown in Item 57—This is normally the last date for a majority of shareholders to revoke a previously filed Subchapter S election for that fiscal year (see Item 10.81 of MIL). _____

*59. Date for filing D's income tax and gift tax returns for tax year before year of death—(Fifteenth day of fourth month following end of tax year—April 15th if tax year is calendar year.) (Refer to Item 9 of this SDL.) If time is extended, enter new date below: _____

    a. First extended due date. _____

*60. Date for filing D's income tax and gift tax returns for tax year of D's death—(Fifteenth day of fourth month following end of D's tax year—April 15th if tax year is calendar year.) If time is extended, enter new date below: _____

    a. First extended due date. _____

61. Date inventory is approved (as shown in Item 6.88 of MIL) or affidavit in lieu of inventory is filed (as shown in Item 6.89 of MIL)—This is the date following which fees must be paid for all instruments filed with the clerk of the court. It also is the earliest date on which proper applications may be made to the court to do the following: _____

    a. Set aside exempt property.

    b. Obtain allowance in lieu of exempt property.

    c. Obtain family allowance.

    Note: **An independent executor or independent administrator ordinarily does not have to have court approval or wait to take the following actions.**

    d. Dispose of items with no commercial value.

    e. Dispose of personal property that is likely to perish, etc.

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f. Sell personal property.

g. Sell real property.

h. Enter into mineral and other leases.

i. Obtain approval of final account.

62. Date disposition of personal property having no commercial value is authorized by court—as shown on order signed by judge (Item 6.91 of MIL). _____

63. Date sale of perishable property is authorized by court—as shown on order signed by judge (Item 6.91 of MIL). _____

64. If there is sale of personal property and court approval is required, complete the following:

a. Date scheduled for hearing, if any, on sale of personal property—as scheduled by clerk of court. _____

b. Date of order of sale of personal property—as shown on order signed by judge (Item 6.91 of MIL). _____

c. Date of concluding sale or finalizing contract for sale of personal property—as furnished by attorney handling sale (Item 6.92 of MIL). _____

d. Date of filing report of sale or report of contract for sale of personal property—as shown by clerk's file stamp (Item 6.98 of MIL). _____

e. Date five days after report of sale or report of contract for sale has been filed. _____

f. Date one day later than the date shown in Item 64e—This is the earliest date on which the order confirming or approving sale may be presented for judge's approval. _____

g. Date of order confirming or approving sale—as shown on decree signed by judge (Item 6.99 of MIL). _____

65. If there is sale of real property and court approval is required, complete the following:

a. Date scheduled for hearing, if any, on sale of real property—as scheduled by clerk of court. _____

b. Date of order of sale of real property—as shown on order signed by judge (Item 6.107 of MIL). _____

c. Date of concluding sale or finalizing contract for sale of real property—as shown on report of sale (Item 6.108 of MIL). _____

d. Date thirty days after concluding sale or finalizing contract for sale as shown in Item 65c—This is the date by which the report of sale must be filed. _____

e. Date of filing report of sale or report of contract for sale of real property—as shown by clerk's file stamp (Item 6.110 of MIL). _____

f. Date five days after report of sale or report of contract for sale has been filed. _____

g. Date one day later than the date shown in Item 65f—This is the earliest date on which order confirming or approving sale may be presented for judge's approval. _____

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h. Date of entry of order confirming or approving sale—as shown on decree signed by judge (Item 6.116 of MIL). _____

i. Date of deed to real property—as furnished by attorney handling sale. _____

66. If there is to be oil, gas, and mineral lease by private sale and court approval is required, complete the following:

a. Date of filing application to lease—as shown by clerk's file stamp. _____

b. Date five days after date of filing application to lease as shown in Item 66a—This is the earliest date on which a hearing may be held. _____

c. Date ten days after date of filing application to lease as shown in Item 66a —This is the latest date on which a hearing may be held. _____

d. Date scheduled for hearing on application to lease—as scheduled by clerk of court. (*Note:* This date *must not* be earlier than the date shown in Item 66b or later than the date shown in Item 66c). _____

e. Date of order granting application to lease—as shown on order signed by judge. _____

f. Date thirty days later than the date shown in Item 66e—This is the latest date by which the lease can be executed without an additional order from the court. _____

g. Date of mineral lease—as furnished by attorney handling lease. (If the lease approved by the court was not dated, the date shown in Item 66e is the date of the lease for all purposes.) _____

67. Date federal estate tax return was filed. _____

68. Date nine months after federal estate tax return was filed—This is the date on which executor, administrator, or client can be discharged from personal liability to IRS for payment of federal estate taxes if request for early assessment was filed with federal estate tax return. _____

68A. Date four years after federal estate tax return was filed—This is the date on which proof of payment of all inheritance, estate, or succession taxes due to any state or foreign country must be submitted to IRS. _____

69. Date IRS determines D's estate qualifies for special use valuation where protective election was filed—as furnished by attorney. _____

70. Date sixty days after date shown in Item 69—This is the last date to file an amended federal estate tax return with a complete election under IRC, Section 2032A. _____

71. Date IRS determines D's estate qualifies for deferred payment of estate taxes if protective election was filed under IRC, Section 6166—as furnished by attorney. _____

72. Date sixty days after date shown in Item 71—This is the last date to make a complete election under IRC, Section 6166, and pay tax and accrued interest then due. _____

73. Date "closing letter" or notice of final assessment of federal estate taxes was received. _____

74. Date thirty days after date shown in Item 73—This is the last date to pay additional federal estate tax assessment without penalty. _____

75. Date ninety days after date shown in Item 73—This is the last date to initiate necessary action to collect apportioned death taxes. _____

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76. If executor or administrator elects to give permissive notice to unsecured creditors, complete the following for each creditor:

    a. Date permissive notice was actually sent to unsecured creditor. _____

    b. Date permissive notice was received by unsecured creditor—as shown by return receipt or proof of delivery receipt. _____

    c. Date one hundred and twenty days after unsecured creditor receives notice—This is the date by which an unsecured creditor must present a claim or it will be barred. _____

77. If claims are presented by creditors, complete the following for each claimant:

    a. Date claim was presented to executor or administrator or was deposited by creditor with clerk of court—as furnished by executor or administrator, as shown by clerk's file stamp, or when received in lawyer's office as the case may be. _____

    b. Date thirty days after date claim was presented or deposited—This is the date by which a claim in a dependent administration will be automatically rejected (disallowed) unless allowed by executor or administrator. _____

    c. Date claim is allowed by executor or administrator—as endorsed on claim itself. _____

    d. Date of filing claim allowed by executor or administrator—as shown by clerk's file stamp. _____

    e. Date of order approving payment of claim—as shown on order signed by judge. _____

    f. Date of actual rejection (disallowance) by executor or administrator of claim, if applicable—as furnished by attorney. _____

    g. Date that is earlier of Items 77b and 77f. _____

    h. Date ninety days after claim is rejected (disallowed) as shown in Item 77g if applicable—This is the date by which suit must be filed in a dependent administration to collect a disallowed claim or it will be barred. _____

    i. Date claim previously approved by executor or administrator is rejected or disapproved by judge—as furnished by attorney. _____

78. First annual account.

    a. Date of filing account—as shown by clerk's receipt. _____

    b. Date eleven days after filing account—This is the earliest date that the account can be acted on by the court. _____

    c. Date scheduled for hearing on annual account—as set by clerk of court. _____

    d. Date of order approving annual account—as shown on order signed by judge. This date must be no earlier than the date shown in Item 78b. _____

79. Second annual account.

    a. Date of filing account—as shown by clerk's receipt. _____

    b. Date eleven days after filing account—This is the earliest date that the account can be acted on by the court. _____

    c. Date scheduled for hearing on annual account—as set by clerk of court. _____

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d. Date of order approving annual account—as shown on order signed by judge. This date must be no earlier than the date shown in Item 79b. _____

80. Third annual account.

a. Date of filing account—as shown by clerk's receipt. _____

b. Date eleven days after filing account—This is the earliest date that the account can be acted on by the court. _____

c. Date scheduled for hearing on annual account—as set by clerk of court. _____

d. Date of order approving annual account—as shown on order signed by judge. This date must be no earlier than the date shown in Item 80b. _____

81. Determination of heirship in RDA and IBA.

a. Date of filing application to declare heirship—as shown by clerk's file stamp (Item 6.124 of MIL). _____

b. Return date for citation by posting—first Monday following expiration of ten days' notice by posting. _____

c. If there is citation by publication, earlier of date of newspaper in which citation is published (as shown in newspaper) or date of publication on public information Internet website. _____

d. Return date for citation by publication—first Monday following expiration of ten days from date in Item 81c. _____

e. Date that is the later of Items 81b and 81d—No hearing may be held before this date. _____

f. Date scheduled for hearing on application to declare heirship—as scheduled by clerk of court. _____

g. One business day before date of hearing—Call witnesses on this date. _____

h. If hearing on application is rescheduled—Enter new date and remember to remind witnesses one business day before new date. _____

i. Actual date of hearing on application—as furnished by attorney who appeared in court. _____

j. Date of judgment declaring heirship—as shown on order signed by judge. _____

82. If a temporary administration is created, complete the following:

a. Date of filing application—as shown on receipt issued by clerk of court (Item 6.23 of MIL). _____

b. Date scheduled for hearing on application—as scheduled by clerk of court (Item 6.24 of MIL). _____

c. One business day before scheduled date for hearing on application—Call witnesses on this date. _____

d. If hearing on application is rescheduled—Enter new date and remember to remind witnesses one business day before new date. _____

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e. Actual date of hearing on application—as furnished by attorney who appeared in court (Item 6.25 of MIL). _____

f. Date of order appointing temporary administrator—as shown on order signed by judge (Item 6.26 of MIL). _____

g. Date of filing bond—as shown by clerk's file stamp (Item 6.36 of MIL). This date must be within three business days of the date shown in Item 82f. _____

h. Date of court approval of bond—as shown on order signed by judge (Item 6.37 of MIL). _____

i. Date of filing oath—as shown by clerk's file stamp (Item 6.38 of MIL). _____

j. Date that is later of Items 82h and 82i—This is the date of qualification of temporary administrator (Item 6.39 of MIL). _____

k. Date three days after date shown in Item 82j—This is the date by which clerk of court must issue letters of temporary administration and post notice. _____

l. Date set by court for expiration of temporary administration—as shown on order signed by judge (Item 6.40A of MIL). _____

m. Date one hundred and eighty days after date of order appointing temporary administrator (Item 82f)—This is the latest date for expiration of temporary administration. _____

n. Date on which clerk of court first issues letters of temporary administration (Item 6.40 of MIL)—This is the date on which temporary administrator must give notice to all heirs. _____

o. Date on which temporary administrator gave notice to heirs—as shown by letter(s) sent to heirs. _____

p. Date fifteen days after clerk issues letters of temporary administration—Contest of appointment of temporary administrator must be filed by this date. _____

q. Date heir files a request for hearing to contest appointment—as shown by clerk's file stamp. _____

r. Date ten days after date on which heir files a request for hearing—This is the date by which a hearing must be held. _____

s. Actual date of hearing on contest—as furnished by attorney who appeared in court. _____

t. Date of order making temporary administration permanent—as shown on order signed by judge. _____

83. Account for final settlement.

a. Date of filing final account of temporary administrator (TDA) or account for final settlement (RDA, AWA, ADE, AP (dependent))—as shown by clerk's file stamp (Item 6.146 of MIL). _____

b. Return date for citation by posting—first Monday following expiration of ten days' notice by posting. _____

c. Date scheduled for hearing on account—as scheduled by clerk of court. _____

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d. Date of order approving final account of temporary administrator (TDA) or order approving account and authorizing distribution of estate (RDA, AWA, ADE, AP (dependent))—as shown on order signed by judge (Item 6.149 of MIL). _____

e. Date six months after order approving account and authorizing distribution of estate (RDA, AWA, ADE, AP (dependent))—This is the earliest date for sending unclaimed funds to Comptroller of Public Accounts. _____

83A. Delivery of unclaimed funds to Comptroller of Public Accounts.

a. Date of order directing payment of unclaimed funds to comptroller. _____

b. Date thirty days after date of order to deliver unclaimed funds to comptroller—This is the deadline to deliver unclaimed funds to comptroller before penalties. _____

c. Date of delivery of unclaimed funds. _____

84. Closing temporary administration or closing estate.

a. Date of filing application to close temporary administration (TDA) or application to close estate and to discharge personal representative (RDA, AWA, ADE, AP (dependent))—as shown by clerk's file stamp. _____

b. Date scheduled for hearing on application—as scheduled by clerk of court. _____

c. Date for filing closing report—as set by judge. _____

d. Actual date of filing closing report—as shown by clerk's file stamp. _____

e. Date of order closing temporary administration (TDA) or order closing estate and discharging executor or administrator and sureties (RDA, AWA, ADE, AP (dependent))—as shown on order signed by judge. _____

85. Date all steps have been concluded and temporary administration or estate is closed—as indicated by attorney. _____

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Furnished Forms

1 IRS Form 4506, Request for Copy of Tax Return 617

2 IRS Form 712, Life Insurance Statement 618

3 Deposition Envelope (Sample) 620

4 Deposition Envelope (Instruction Sample) 622

5 IRS Form 4506-T, Request for Transcript of Tax Return 624

6 IRS Form SS-4, Application for Employer Identification Number 625

7 IRS Form 56, Notice Concerning Fiduciary Relationship 626

[Furnished Form 8 is reserved for expansion.]

9 IRS Form 8821, Tax Information Authorization 628

10 IRS Form 2848, Power of Attorney and Declaration of Representative 629

11 IRS Form 4768, Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes 631

[Furnished Form 12 is reserved for expansion.]

13 IRS Form 8822, Change of Address 633

[Furnished Form 14 is reserved for expansion.]

15 IRS Form W-9, Request for Taxpayer Identification Number and Certification 634

[Furnished Form 16 is reserved for expansion.]

17 Texas Medicaid Estate Recovery Program (MERP) Authorization and MERP Certification 636

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FURNISHED FORM 1—REQUEST COPY OF D'S TAX RETURN(S)

Form **4506**

(April 2025)

Department of the Treasury
Internal Revenue Service

Request for Copy of Tax Return

Do not sign this form unless all applicable lines have been completed.
Request may be rejected if the form is incomplete or illegible.
For more information about Form 4506, visit *www.irs.gov/form4506*.

OMB No. 1545-0429

Tip: Get faster service: Online at www.irs.gov, **Get Your Tax Record** (Get Transcript) or by calling **1-800-908-9946** for specialized assistance. We have teams available to assist. **Note:** Taxpayers may register to use Get your tax records and transcripts | Internal Revenue Service to view, print, or download the following transcript types: **Tax Return Transcript** (shows most line items including Adjusted Gross Income (AGI) from your original Form 1040-series tax return as filed, along with any forms and schedules), **Tax Account Transcript** (shows basic data such as return type, marital status, AGI, taxable income and all payment types), **Record of Account Transcript** (combines the tax return and tax account transcripts into one complete transcript), **Wage and Income Transcript** (shows data from information returns we receive such as Forms W-2, 1099, 1098 and Form 5498), and **Verification of Non-filing Letter** (provides proof that the IRS has no record of a filed Form 1040-series tax return for the year you request).

1a Name shown on tax return. If a joint return, enter the name shown first.

1b First social security number on tax return, individual taxpayer identification number, or employer identification number (see instructions)

2a If a joint return, enter spouse's name shown on tax return.

2b Second social security number or individual taxpayer identification number if joint tax return

3 Current name, address (including apt., room, suite, or inmate no.), city, state, and ZIP code (see instructions).

4 Previous address shown on the last return filed if different from line 3 (see instructions).

5 If the tax return is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number.

Caution: If the tax return is being sent to the third party, ensure that lines 5 through 7 are completed before signing. (see instructions).

6 **Tax return requested.** Form 1040, 1120, 941, etc. and all attachments as originally submitted to the IRS, including Form(s) W-2, schedules, or amended returns. Copies of Forms 1040, 1040A, and 1040EZ are generally available for 7 years from filing before they are destroyed by law. Other returns may be available for a longer period of time. Enter only one return number. If you need more than one type of return, you must complete another Form 4506. _____

Note: If the copies must be certified for court or administrative proceedings, check here . . . . . ☐

7 **Year or period requested**. Enter the ending date of the tax year or period using the mm/dd/yyyy format (see instructions).

____ / ____ / _____ ____ / ____ / _____ ____ / ____ / _____ ____ / ____ / _____

____ / ____ / _____ ____ / ____ / _____ ____ / ____ / _____ ____ / ____ / _____

8 **Fee.** There is a $30 fee for each return requested. **Full payment must be included with your request or it will be rejected. Make your check or money order payable to "United States Treasury." Enter your SSN, ITIN, or EIN and "Form 4506 request" on your check or money order**

a Cost for each return . . . . . $

b Number of returns requested on line 7 . . . . . .

c Total cost. Multiply line 8a by line 8b . . . . . $

9 If we cannot find the tax return, we will refund the fee. If the refund should go to the third party listed on line 5, check here . . . . . ☐

Caution: Do not sign this form unless all applicable lines have been complete

Signature of taxpayer(s). I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax return requested. If the request applies to a joint return, at least one spouse must sign. If signed by a corporate officer, 1 percent or more shareholder, partner, managing member, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506 on behalf of the taxpayer. **Note:** This form must be received by IRS within 120 days of the signature date.

☐ **Signatory attests that he/she has read the attestation clause and upon so reading declares that he/she has the authority to sign the Form 4506. See instructions**

Phone number of taxpayer on line 1a or 2a

Sign Here

Signature (see instructions) Date

Print/Type name **Title** (if line 1a above is a corporation, partnership, estate, or trust)

Spouse's signature Date

Print/Type name

For Privacy Act and Paperwork Reduction Act Notice, see page 2. Cat. No. 41721E Form **4506** (Rev. 4-2025)

FURNISHED FORM 2—INSURANCE POLICY ON D'S LIFE OR WHERE D OWNED INTEREST IN POLICY ON LIFE OF ANOTHER

Form **712** (Rev. December 2024) Department of the Treasury Internal Revenue Service

Life Insurance Statement

Go to *www.irs.gov/Form712* for the latest information.

OMB No. 1545-0022

Part I **Decedent—Insured**

(To be filed by the executor with Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, or Form 706-NA, United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States.)

1 Decedent's first name and middle initial	2 Decedent's last name	3 Decedent's social security number (if known)	4 Date of death

5a Name of insurance company	5b Address (number and street) of insurance company	5c City	5d State	5e ZIP code

6 Type of policy	7 Policy number

8 Owner's name. If decedent is not owner, attach copy of application.	9 Date issued	10 Assignor's name. Attach copy of assignment.	11 Date assigned

12 Value of the policy at the time of assignment	13 Amount of premium (see instructions)	14 Name of beneficiaries

15	Face amount of policy	15	
16	Indemnity benefits	16	
17	Additional insurance	17	
18	Other benefits	18	
19	Principal of any indebtedness to the company that is deductible in determining net proceeds	19	
20	Interest on indebtedness (line 19) accrued to date of death	20	
21	Amount of accumulated dividends	21	
22	Amount of post-mortem dividends	22	
23	Amount of returned premium	23	
24	Amount of proceeds if payable in one sum	24	
25	Value of proceeds as of date of death (if not payable in one sum)	25	
26	Policy provisions concerning deferred payments or installments. If other than a lump-sum settlement is authorized for a surviving spouse, check here and attach a copy of the insurance policy ☐		
27	Amount of installments	27	
28	Date of birth, sex, and name of any person the duration of whose life may measure the number of payments.		
29	Amount applied by the insurance company as a single premium representing the purchase of installment benefits	29	

(i) Name of person the duration of whose life may measure beyond the number of payments	(ii) Date of birth	(iii) Sex

30 Basis (mortality table and rate of interest) used by insurer in valuing installment benefits.

31 Were there any transfers of the policy within the 3 years prior to the death of the decedent? ☐ Yes ☐ No

32 If you checked "Yes" on line 31, enter date of assignment or transfer: ___ / ___ / ___ (Month Day Year)

33 Was the insured the annuitant or beneficiary of any annuity contract issued by the company? ☐ Yes ☐ No

34 Did the decedent have any incidents of ownership on any policies on the decedent's life, but not owned by the decedent at the date of death? ☐ Yes ☐ No

35 Names of companies with which decedent carried other policies and amount of such policies if this information is disclosed by your records.

The undersigned officer of the above-named insurance company (or appropriate federal agency or retirement system official) hereby certifies that this statement sets forth true and correct information.

Signature	Title	Date of Certification

For Privacy Act and Paperwork Reduction Act Notice, see instructions. Cat. No. 10170V Form **712** (Rev. 12-2024)

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Form 712 (Rev. 12-2024) Page **2**

Part II **Living Insured**

(File with Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, and Form 709-NA, United States Gift (and Generation-Skipping Transfer) Tax Return on Nonresident Not a Citizen of the United States. May also be filed with Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, or Form 706-NA, United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States, where decedent owned insurance on life of another.)

SECTION A—General Information

36 First name and middle initial of donor (or decedent)	**37** Last name	**38 Social security number**	
39 Date of gift for which valuation data submitted		**39**	
40 Date of decedent's death for which valuation data submitted		**40**	

SECTION B—Policy Information

41 Name of insured			**42** Sex	**43** Date of birth	
44a Name of insurance company	**44b** Address (number and street) of insurance company	**44c** City		**44d** State	**44e** ZIP code
45 Type of policy	**46** Policy number	**47** Face amount		**48** Issue date	
49 Gross premium		**50** Frequency of payment			
51 Assignee's name				**52** Date assigned	
53 If irrevocable designation of beneficiary made, name of beneficiary	**54** Sex	**55** Date of birth, if known		**56** Date designated	
57 If other than simple designation, quote in full. Attach additional sheets if necessary.					

58 If policy is not paid up:			
a Interpolated terminal reserve on date of death, assignment, or irrevocable designation of beneficiary	**58a**		
b Add proportion of gross premium paid beyond date of death, assignment, or irrevocable designation of beneficiary	**58b**		
c Add adjustment on account of dividends to credit of policy	**58c**		
d **Total.** Add lines 58a, b, and c		**58d**	
e Outstanding indebtedness against policy		**58e**	
f Net total value of the policy (for gift or estate tax purposes). Subtract line 58e from line 58d		**58f**	
59 If policy is either paid up or a single premium:			
a Total cost, on date of death, assignment, or irrevocable designation of beneficiary, of a single-premium policy on life of insured at attained age, for original face amount plus any additional paid-up insurance (additional face amount _____)	**59a**		
(If a single-premium policy for the total face amount would not have been issued on the life of the insured as of the date specified, nevertheless, assume that such a policy could then have been purchased by the insured and state the cost thereof, using for such purpose the same formula and basis employed, on the date specified, by the company in calculating single premiums.)			
b Adjustment on account of dividends to credit of policy	**59b**		
c **Total.** Add lines 59a and 59b		**59c**	
d Outstanding indebtedness against policy		**59d**	
e Net total value of policy (for gift or estate tax purposes). Subtract line 59d from line 59c		**59e**	

The undersigned officer of the above-named insurance company (or appropriate federal agency or retirement system official) hereby certifies that this statement sets forth true and correct information.

Signature	**Title**	**Date of Certification**

Form **712** (Rev. 12-2024)

FURNISHED FORM 3—DEPOSITION ENVELOPE (SAMPLE)

DEPOSITION ENVELOPE FF 3
1013 (Texas Standard Form)

FILE NO. 6.01

6.03 Court,
6.04 County, Texas

ESTATE OF 6.02, DECEASED

VS.

DEPOSITION OF

2.11 T/D

Witness

I hereby certify that I am the officer before whom the enclosed depositions were taken, and I, in person, deposit this envelope containing said depositions in the mail for transmission, on this ..... day of ....., 19....., in the Post Office of .....

Received this package from the Post Office at ....., Texas, on the ..... day of ....., 19....., and filed same on the ..... day of ....., A. D. 19.....

Clerk ..... Court, ... County, Texas
By ..... Deputy

This package is opened the ..... day of ....., 19....., at the request of .....

Attorney ..... for the .....

Clerk ..... Court, ... County, Texas
By ..... Deputy

Filed the ..... day of ....., 19.....

..... Clerk
By ..... Deputy

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Officer before whom enclosed depositions were taken

Officer before whom enclosed depositions were taken

To the Clerk of the ..... 6.03 ..... **Court**

of ..... 6.04 ..... **County**

..... 6.05 ..... **Texas**

Fee for taking within Depositions _____, $ _____

FURNISHED FORM 4—DEPOSITION ENVELOPE (INSTRUCTION SAMPLE)

INSTRUCTION SAMPLE FF 4

1018 (Texas Standard Form)

FILE NO. 123,456

PROBATE Court,

METROPOLIS County, Texas

ESTATE OF HARRY D. GREEN, DECEASED

VS.

DEPOSITION OF

MARVIN T. PHILLIPS

MARVIN T. PHILLIPS TO SIGN HERE

Witness

I hereby certify that I am the officer before whom the enclosed depositions were taken, and I, in person, deposit this envelope containing said depositions in the mail for transmission, on this day of , 19 , in the Post Office of

NOTARY TO FILL IN DATE OF MAILING

NOTARY TO FILL IN WHERE THIS ENVELOPE WAS MAILED

NOTARY TO SIGN ON THIS LINE

NOTARY'S NAME TO BE PRINTED ON THIS LINE

Received this package from the Post Office at , Texas, on the day of , 19 , and filed same on the day of , A. D. 19 .

Clerk Court, County, Texas

By Deputy

This package is opened the day of , 19 , at the request of

Attorney for the

Clerk Court, County, Texas

By Deputy

Filed the day of , 19

Clerk

By Deputy

© STATE BAR OF TEXAS

NOTARY TO SIGN ACROSS THIS FLAP AFTER SEALING THIS ENVELOPE

Officer before whom enclosed depositions were taken

NOTARY TO SIGN ACROSS THIS FLAP AFTER SEALING THIS ENVELOPE

Officer before whom enclosed depositions were taken

NOTARY TO COMPLETE THIS IF NOT ALREADY PAID

Fee for taking within Depositions _____, $ _____

To the Clerk of the PROBATE Court

of METROPOLIS County
333 Main Street, Room 222

Any City Texas 77777

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FURNISHED FORM 5—REQUEST TRANSCRIPT OF D'S TAX RETURN(S)

Form **4506-T** (April 2025)
Department of the Treasury
Internal Revenue Service

Request for Transcript of Tax Return
Do not sign this form unless all applicable lines have been completed.
Request may be rejected if the form is incomplete or illegible.
For more information about Form 4506-T, visit *www.irs.gov/form4506t*.

OMB No. 1545-1872

Tip: Get faster service: Online at www.irs.gov, **Get Your Tax Record** (Get Transcript) or by calling **1-800-908-9946** for specialized assistance. We have teams available to assist. **Note:** Taxpayers may register to use Get Transcript to view, print, or download the following transcript types: **Tax Return Transcript** (shows most line items including Adjusted Gross Income (AGI) from your original Form 1040-series tax return as filed, along with any forms and schedules), **Tax Account Transcript** (shows basic data such as return type, marital status, AGI, taxable income and all payment types), **Record of Account Transcript** (combines the tax return and tax account transcripts into one complete transcript), **Wage and Income Transcript** (shows data from information returns we receive such as Forms W-2, 1099, 1098 and Form 5498), and **Verification of Non-filing Letter** (provides proof that the IRS has no record of a filed Form 1040-series tax return for the year you request).

1a Name shown on tax return. If a joint return, enter the name shown first.	**1b First social security number on tax return, individual taxpayer identification number, or employer identification number (see instructions)**
2a If a joint return, enter spouse's name shown on tax return.	**2b Second social security number or individual taxpayer identification number if joint tax return**

3 Current name, address (including apt., room, suite, or inmate no.), city, state, and ZIP code (see instructions)

4 Previous address shown on the last return filed if different from line 3 (see instructions)

5 Customer file number (if applicable) (see instructions)

Note: Effective July 2019, the IRS will mail tax transcript requests only to your address of record. See **What's New** under **Future Developments** on Page 2 for additional information.

6 **Transcript requested.** Enter the tax form number here (1040, 1065, 1120, etc.) and check the appropriate box below. Enter only one tax form number per request. _____

a **Return Transcript,** which includes most of the line items of a tax return as filed with the IRS. A tax return transcript does not reflect changes made to the account after the return is processed. Tax return transcripts for individuals are available for the Form 1040 series. A list of the tax return transcripts that are available for a business can be found at *www.irs.gov/businesses/get-a-business-tax-transcript*. Return transcripts are available for the current year and returns processed during the prior 3 processing years. Most requests will be processed within 10 business days . . . . . ☐

b **Account Transcript,** which contains information on the financial status of the account, such as payments made on the account, penalty assessments, and adjustments made by you or the IRS after the return was filed. Return information is limited to items such as tax liability and estimated tax payments. Account transcripts are available for most returns. Most requests will be processed within 10 business days . ☐

c **Record of Account,** which provides the most detailed information as it is a combination of the Return Transcript and the Account Transcript. Available for current year and 3 prior tax years. Most requests will be processed within 10 business days . . . . . ☐

7 **Verification of Nonfiling,** which is proof from the IRS that you **did not** file a return for the year. Current year requests are only available after June 15th. There are no availability restrictions on prior year requests. Most requests will be processed within 10 business days . . ☐

8 **Form W-2, Form 1099 series, Form 1098 series, or Form 5498 series transcript.** The IRS can provide a transcript that includes data from these information returns. State or local information is not included with the Form W-2 information. The IRS may be able to provide this transcript information for up to 10 years. Information for the current year is generally not available until the year after it is filed with the IRS. For example, W-2 information for 2016, filed in 2017, will likely not be available from the IRS until 2018. If you need W-2 information for retirement purposes, you should contact the Social Security Administration at 1-800-772-1213. Most requests will be processed within 10 business days . ☐

Caution: If you need a copy of Form W-2 or Form 1099, you should first contact the payer. To get a copy of the Form W-2 or Form 1099 filed with your return, you must use Form 4506 and request a copy of your return, which includes all attachments.

9 **Year or period requested.** Enter the end date of the tax year or period requested in mm/dd/yyyy format. This may be a calendar year, fiscal year or quarter. Enter each quarter requested for quarterly returns. Example: Enter 12/31/2018 for a calendar year 2018 Form 1040 transcript.

/ /	/ /	/ /	/ /

Caution: Do not sign this form unless all applicable lines have been completed.

Signature of taxpayer(s). I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax information requested. If the request applies to a joint return, at least one spouse must sign. If signed by a corporate officer, 1 percent or more shareholder, partner, managing member, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506-T on behalf of the taxpayer. **Note:** This form must be received by IRS within 120 days of the signature date.

☐ **Signatory attests that he/she has read the attestation clause and upon so reading declares that he/she has the authority to sign the Form 4506-T.** See instructions.

Phone number of taxpayer on line 1a or 2a

Sign Here

Signature (see instructions) Date

Title (if line 1a above is a corporation, partnership, estate, or trust)

Spouse's signature Date

For Privacy Act and Paperwork Reduction Act Notice, see page 2. Cat. No. 37667N Form **4506-T** (Rev. 4-2025)

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FURNISHED FORM 6—EMPLOYER IDENTIFICATION NUMBER FOR ESTATE

Form **SS-4** (Rev. December 2025) Department of the Treasury Internal Revenue Service

Application for Employer Identification Number
(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.)
See separate instructions for each line. Keep a copy for your records.
Go to *www.irs.gov/FormSS4* for instructions and the latest information.

OMB No. 1545-0003

EIN

Type or print clearly.

1 Legal name of entity (or individual) for whom the EIN is being requested

2 Trade name of business (if different from name on line 1)

3 Executor, administrator, trustee, "care of" name

4a Mailing address (room, apt., suite no. and street, or P.O. box)

5a Street address (if different) (Don't enter a P.O. box.)

4b City, state, and ZIP code (if foreign, see instructions)

5b City, state, and ZIP code (if foreign, see instructions)

6 County and state where principal business is located

7a Name of responsible party

7b SSN, ITIN, or EIN

8a Is this application for a limited liability company (LLC) (or a foreign equivalent)? . . . . . ☐ Yes ☐ No

8b If 8a is "Yes," enter the number of LLC members . . . . . .

8c If 8a is "Yes," was the LLC organized in the United States? . . . . . ☐ Yes ☐ No

9a **Type of entity** (check only one box). **Caution:** If 8a is "Yes," see the instructions for the correct box to check.

☐ Sole proprietor (SSN) _____
☐ Partnership
☐ Corporation (enter form number to be filed) _____
☐ Personal service corporation
☐ Church or church-controlled organization
☐ Other nonprofit organization (specify) _____
☐ Other (specify)

☐ Estate (SSN of decedent) _____
☐ Plan administrator (TIN) _____
☐ Trust (TIN of grantor) _____
☐ Military/National Guard ☐ State/local government
☐ Farmers' cooperative ☐ Federal government
☐ REMIC ☐ Indian tribal governments/enterprises
Group Exemption Number (GEN) if any

9b If a corporation, name the state or foreign country (if applicable) where incorporated

State

Foreign country

10 **Reason for applying** (check only one box)

☐ Started new business (specify type) _____
☐ Hired employees (Check the box and see line 13.)
☐ Compliance with IRS withholding regulations
☐ Other (specify)

☐ Banking purpose (specify purpose) _____
☐ Changed type of organization (specify new type) _____
☐ Purchased going business
☐ Created a trust (specify type) _____
☐ Created a pension plan (specify type) _____

11 Date business started or acquired (month, day, year). See instructions.

12 Closing month of accounting year

13 Highest number of employees expected in the next 12 months (enter -0- if none). If no employees expected, skip line 14.

Agricultural	Household	Other

14 If you expect your employment tax liability to be $1,000 or less in a full calendar year **and** want to file Form 944 annually instead of Forms 941 quarterly, check here. (Your employment tax liability will generally be $1,000 or less if you expect to pay $5,000 or less, $6,536 or less if you're in a U.S. territory, in total wages.) If you don't check this box, you must file Form 941 for every quarter . . . . . ☐

15 First date wages or annuities were paid (month, day, year). **Note:** If applicant is a withholding agent, enter date income will first be paid to nonresident alien (month, day, year) . . . . . .

16 Check **one** box that best describes the principal activity of your business.

☐ Construction ☐ Rental & leasing ☐ Transportation & warehousing
☐ Real estate ☐ Manufacturing ☐ Finance & insurance
☐ Health care & social assistance
☐ Accommodation & food service
☐ Other (specify)
☐ Wholesale—agent/broker
☐ Wholesale—other ☐ Retail

17 Indicate principal line of merchandise sold, specific construction work done, products produced, or services provided.

18 Has the applicant entity shown on line 1 ever applied for and received an EIN? ☐ Yes ☐ No
If "Yes," write previous EIN here

Third Party Designee

Complete this section **only** if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.

Designee's name

Designee's telephone number (include area code)

Address and ZIP code

Designee's fax number (include area code)

Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.

Name and title (type or print clearly)

Applicant's telephone number (include area code)

Applicant's fax number (include area code)

Signature Date

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 16055N Form **SS-4** (Rev. 12-2025) Created 10/17/25

FURNISHED FORM 7—NOTIFY IRS OF FIDUCIARY RELATIONSHIP

Form **56**
(Rev. November 2022)
Department of the Treasury
Internal Revenue Service

Notice Concerning Fiduciary Relationship

(Internal Revenue Code Sections 6036 and 6903)

Go to *www.irs.gov/Form56* for instructions and the latest information.

OMB No. 1545-0013

Part I Identification

Name of person for whom you are acting (as shown on the tax return)	Identifying number	**Decedent's social security no.**

Address of person for whom you are acting (number, street, and room or suite no.)

City or town, state, and ZIP code (If a foreign address, see instructions.)

Fiduciary's name

Address of fiduciary (number, street, and room or suite no.)

City or town, state, and ZIP code	Telephone number (optional) ( )

Section A. Authority

1 Authority for fiduciary relationship. Check applicable box:

a ☐ Court appointment of testate estate (valid will exists)
b ☐ Court appointment of intestate estate (no valid will exists)
c ☐ Court appointment as guardian or conservator
d ☐ Fiduciary of intestate estate
e ☐ Valid trust instrument and amendments
f ☐ Bankruptcy or assignment for the benefit of creditors
g ☐ Other. Describe: _____

2a If box 1a, 1b, or 1d is checked, enter the date of death: _____

b If box 1c, 1e, 1f, or 1g is checked, enter the date of appointment, taking office, or assignment or transfer of assets: _____

Section B. Nature of Liability and Tax Notices

3 Type of taxes (check all that apply): ☐ Income ☐ Gift ☐ Estate ☐ Generation-skipping transfer ☐ Employment ☐ Excise ☐ Other (describe): _____

4 Federal tax form number (check all that apply): **a** ☐ 706 series **b** ☐ 709 **c** ☐ 940 **d** ☐ 941, 943, 944 **e** ☐ 1040 or 1040-SR **f** ☐ 1041 **g** ☐ 1120 **h** ☐ Other (list): _____

5 If your authority as a fiduciary does not cover all years or tax periods, check here . . . . . ☐ and list the specific years or periods within your authority: _____

For Paperwork Reduction Act and Privacy Act Notice, see separate instructions. Cat. No. 16375I Form **56** (Rev. 11-2022)

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Form 56 (Rev. 11-2022) Page **2**

Part II **Revocation or Termination of Notice**

Section A—Total Revocation or Termination

6 Check this box if you are revoking or terminating all prior notices concerning fiduciary relationships on file with the Internal Revenue Service for the same tax matters and years or periods covered by this notice concerning fiduciary relationship . . ☐

Reason for termination of fiduciary relationship. Check applicable box:

a ☐ Court order revoking fiduciary authority

b ☐ Certificate of dissolution or termination of a business entity

c ☐ Other. Describe: _____

Section B—Partial Revocation

7a Check this box if you are revoking earlier notices concerning fiduciary relationships on file with the Internal Revenue Service for the same tax matters and years or periods covered by this notice concerning fiduciary relationship . . . . . ☐

b Specify to whom granted, date, and address, including ZIP code.

Section C—Substitute Fiduciary

8 Check this box if a new fiduciary or fiduciaries have been or will be substituted for the revoking or terminating fiduciary and specify the name(s) and address(es), including ZIP code(s), of the new fiduciary(ies) . . . . . ☐

Part III **Court and Administrative Proceedings**

Name of court (if other than a court proceeding, identify the type of proceeding and name of agency)			Date proceeding initiated
Address of court			Docket number of proceeding
City or town, state, and ZIP code	Date	Time ☐ a.m. ☐ p.m.	Place of other proceedings

Part IV **Signature**

Please Sign Here

Under penalties of perjury, I declare that I have examined this document, including any accompanying statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Fiduciary's signature | Title, if applicable | Date

Form **56** (Rev. 11-2022)

Furnished Form 8 is reserved.

FURNISHED FORM 9—TAX INFORMATION AUTHORIZATION

Form **8821**

(Rev. January 2021)

Department of the Treasury
Internal Revenue Service

Tax Information Authorization

▶ Go to *www.irs.gov/Form8821* for instructions and the latest information.
▶ Don't sign this form unless all applicable lines have been completed.
▶ Don't use Form 8821 to request copies of your tax returns or to authorize someone to represent you. See instructions.

OMB No. 1545-1165
For IRS Use Only
Received by:
Name
Telephone
Function
Date

1 Taxpayer information. Taxpayer must sign and date this form on line 6.

Taxpayer name and address	Taxpayer identification number(s)	
	Daytime telephone number	Plan number (if applicable)

2 Designee(s). If you wish to name more than two designees, attach a list to this form. **Check here if a list of additional designees is attached ▶** ☐

Name and address	CAF No. ____ PTIN ____ Telephone No. ____ Fax No. ____
Check if to be sent copies of notices and communications ☐	Check if new: Address ☐ Telephone No. ☐ Fax No. ☐
Name and address	CAF No. ____ PTIN ____ Telephone No. ____ Fax No. ____
Check if to be sent copies of notices and communications ☐	Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

3 Tax information. Each designee is authorized to inspect and/or receive confidential tax information for the type of tax, forms, periods, and specific matters you list below. See the line 3 instructions.

☐ By checking here, I authorize access to my IRS records via an Intermediate Service Provider.

(a) Type of Tax Information (Income, Employment, Payroll, Excise, Estate, Gift, Civil Penalty, Sec. 4980H Payments, etc.)	**(b)** Tax Form Number (1040, 941, 720, etc.)	**(c)** Year(s) or Period(s)	**(d)** Specific Tax Matters

4 Specific use not recorded on the Centralized Authorization File (CAF). If the tax information authorization is for a specific use not recorded on CAF, check this box. See the instructions. If you check this box, skip line 5 . . . . . ▶ ☐

5 Retention/revocation of prior tax information authorizations. If the line 4 box is checked, skip this line. If the line 4 box isn't checked, the IRS will automatically revoke all prior tax information authorizations on file unless you check the line 5 box and **attach a copy** of the tax information authorization(s) that you want to retain . . . . . ▶ ☐

To revoke a prior tax information authorization(s) without submitting a new authorization, see the line 5 instructions.

6 Taxpayer signature. If signed by a corporate officer, partner, guardian, partnership representative (or designated individual, if applicable), executor, receiver, administrator, trustee, or individual other than the taxpayer, I certify that I have the legal authority to execute this form with respect to the tax matters and tax periods shown on line 3 above.

▶ IF NOT COMPLETED, SIGNED, AND DATED, THIS TAX INFORMATION AUTHORIZATION WILL BE RETURNED.

▶ DON'T SIGN THIS FORM IF IT IS BLANK OR INCOMPLETE.

Signature | Date

Print Name | Title (if applicable)

For Privacy Act and Paperwork Reduction Act Notice, see the instructions. Cat. No. 11596P Form **8821** (Rev. 01-2021)

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FURNISHED FORM 10—PERMIT ATTORNEY TO DEAL DIRECTLY WITH IRS

Form **2848**
(Rev. January 2021)
Department of the Treasury
Internal Revenue Service

Power of Attorney and Declaration of Representative

▶ Go to *www.irs.gov/Form2848* for instructions and the latest information.

OMB No. 1545-0150

For IRS Use Only
Received by:
Name
Telephone
Function
Date / /

Part I **Power of Attorney**

Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address	Taxpayer identification number(s)	
	Daytime telephone number	Plan number (if applicable)

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address	CAF No. ____ PTIN ____ Telephone No. ____ Fax No. ____
Check if to be sent copies of notices and communications ☐	Check if new: Address ☐ Telephone No. ☐ Fax No. ☐
Name and address	CAF No. ____ PTIN ____ Telephone No. ____ Fax No. ____
Check if to be sent copies of notices and communications ☐	Check if new: Address ☐ Telephone No. ☐ Fax No. ☐
Name and address	CAF No. ____ PTIN ____ Telephone No. ____ Fax No. ____
(**Note:** IRS sends notices and communications to only two representatives.)	Check if new: Address ☐ Telephone No. ☐ Fax No. ☐
Name and address	CAF No. ____ PTIN ____ Telephone No. ____ Fax No. ____
(**Note:** IRS sends notices and communications to only two representatives.)	Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

3 Acts authorized (you are required to complete line 3). Except for the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions)

4 Specific use not recorded on the Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See *Line 4. Specific Use Not Recorded on CAF* in the instructions . . . . . ▶ ☐

5a Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information): ☐ Access my IRS records via an Intermediate Service Provider;
☐ Authorize disclosure to third parties; ☐ Substitute or add representative(s); ☐ Sign a return; ____

☐ Other acts authorized: ____

For Privacy Act and Paperwork Reduction Act Notice, see the instructions. Cat. No. 11980J Form **2848** (Rev. 1-2021)

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Form 2848 (Rev. 1-2021) Page **2**

b **Specific acts not authorized.** My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability.
List any other specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b): _____

6 **Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this form. If you **do not** want to revoke a prior power of attorney, check here . . . . . ▶ ☐
YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

7 **Taxpayer declaration and signature.** If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, partnership representative (or designated individual, if applicable), executor, receiver, administrator, trustee, or individual other than the taxpayer, I certify I have the legal authority to execute this form on behalf of the taxpayer.
▶ **IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.**

Signature	Date	Title (if applicable)

Print name	Print name of taxpayer from line 1 if other than individual

Part II **Declaration of Representative**

Under penalties of perjury, by my signature below I declare that:

- I am not currently suspended or disbarred from practice, or ineligible for practice, before the Internal Revenue Service;
- I am subject to regulations in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:

a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
b Certified Public Accountant—a holder of an active license to practice as a certified public accountant in the jurisdiction shown below.
c Enrolled Agent—enrolled as an agent by the IRS per the requirements of Circular 230.
d Officer—a bona fide officer of the taxpayer organization.
e Full-Time Employee—a full-time employee of the taxpayer.
f Family Member—a member of the taxpayer's immediate family (spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the IRS is limited by section 10.3(d) of Circular 230).
h Unenrolled Return Preparer—Authority to practice before the IRS is limited. An unenrolled return preparer may represent, provided the preparer (1) prepared and signed the return or claim for refund (or prepared if there is no signature space on the form); (2) was eligible to sign the return or claim for refund; (3) has a valid PTIN; and (4) possesses the required Annual Filing Season Program Record of Completion(s). ***See*** **Special Rules and Requirements for Unenrolled Return Preparers** ***in the instructions for additional information.***
k Qualifying Student or Law Graduate—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student, or law graduate working in a LITC or STCP. See instructions for Part II for additional information and requirements.
r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

▶ **IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2.**

Note: For designations d–f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column.

Designation—Insert above letter **(a–r).**	Licensing jurisdiction (State) or other licensing authority (if applicable)	Bar, license, certification, registration, or enrollment number (if applicable)	Signature	Date

Form **2848** (Rev. 1-2021)

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FURNISHED FORM 11—APPLY FOR EXTENSION OF TIME TO FILE RETURN OR PAY ESTATE TAX

Form **4768** (Rev. February 2020) Department of the Treasury Internal Revenue Service

Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes

▶ Go to *www.irs.gov/Form4768* for instructions and the latest information.

OMB No. 1545-0181

Part I Identification

Decedent's first name and middle initial	Decedent's last name	Date of death
Name of executor	Name of application filer (if other than the executor)	**Decedent's social security number**
Address of executor (number, street, and room or suite no.)		Estate tax return due date
City, state, and ZIP code	Domicile of decedent (county, state, and ZIP code)	Daytime telephone number of executor

Part II Extension of Time To File Form 706, 706-A, 706-NA, or 706-QDT (Section 6081)

Form for which extension of time to file is being requested:

☐ Form 706 ☐ Form 706-A ☐ Form 706-NA ☐ Form 706-QDT

Automatic Extension

☐ Check here if you are applying for an automatic 6-month extension of time to file, and the time for filing has not passed.

Extension For Cause/Form 4768 Not Filed In Time For Automatic Extension

☐ Check here if you are applying for an extension of time to file, based on good and sufficient cause, and the time for filing has passed. Also you **must** attach a statement explaining in detail why a request for automatic extension was not timely made, why it was impossible or impractical to file the return by the due date, and the specific reasons why you have good and sufficient cause for not requesting the automatic extension. If granted, the 6-month extension for cause runs from the original due date of the return. See instructions.

Additional Extension

☐ Check here if you are an executor out of the country applying for an extension of time beyond the 6-month automatic extension to file. Also you **must** attach a statement explaining in detail why it was impossible or impractical to file the return by the due date. See instructions.

Enter extension date requested

Part III Extension of Time To Pay (Section 6161)

You must attach your written statement to explain in detail why it is impossible or impractical to pay the full amount of the estate (or GST) tax by the return due date. If the taxes cannot be determined because the size of the gross estate is unascertainable, check here ▶ ☐ and enter "-0-" or other appropriate amount on Part IV, line 3. You must attach an explanation.

Enter extension date requested (Not more than 12 months)

- If this request is for the tax that will be or was due with the filing of the return, check here . . . . . ▶ ☐
- If this request is for the tax that will be due as a result of an amended or supplemental return, check here . . . . . ▶ ☐
- If this request is for additional tax due as a result of an examination of your return, check here . . . . . ▶ ☐
- If this request is for a section 6166 installment payment, check here . . . . . ▶ ☐

Part IV Payment To Accompany Extension Request

1	Amount of estate and GST taxes estimated to be due	1	
2	Amount of cash shortage (complete Part III)	2	
3	**Balance due** (subtract line 2 from line 1) (see instructions)	3	

Signature and Verification

If filed by executor—Under penalties of perjury, I declare that I am an executor of the estate of the above-named decedent and that to the best of my knowledge and belief, the statements made herein and attached are true and correct.

Executor's signature ---------- Title ---------- Date ----------

If filed by someone other than the executor—Under penalties of perjury, I declare that to the best of my knowledge and belief, the statements made herein and attached are true and correct, that I am authorized by an executor to file this application, and that I am (check applicable boxes):

☐ A member in good standing of the bar of the highest court of (specify jurisdiction) ▶ ----------

☐ A certified public accountant duly qualified to practice in (specify jurisdiction) ▶ ----------

☐ A person enrolled to practice before the Internal Revenue Service.

☐ A duly authorized agent holding a power of attorney. (The power of attorney need not be submitted unless requested.)

Filer's signature (other than the executor) ---------- Date ----------

Mail to: Internal Revenue Service Center, Attn: Estate & Gift, Stop 824G
7940 Kentucky Drive, Florence, KY 41042-2915

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 41984P Form **4768** (Rev. 2-2020)

FURNISHED FORM 13—CHANGE OF ADDRESS TO IRS

Form **8822**
(Rev. February 2021)
Department of the Treasury
Internal Revenue Service

Change of Address

(For Individual, Gift, Estate, or Generation-Skipping Transfer Tax Returns)

► Please type or print. ► See instructions on back. ► Do not attach this form to your return.
► Information about Form 8822 is available at *www.irs.gov/form8822.*

OMB No. 1545-1163

Part I **Complete This Part To Change Your Home Mailing Address**

Check **all** boxes this change affects:

1 ☐ Individual income tax returns (Forms 1040, 1040-SR, 1040-NR, etc.)
► If your last return was a joint return and you are now establishing a residence separate from the spouse with whom you filed that return, check here . . . . . ► ☐

2 ☐ Gift, estate, or generation-skipping transfer tax returns (Forms 706, 709, etc.)
► For Forms 706 and 706-NA, enter the decedent's name and social security number below.

► Decedent's name ► Social security number

3a	**Your name** (first name, initial, and last name)	3b	**Your social security number**
4a	**Spouse's name** (first name, initial, and last name)	4b	**Spouse's social security number**

5a **Your prior name(s).** See instructions.

5b **Spouse's prior name(s).** See instructions.

6a **Your old address** (no., street, apt. no., city or town, state, and ZIP code). If a P.O. box, see instructions. If foreign address, also complete spaces below, see instructions.

Foreign country name	Foreign province/county	Foreign postal code

6b **Spouse's old address,** if different from line 6a (no., street, apt. no., city or town, state, and ZIP code). If a P.O. box, see instructions. If foreign address, also complete spaces below, see instructions.

Foreign country name	Foreign province/county	Foreign postal code

7 **New address** (no., street, apt. no., city or town, state, and ZIP code). If a P.O. box, see instructions. If foreign address, also complete spaces below, see instructions.

Foreign country name	Foreign province/county	Foreign postal code

Part II **Signature**

Daytime telephone number of person to contact (optional) ►

Sign Here

► Your signature Date ► Signature of representative, executor, administrator/if applicable Date

► If joint return, spouse's signature Date ► Title

For Privacy Act and Paperwork Reduction Act Notice, see back of form. Cat. No. 12081V Form **8822** (Rev. 2-2021)

Furnished Form 14 is reserved.

FURNISHED FORM 15—PAYER'S REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION

Form **W-9**
(Rev. March 2024)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Go to *www.irs.gov/FormW9* for instructions and the latest information.

Give form to the requester. Do not send to the IRS.

Before you begin. For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.

Print or type. See ***Specific Instructions*** on page 3.

1 Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.)

2 Business name/disregarded entity name, if different from above.

3a Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only **one** of the following seven boxes.

☐ Individual/sole proprietor ☐ C corporation ☐ S corporation ☐ Partnership ☐ Trust/estate

☐ LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership) . . . . _____

Note: Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) _____

3b If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions . . . . . ☐

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any) _____

(Applies to accounts maintained outside the United States.)

5 Address (number, street, and apt. or suite no.). See instructions.

Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

Part I **Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number
☐☐☐ – ☐☐ – ☐☐☐☐

or

Employer identification number
☐☐ – ☐☐☐☐☐☐☐

Part II **Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here **Signature of U.S. person** **Date**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/FormW9*.

What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they

Cat. No. 10231X Form **W-9** (Rev. 3-2024)

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FURNISHED FORM 17—MERP AUTHORIZATION AND CERTIFICATION

TEXAS MEDICAID ESTATE RECOVERY PROGRAM (MERP)
AUTHORIZATION AND MERP CERTIFICATION

FROM: Name: _____

Company/Firm: _____

Address: _____

Phone Number: _____ **Fax #/Email:** _____

RE: Deceased Owner's Name: _____ **Date of Death:** _____

Deceased Owner's Medicaid ID and/or Social Security Number: _____

Complete Property Address: _____

_____

SECTION 1:
Authorization to Obtain MERP Claim Information
(To be Completed by Heirs/Beneficiaries or Estate Representative)

The undersigned heir/beneficiaries or Estate Representative of the Deceased Owner are unable to certify that the estate of the Deceased Owner is exempt or is not subject to a MERP claim, and hereby authorizes MERP to complete Section 2 of this form below and provide same or any other information related to a MERP claim against Deceased Owner to the requestor above.

By: _____ (Signature) **By:** _____ (Signature)

Printed Name: _____ **Printed Name:** _____

SECTION 2
CERTIFICATION BY MERP
(To be Completed by MERP)

☐	_____ initial	Based on the Social Security Number provided, there is no pending MERP Claim against the Deceased Owner's estate and the State of Texas does not intend to file a MERP Claim against the Deceased Owner's estate.
☐	_____ initial	There is a MERP Claim filed against the Deceased Owner's estate in amount of $_____, as evidenced by the attached document.
☐	_____ initial	MERP intends to file a MERP claim against the Deceased Owner's estate in the amount of $_____. **MERP Case ID:** _____

This is not a dismissal of any other claim the State may have against this estate. Estate representatives of deceased Medicaid recipients whose estates may include assets such as, but not limited to, qualified income trusts, other trusts, annuities, torts, or private insurance policies, should also check with Texas Medicaid & Healthcare Partnership (TMHP) Third Party Resources Line by calling 800-846-7307, and select the option for injury, accident, or informational claim to determine if HHSC may have additional claims against this estate.

TEXAS MERP REPRESENTATIVE

_____ _____
Signature **Date**

_____ _____
Printed Name **Title**

FAX OR MAIL COMPLETED FORM TO: HMS – The Texas Medicaid Estate Recovery Contractor
5615 High Point Drive, Suite 100
Irving, Texas 75038
Phone: 1-800-641-9356 **Fax: 214-560-3918**

ONLINE/EMAIL SUBMISSION: **submissions.hms.com/submissions/estate/MERP**
merpcerts@gainwelltechnologies.com

MERP Certification and Authorization Form – Rev. 09-2023

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78 Motion to appoint attorney ad litem
80 Statement of facts (PDH, RDA, IBA)
81 Judgment declaring heirship
104 Affidavit of service of citation (heirship)
105 Certificate of service of citation (heirship)
107 Waiver of citation and notice (IBA, PDH, RDA)

INDEPENDENT ADMINISTRATION

5 Application for probate of will (IA)
7 Proof of death and other facts (IA)
8 Proof by subscribing witness
9 Interrogatories to subscribing witness
10 Interrogatories and answers to interrogatories by subscribing witness
13 Notice for deposition on written questions
14 Proof of decedent's handwriting and signature for holographic will
15 Appointment of resident agent—individual executor or administrator
16 Appointment of resident agent—corporate executor or administrator
17 Order admitting will to probate (IA)
18 Oath of individual (IA, ADE, AWA, TBA, AP)
19 Oath of corporate executor or administrator (IA, ADE, TBA, AP)
20 Newspaper notice to creditors
21 Proof of service of notice to secured creditors
22 Inventory, appraisement, and list of claims and order approving
96 Waiver and renunciation of right to letters testamentary (IA, ADE)
100 Beneficiary's waiver of notice of probate
101 Affidavit of notice of probate
102 Certificate of notice of probate
103 Affidavit in lieu of inventory, appraisement, and list of claims
133 Proof of decedent's signature
134 Proof of signature of subscribing witness
139 Interrogatories to witness to signature
140 Interrogatories and answers to interrogatories by witness to signature
141 Interrogatories to witness to decedent's handwriting and signature for holographic will
142 Interrogatories and answers to interrogatories by witness to decedent's handwriting and signature for holographic will
147 Obtaining original will or estate papers
148 Obtaining personal property of estate
149 Receipt and refunding agreement

INDEPENDENT ADMINISTRATION BY AGREEMENT—INTESTATE ESTATE

15 Appointment of resident agent—individual executor or administrator
20 Newspaper notice to creditors
21 Proof of service of notice to secured creditors
22 Inventory, appraisement, and list of claims and order approving
74 Waiver and renunciation of right to letters of administration (RDA, TDA, TBA, IBA)
75 Proof of death and other facts (RDA, IBA)
77 Application to declare heirship
78 Motion to appoint attorney ad litem
80 Statement of facts (PDH, RDA, IBA)
81 Judgment declaring heirship
86 Oath of administrator (RDA, IBA)
103 Affidavit in lieu of inventory, appraisement, and list of claims
104 Affidavit of service of citation (heirship)
105 Certificate of service of citation (heirship)
106 Distributee's agreement to independent administration (TBA, IBA)
107 Waiver of citation and notice (IBA, PDH, RDA)
108 Application for independent administration of intestate estate by agreement (IBA)
109 Order authorizing letters of administration (IBA)
148 Obtaining personal property of estate
149 Receipt and refunding agreement

INDEPENDENT ADMINISTRATION BY AGREEMENT—TESTATE ESTATE

8 Proof by subscribing witness

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9 Interrogatories to subscribing witness
10 Interrogatories and answers to interrogatories by subscribing witness
13 Notice for deposition on written questions
14 Proof of decedent's handwriting and signature for holographic will
15 Appointment of resident agent—individual executor or administrator
16 Appointment of resident agent—corporate executor or administrator
18 Oath of individual (IA, ADE, AWA, TBA, AP)
19 Oath of corporate executor or administrator (IA, ADE, TBA, AP)
20 Newspaper notice to creditors
21 Proof of service of notice to secured creditors
22 Inventory, appraisement, and list of claims and order approving
74 Waiver and renunciation of right to letters of administration (RDA, TDA, TBA, IBA)
100 Beneficiary's waiver of notice of probate
101 Affidavit of notice of probate
102 Certificate of notice of probate
103 Affidavit in lieu of inventory, appraisement, and list of claims
106 Distributee's agreement to independent administration (TBA, IBA)
110 Application for probate of will and independent administration by agreement (TBA)
111 Order admitting will to probate (TBA)
112 Proof of death and other facts (TBA)
133 Proof of decedent's signature
134 Proof of signature of subscribing witness
139 Interrogatories to witness to signature
140 Interrogatories and answers to interrogatories by witness to signature
141 Interrogatories to witness to decedent's handwriting and signature for holographic will
142 Interrogatories and answers to interrogatories by witness to decedent's handwriting and signature for holographic will
143 Affidavit of inability or unwillingness to serve as executor
147 Obtaining original will or estate papers
148 Obtaining personal property of estate
149 Receipt and refunding agreement

INTERROGATORIES

9 Interrogatories to subscribing witness
10 Interrogatories and answers to interrogatories by subscribing witness
139 Interrogatories to witness to signature
140 Interrogatories and answers to interrogatories by witness to signature
141 Interrogatories to witness to decedent's handwriting and signature for holographic will
142 Interrogatories and answers to interrogatories by witness to decedent's handwriting and signature for holographic will

INVENTORY

22 Inventory, appraisement, and list of claims and order approving
27 Extension of time for filing inventory and order approving
36 Supplemental inventory and order approving
103 Affidavit in lieu of inventory, appraisement, and list of claims
122 Waiver of right to receive

LAWYER'S CREED

99 Texas Lawyer's Creed

LAWYER'S TRUST ACCOUNT

129 Statement under Estates Code, chapter 456
130 Agreement under Estates Code, chapter 456
131 Estates Code, chapter 456

LEASES, MINERAL

56 Application to enter into mineral lease at private sale
57 Order authorizing mineral lease at private sale

MINERAL LEASES (see Leases, Mineral)

MUNIMENT OF TITLE

6 Application for probate of will (MT)
8 Proof by subscribing witness
9 Interrogatories to subscribing witness
10 Interrogatories and answers to interrogatories by subscribing witness
13 Notice for deposition on written questions
14 Proof of decedent's handwriting and signature for holographic will
22 Inventory, appraisement, and list of claims and order approving
31 Proof of death and other facts (MT)
32 Order admitting will to probate (MT)
97 Affidavit regarding fulfillment of will admitted to probate as muniment of title
132 Heir's waiver of notice
133 Proof of decedent's signature
134 Proof of signature of subscribing witness
139 Interrogatories to witness to signature

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140 Interrogatories and answers to interrogatories by witness to signature
141 Interrogatories to witness to decedent's handwriting and signature for holographic will
142 Interrogatories and answers to interrogatories by witness to decedent's handwriting and signature for holographic will
147 Obtaining original will or estate papers

NEWSPAPER

20 Newspaper notice to creditors

NOTICE

13 Notice for deposition on written questions
20 Newspaper notice to creditors
21 Proof of service of notice to secured creditors
100 Beneficiary's waiver of notice of probate
101 Affidavit of notice of probate
102 Certificate of notice of probate
132 Waiver of, under Estates Code, section 258.051
150 Notice of court proceeding
152 Certificate of notice
153 Certificate of delivery of notice

OATH

18 Individual (IA, ADE, AWA, TBA, AP)
19 Corporate executor or administrator (IA, ADE, TBA, AP)
86 Administrator (RDA, IBA)
87 Temporary administrator

ORDER

4 To enter safe deposit box (with motion)
17 Admitting will to probate (IA)
22 Approving inventory, appraisement, and list of claims (with inventory)
27 Approving extension of time for filing inventory (with application)
32 Admitting will to probate (MT)
33 Admitting will to probate (ADE)
36 Approving supplemental inventory (with supplemental inventory)
42 Permitting sale of real property
44 Confirming or approving sale of real property
46 Setting aside order confirming or approving sale or contract for sale of real property (with application)
48 Permitting sale of personal property
50 Confirming or approving sale of personal property
51 To dispose of personal effects (with application)
52 For sale of personal property likely to perish, etc. (with application)
53 For family allowance (with application)
54 To set aside exempt property (with application)
55 For allowance in lieu of exempt property (with application)
57 Authorizing mineral lease at private sale
59 To expend funds (with application)
60 To reimburse executor or administrator (with application)
61 To pay attorney's fees (with application)
62 Approving annual account (with annual account)
66 Approving account for final settlement and authorizing distribution of estate
68 Closing estate and discharging personal representative
72 Admitting will to probate (AWA)
76 Authorizing letters of administration (RDA)
82 Approving small estate affidavit (with affidavit)
85 Appointing temporary administrator
90 Granting additional powers to temporary administrator
91 Making temporary administration permanent
93 Approving final account of temporary administrator
95 Closing temporary administration
109 Authorizing letters of administration (IBA)
111 Admitting will to probate (TBA)
115 To deposit funds into registry (with application)
116 To withdraw funds and pay comptroller (with application)
121 Admitting will to probate (AP)
136 To engage or employ (with application)
137 To make partial distribution of estate assets (with application)
138 Ratifying expenditure (with application)

PERSONAL PROPERTY

40 Verified exhibit to be attached to application for court-approved sale of property
47 Application for court-approved sale of personal property
48 Order permitting sale of personal property
49 Report to court of sale or contract for sale of personal property
50 Order confirming or approving sale of personal property
51 Application for court-approved disposition of personal effects

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52 Application for sale of personal property likely to perish, waste, or deteriorate in value
148 Obtaining personal property of estate

POWERS

24 Irrevocable stock power
25 Irrevocable bond power

PROBATE INFORMATION LIST

1 Probate information list

PROCEEDINGS TO DETERMINE HEIRSHIP (see Heirship, Proceedings to Declare)

PROOF (see also Proof of Will—Witness Not in Court)

7 Death and other facts (IA)
8 Subscribing witness
14 Decedent's handwriting and signature for holographic will
21 Service of notice to secured creditors
29 Death and other facts (ADE)
31 Death and other facts (MT)
71 Death and other facts (AWA)
75 Death and other facts (RDA, IBA)
112 Death and other facts (TBA)
120 Death and other facts (AP)
133 Decedent's signature
134 Signature of subscribing witness

PROOF OF WILL—WITNESS NOT IN COURT

9 Interrogatories to subscribing witness
10 Interrogatories and answers to interrogatories by subscribing witness
13 Notice for deposition on written questions
139 Interrogatories to witness to signature
140 Interrogatories and answers to interrogatories by witness to signature
141 Interrogatories to witness to decedent's handwriting and signature for holographic will
142 Interrogatories and answers to interrogatories by witness to decedent's handwriting and signature for holographic will

PUBLICATION

20 Newspaper notice to creditors

REAL ESTATE

39 Application for court-approved sale of real property
40 Verified exhibit to be attached to application for court-approved sale of property
42 Order permitting sale of real property
43 Report to court of sale or contract for sale of real property
44 Order confirming or approving sale of real property
45 Deed for sale of real property following court approval of sale
46 Application and order to set aside order confirming or approving sale or contract for sale of real property
117 Distribution deed
149 Receipt and refunding agreement

RECEIPT

3 Receipt for documents
30 Receipt and release
149 Receipt and refunding agreement

REGULAR DEPENDENT ADMINISTRATION

15 Appointment of resident agent—individual executor or administrator
20 Newspaper notice to creditors
21 Proof of service of notice to secured creditors
22 Inventory, appraisement, and list of claims and order approving
30 Receipt and release
62 Annual account of executor or administrator with order
63 Verification of funds on deposit
64 Confirmation of safekeeping
65 Account for final settlement
66 Order approving account for final settlement and authorizing distribution of estate
67 Application to close estate and to discharge personal representative
68 Order closing estate and discharging personal representative
73 Application for letters of administration where there is no will (RDA)
74 Waiver and renunciation of right to letters of administration (RDA, TDA, TBA, IBA)
75 Proof of death and other facts (RDA, IBA)
76 Order authorizing letters of administration (RDA)
77 Application to declare heirship
78 Motion to appoint attorney ad litem
80 Statement of facts (PDH, RDA, IBA)
81 Judgment declaring heirship
86 Oath of administrator (RDA, IBA)
104 Affidavit of service of citation (heirship)

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105 Certificate of service of citation (heirship)
107 Waiver of citation and notice (IBA, PDH, RDA)
113 Affidavit of service of citation (final account)
114 Certificate of service of citation (final account)
147 Obtaining original will or estate papers
148 Obtaining personal property of estate
149 Receipt and refunding agreement

REIMBURSEMENT

60 Application and order to reimburse executor or administrator

REMOTE PROCEEDINGS

150 Notice of court proceeding
151 Motion for remote proceeding
152 Certificate of service

RESIDENT AGENT

15 Appointment of resident agent—individual executor or administrator
16 Appointment of resident agent—corporate executor or administrator

SAFE DEPOSIT BOX

4 Motion to enter a safe deposit box and order granting

SAFEKEEPING

64 Confirmation of safekeeping

SECURITIES

24 Irrevocable stock power
25 Irrevocable bond power

SETTLEMENT

63 Verification of funds on deposit
64 Confirmation of safekeeping
65 Account for final settlement
66 Order approving account for final settlement and authorizing distribution of estate
113 Affidavit of service of citation (final account)
114 Certificate of service of citation (final account)
115 Application and order to deposit funds into registry
116 Application and order to withdraw funds and pay comptroller
149 Receipt and refunding agreement

SMALL ESTATE

82 Small estate affidavit and order

STOCK POWERS

24 Irrevocable stock power

SUCCESSOR PERSONAL REPRESENTATIVE, AFFIDAVIT OF

154 Affidavit of Successor Personal Representative

TEMPORARY DEPENDENT ADMINISTRATION

74 Waiver and renunciation of right to letters of administration (RDA, TDA, TBA, IBA)
83 Application for temporary administration—where there is no will
84 Application for temporary administration—where decedent left a will
85 Order appointing temporary administrator
87 Oath of temporary administrator
88 Letters of temporary administration if not prepared by clerk
89 Application for enlargement of powers of temporary administrator
90 Order granting additional powers to temporary administrator
91 Order making temporary administration permanent
92 Final account of temporary administrator
93 Order approving final account of temporary administrator
94 Application to close temporary administration
95 Order closing temporary administration
98 Affidavit of notice of appointment of temporary administrator

WAIVER

70 And renunciation of right to letters (AWA)
74 And renunciation of right to letters of administration (RDA, TDA, TBA, IBA)
96 And renunciation of right to letters testamentary (IA, ADE)
100 Beneficiary's notice of probate
107 Citation and notice (IBA, PDH, RDA)
122 Of right to receive inventory and appraisement
132 Of notice under Estates Code, section 258.051

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FORM 1—PROBATE INFORMATION LIST

Probate Information List

Full Name of Decedent (D) _____

Date of Death _____

Please obtain as many of the following described items and as much of this requested information as possible. If an item definitely applies to this estate and you have obtained all documents and/or have furnished all information requested, so indicate by a check mark. Do not be surprised if you cannot complete all items.

Please let us collect all life insurance benefits, since it is mandatory for us to obtain certain information directly from the companies. It also will make our job easier if you will not transfer any assets or pay any of decedent's bills before our first appointment.

Please assemble the items in the order below, fill in the answers to the questions, and bring this list and the assembled materials to my office. When you have as much as you can furnish, please call my secretary to make an appointment.

Items to locate and bring with you:

Please assemble the items in the following order.

Note: To obtain Social Security, Medicare, railroad retirement, and veterans benefits, you may need to locate and furnish D's birth certificate, marriage license, adoption and divorce documents, and military discharge certificate.

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Note: In the event of an audit of D's death tax returns, it will be necessary to have D's check registers, bank statements, canceled checks, savings account records, and brokerage records for the three years before and two months following D's death.

CHECK WHEN COMPLETED

_____ 1. All signed copies of D's wills and codicils and memoranda concerning disposition of personal property; copies of all trusts created by or for the benefit of D or D's spouse; current financial statement for each of those trusts and a list of all beneficiaries with their birth dates; D's death certificate (one for each policy of insurance on D's life, plus one additional for our file); copies of D's passport, driver's license, and Social Security card; copy of D's obituary notice and any newspaper articles if D's death was not from natural causes; documents relating to travel clubs, automobile associations, and other organizations if D's death was accidental; copies of will and codicils of D's spouse. (1.0; 2.0)

_____ 2. If D served in military, bring certificate of discharge or separation and other documents relating to military benefits. (1.0)

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_____ 3. Deeds and contracts for deeds to all real estate, including time shares, owned or being purchased by D or D's spouse (including oil, gas, and other mineral interests) and, if owned with others, the names and addresses of all co-owners. If purchased within five years of D's death, a copy of the closing statement. If the property was leased, bring copies of all leases. If survey plats, street addresses of the properties, copies of all appraisals made within five years of D's death, property tax receipts for most current year, and title policies are available, bring them, too. Also, please bring any documents where D created any easements, disposed of portions of the original property, or was involved in any condemnation proceedings. If real estate was not paid for, bring loan number, payment book and/or loan amortization schedule, and address of mortgage company or other note holder and copies of notes, mortgages, and other documents. If loan(s) paid off, bring release of lien. Bring listing agreements and contracts for the purchase or sale of real estate by D or D's spouse pending at the date of D's death. (7.0)

_____ 4. Original debentures and bonds, including government bonds and stock certificates owned or registered in the name of D or D's spouse or in combination with others and information regarding phantom stock, stock appreciation rights, and stock options. If securities are held for safekeeping or in an account by a broker or a custodian, please furnish most recent statement and name and address of firm where held. Information regarding phantom stock, stock appreciation rights, and stock options. If D or D's spouse owned stock in a closely held corporation, please furnish income tax returns, balance sheets, and profit-and-loss statements for the five most recent years. In all instances, please provide copies of all restrictions on transfer of these securities. (8.0; 9.0; 10.0)

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_____ 5. Partnership, "buy-sell," employment, noncompete, franchise, stock purchase, stock option, and other agreements signed by either D or D's spouse. If D or D's spouse owned an interest in a partnership, please furnish income tax returns, Schedule K-1 for IRS Form 1065 for each partnership, balance sheets, and profit-and-loss statements for the five most recent years. (10.0; 16.0)

_____ 6. Statements, checks, and deposits for month before, month of, and month following D's death and checkbooks for one year before D's death for each bank, savings and loan, or credit union checking or savings account of D or D's spouse; all passbooks and actual certificates of deposit; statements for agency accounts for the benefit of D or D's spouse; receipts for safekeeping of valuables; traveler's checks and checks payable to D or D's spouse uncashed at date of D's death—especially Social Security and VA checks; keys to safe deposit boxes if access denied; name of D's officer or other person to contact; copies of signature cards and all agreements signed by D that relate to any of the foregoing accounts and certificates of deposit. (4.0; 11.0)

_____ 7. All notes, accounts, and judgments payable to D or D's spouse, loan amortization schedules, and the name and address of each debtor. (12.0)

_____ 8. All unpaid premium notices and all policies of insurance and all endorsements, including life, accident, burial, disability, homeowner's, automobile, personal property, fire and extended coverage, casualty, and medical and health insurance in which either D or D's spouse was an owner, beneficiary, or insured, either individually or in combination with others, including any policy on the life of another (such as spouse or children). (13.0; 14.0; 15.0)

_____ 9. Royalty agreements, including oil and gas royalties, owned by or paid to D or D's spouse. Bring as much additional information as you can locate, including leases, division orders, financial statements, check stubs for the twelve months before D's death, and statements from royalty payers. (7.0; 16.0)

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_____ 10. Titles to all automobiles, boats, airplanes, and other motor vehicles and mobile homes registered in the name of D or D's spouse and, if subject to a lien, a copy of the note, the loan number, payment book, and name and address of each lienholder. (17.0)

_____ 11. All documents relating to annuities and franchises. Copies of copyrights, patents and patent applications, trademarks, literary works, and musical compositions. (19.0)

_____ 12. Copies of D's personal financial statements for the last three years and copies of all notes payable by D or D's spouse; guaranty agreements signed by D or D's spouse. (21.0)

_____ 13. Copy of funeral bills, including cemetery lot, monuments, obituary notices, long-distance telephone charges, floral offerings, memorial services, visitation, and any other related expenses. (22.0)

_____ 14. Information concerning any estate from which D inherited any property in the last ten years and all documents (particularly the federal estate tax return and audit adjustments for that estate) related to the inheritance. (24.0)

_____ 15. Copies of last three income tax returns (federal, state, and city) filed by D or D's spouse; information regarding pending tax refunds and audits; copy of worksheet for current estimated income tax for D or D's spouse and evidence of payment of past installments; Schedule H for IRS Form 1040 for household help; and copies of *all* gift tax returns ever filed by D or D's spouse and complete details of all unreported gifts aggregating more than $10,000 to any one person in a single year. (20.0; 26.0)

_____ 16. Agreements between D and D's spouse, such as partition, premarital, and community survivorship agreements; copies of property settlement agreements and decrees of divorce or other legal dissolution relating to D's prior marriages. (3.0; 21.0)

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_____ 17. All documents relating to pensions and profit-sharing plans. Booklets and other information describing present and past employment benefits for D and D's spouse, including most recent account statements of D's individual accounts; all information relating to individual retirement accounts, HR-10 (Keogh) plans, 401(k) and similar plans for D or D's spouse; all information relating to Social Security benefits being received by or payable to D or D's spouse; all information relating to military, civil service, or railroad retirement benefits being received by or payable to D or D's spouse; all information relating to annuities being received by or payable to D or D's spouse; all information relating to deferred compensation, pensions, and profit-sharing plans of D or D's spouse. (19.0)

_____ 18. Powers of attorney given by D to anyone.

_____ 19. Copies of pleadings filed in suits in which D or D's spouse was a party at the time of D's death.

_____ 20. Published articles, photographs, or descriptions of home furnishings, art work, collections, or other items shown in newspapers, magazines, and other publications.

_____ 21. If D was killed while on a common carrier, locate receipt for ticket charged to a credit card and provide full details regarding card issuer, its address, and its phone number.

_____ 22. Statements from airlines, hotels, and other entities that offer "miles" or other incentives.

_____ 23. Copies of judgments and tax liens filed against D or D's spouse.

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Information to be completed:

CHECK WHEN COMPLETED

_____ 24. Date and place of D's birth _____

D's residence address at time of death _____

Approximate date on which D became a Texas resident _____

If D and D's surviving spouse had not resided in Texas during the entirety of their marriage, list all places of residence and approximate dates _____

D's citizenship if not U.S. _____

D's Social Security number _____

D's driver's license or identification card number _____

D's Medicare number _____

D's military identification number _____

D's VA identification number _____

Dates and branch of D's military service _____

D's occupation at date of death and the name, address, and phone number of employer and of person to contact concerning benefits _____

_____

If D was self-employed, list D's trade name and business address and the employer identification number of D's business _____

_____

If D was retired, give D's former occupation, employer, and nature of business ___

_____

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_____ 25. Club, fraternal, and lodge memberships of D or D's spouse (1.0) _____

_____

_____

_____ 26. Names, addresses, and phone and SMS (text) numbers of the witnesses to D's most recent will and all codicils (2.0) _____

_____

_____

_____

Name, address, and phone and SMS (text) numbers of each executor, trustee, and guardian (including alternates) named in D's will (2.0) _____

_____

_____

Name, address, phone and SMS (text) numbers, Social Security number, and driver's license or identification card number of each person who will be the applicant (2.0)

_____

_____

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_____ 27. If D was not survived by either spouse or children, or if D's will provides benefits to institutions or to persons other than the surviving spouse and children, please furnish name, address, phone and SMS (text) numbers, date of birth, Social Security number, marital status and name of that person's spouse, and relationship to D for each of those institutions or persons and also for D's surviving parents (3.0) _____

_____

_____

_____

_____

_____

_____

_____ 28. Date and place of marriage to and name, address, phone and SMS (text) numbers, date of birth, Social Security number, and citizenship of D's surviving spouse (3.0) ___

_____

_____

Same information with respect to all D's prior spouses, especially dates and places of those marriages and of termination of prior marriages and whether terminated by death, divorce, or other legal dissolution (3.0) _____

_____

_____

_____

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_____ 29. Name, address, phone and SMS (text) numbers, date and place of birth, Social Security number, marital status, and name of spouse of *all* children ever born to or adopted by D, whether presently living or not, and identification of the other parent. If D was not survived by either a spouse or children, check here _____

_____

_____

_____

_____ 30. Name and address of each bank at which D maintained or had access to or kept items in a safe deposit box, the box number(s), and the name, address, and relationship of all other persons having access to those boxes (4.0) _____

_____

_____

_____

_____

_____ 31. Name, address, and phone and SMS (text) numbers of D's personal secretaries, attorneys, accountants, tax return preparers, stockbrokers, life insurance agents, casualty insurance agents, health and accident insurance agents, bankers, and other professional advisors (5.0; 9.0; 13.0; 14.0; 15.0) _____

_____

_____

_____ 32. Description of any improvements to or crops growing on real estate (7.0) _____

_____

_____

_____

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_____ 33. Style of account, account number, and name and location of bank, savings association, and credit union for each checking or savings account or certificate of deposit in the name of D or D's spouse or on which D could sign, and name of officer, if known (11.0)

_____

_____

_____

_____ 34. Detailed description of all motor vehicles, including make, model, year, body type, mileage, major equipment, and accessories (17.0) _____

_____

_____

_____

_____

_____

_____

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_____ 35. General description of all other property owned by D or D's spouse, including club memberships, livestock, farm products, leasehold interests, jewelry, household goods, and personal effects. With respect to furs, precious metals, wine and liquor collections, pets, jewelry, household goods and personal effects, guns, and other sporting equipment, itemize only those items of considerable value ($1,000 or more) and for collections, only those valued at $10,000 or more. Bring as much additional information as you can locate, including insurance policies and financial statements, related to these items (18.0) _____

_____

_____

_____

_____

_____ 36. List outstanding accounts, charge or credit card purchases (including account numbers) made but not yet billed, and other debts and charitable pledges owed by D or D's spouse on the date of D's death and names, addresses, and phone numbers of those creditors (21.0) _____

_____

_____

_____

_____ 37. Name, address, and phone number of funeral home (22.0) _____

_____

_____

_____

_____

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_____ 38. List of expenses of last illness (unpaid at D's death), including names of payees and amounts paid for physicians, nurses, hospitals, drugs, sick-room equipment, etc. (23.0)

_____

_____

_____ 39. If there is insurance on life of D that is payable to D's company, partners, fellow stockholders, or employees, give their names, addresses, and telephone numbers and furnish complete details (13.0) _____

_____

_____

_____

_____

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FORM 2—AUTHORIZE THIRD PARTIES TO FURNISH INFORMATION

Authorization

TO WHOM IT MAY CONCERN:

Re: Estate of **6.02**, Deceased
Date of death: **1.07**
[Personal representative: **2.29** or **2.45** or **2.76** or **2.101** or **2.116** or **3.03**]
[Surviving spouse and community administrator: **3.03**]
[Trustee: [**client's name**], the acting trustee of the [**name of trust**] dated [**date**]]

Include the following for a personal representative.

The undersigned, **2.29** or **2.45** or **2.76** or **2.101** or **2.116** or **3.03**, is the duly appointed personal representative of the above-referenced estate, appointed in Cause No. **6.01**, In the Estate of **6.02**, Deceased, in the **6.03** Court of **6.04** County, Texas, on **6.26**. The undersigned has authority and responsibility to—

- satisfy personal liability for federal estate tax under Internal Revenue Code, Section 2002;
- account for all assets includible in Decedent's gross estate under Internal Revenue Code, Sections 2036 through 2042;
- protect against transferee liability under Internal Revenue Code, Section 6324(a)(2); and
- fulfill state fiduciary duties under Texas common law (duty to inform) and Texas Estates Code, Sections 309.051 (inventory), 351.101 (care and loyalty), and 359.001 (accounting).

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Include the following for a surviving spouse.

The undersigned, **3.03**, is the surviving spouse of the above-referenced Decedent and community administrator of Decedent's estate. The undersigned has statutory authority to manage, control, and dispose of community property after the death of the other spouse. Texas Estates Code, Chapter 453. Because all marital property is presumed community under Texas law, Texas Family Code, Section 3.003, the undersigned has authority and need to—

- identify all community property interests;
- address potential liability as a person in possession of Decedent's property under Internal Revenue Code, Sections 2002 and 6324;
- comply with tax obligations including final joint returns, portability elections, and potential transferee liability; and
- determine whether formal estate administration is necessary.

Include the following for a trustee.

The undersigned, [**client's name**], is the acting trustee of the [**name of trust**] dated [**date**] (the "Trust"), an inter vivos revocable trust in which Decedent was a grantor and/or grantee. Under the Trust instrument and Texas Property Code, Sections 113.051 and 117.001 through 117.012, the undersigned has fiduciary duties to identify, collect, and administer trust assets. Because the Trust was revocable during Decedent's lifetime, trust assets are includible in Decedent's gross estate for federal estate tax purposes under Internal Revenue Code, Section 2038, and the undersigned has—

- fiduciary duties under Texas Property Code, Sections 113.051 (loyalty) and 117.001 through 117.012 (powers);

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- potential liability as a person in possession of gross estate property under Internal Revenue Code, Sections 2002, 2203, and 6324;
- coordination duties with any personal representative for gross estate reporting, generation-skipping tax allocation, and expense apportionment; and
- a corresponding need to identify all assets that may affect these duties and liabilities.

Continue with the following.

Please accept this as authorization to furnish **5.01** or their designee all information (and copies thereof) that may be requested concerning—

- all assets within Decedent's gross estate for state or federal income, gift, estate, or generation-skipping transfer tax purposes;
- assets held in trust, as joint tenants, as payable-on-death beneficiaries, or otherwise outside probate;
- all assets affecting the undersigned's fiduciary or statutory duties and liabilities;
- any bank statements, bank deposits, bank accounts, ledgers, bookkeeping, accounting, financial records, financial statements, tax records, and other information of any description whatsoever relating to Decedent or Decedent's spouse, if any, including surviving, predeceased, or former spouse.

Thank you for the requested information and records. Please attach your invoice for any reproduction charges and forward to my attorney along with the copies requested.

Include the following for a personal representative.

ESTATE OF **6.02**, DECEASED

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By _____
2.29 or 2.45 or 2.76 or 2.101 or 2.116 or 3.03,
personal representative of the estate of **6.02**,
Deceased

Include the following for a surviving spouse.

_____
3.03,
as surviving spouse and community
administrator of the estate of **6.02**, Deceased

Include the following for a trustee.

[**Name of trust**]

By _____
[**Client's name**], trustee of the [**name of trust**]
dated [**date**]

Continue with the following.

STATE OF TEXAS)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on _____ by [**2.29 or 2.45 or 2.76 or 2.101 or 2.116 or 3.03**/[**client's name**]].

_____
Notary Public, State of Texas

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FORM 3—RECEIPT FOR DOCUMENTS

This form may be prepared on the attorney's letterhead or on plain paper.

Receipt for Documents

Receipt is hereby acknowledged of the following described documents for the purpose of obtaining information or for the transfer or collection of such assets with respect to the Estate of **6.02**, Deceased:

List all items, giving a full description of each, including stock certificate numbers, dates of documents, etc.

DATED [**today's date**].

_____

5.02

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FORM 4—REQUEST COURT AUTHORITY TO ENTER A SAFE DEPOSIT BOX

Leave blanks in the caption unless the docket number and court assignment appear on prior pleadings or orders of the court.

Although there is no statutory requirement, consider adding a jurat.

[**Caption. See Special Instruction 87.**]

Motion to Open Safe Deposit Box and to Examine Papers

4.15 ("Movant") furnishes the following information to the Court for authorization to examine the safe deposit box of **6.02**, Deceased ("Decedent"):

1. Decedent died on **1.07**.

2. This Court has jurisdiction and venue of the estate of Decedent.

3. Decedent had leased a safe deposit box from **4.02** ("Respondent").

4. The box may contain Decedent's will, a deed to a burial plot in which Decedent is to be buried, or an insurance policy issued in Decedent's name and payable to a beneficiary named in the policy.

Movant prays that Respondent be ordered to permit Movant to examine the box and remove those items as may be directed by the Court.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Movant.

File the following order as a separate document.

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[**Caption. See Special Instruction 87.**]

Order on Motion to Open Safe Deposit Box and to Examine Papers

On this day the Court heard the Motion to Open Safe Deposit Box and to Examine Papers filed on [**date**], and the Court, having heard the evidence, finds that the allegations contained in the motion are true and that it should be granted.

Respondent, **4.02**, is ORDERED to permit Movant to examine such safe deposit box in the presence of an officer or an agent of an officer of Respondent, who is appointed as an agent of this Court, and if such documents are found therein, then upon proper receipt, Respondent is directed to deliver them to **4.15**, who is appointed as the court representative to receive any purported will of Decedent, a deed to a burial plot in which Decedent is to be buried, and all insurance policies issued in Decedent's name and payable to a beneficiary named in the policy.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Movant.

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FORM 5—APPLICATION FOR PROBATE OF WILL (IA)

This is a combination form that is not to be completely copied; rather, appropriate alternative paragraphs are to be selected. Each application *must* have paragraphs that are numbered 1 through 11, *but* only one of each numbered paragraph is to be used.

Leave blanks in the caption unless the docket number and court assignment appear on prior pleadings or orders of the court.

If the will cannot be produced in court, supplement this application as instructed in Special Instruction 85—Wills Not Produced.

It is assumed in this form that the applicant is an executor named in the will. If the applicant has instead been designated as administrator by a person granted the authority to make such a designation (see 2.44N of MIL), or if such a designee is unwilling or unable to serve, see Special Instruction 95 for appropriate pleadings. If the applicant was designated as administrator, the form will be entitled "Application for Probate of [Will/Will and Codicil] and Issuance of Letters of Independent Administration with Will Annexed."

[**Caption. See Special Instruction 87.**]

Application for Probate of [Will/Will and Codicil] and Issuance of Letters Testamentary

[**Name(s) of applicant(s); see 2.45(A), 2.45(B), 2.66(A)**] ("Applicant") furnishes/("Applicants") furnish] the following information to the Court for the probate of the [will/will and codicil] of **1.01** ("Decedent") and for issuance of letters testamentary to Applicant[s]:

¶1—Refer to 2.45 and 2.66(A) of MIL. If only one individual is named as executor, select the first alternative; if a corporate fiduciary is named as sole executor, select the second alternative; if two individuals are named as co-executors, select the third alternative; if an individual and a corporate fiduciary are named as co-executors, select the fourth alternative. For names, addresses, driver's license numbers, Social Security numbers, counties, and states of domicile, refer to 2.45–2.52 and 2.66(A) of MIL.

1. Applicant is an individual interested in this estate, domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on Applicant. [The last three numbers of Applicant's driver's license number are [**numbers**]./Applicant has not been issued a driver's license.] [The last three numbers of Applicant's Social Security number are [**numbers**]./Applicant has not been issued a Social Security number.]

Or

1. Applicant is interested in this estate and is a [bank/trust company] domiciled in and situated at [**address**], [**county**] County, [**state**], the physical address at which service can be had on Applicant, and is acting herein by and through its duly authorized representative.

Or

1. [**Name**] is an individual interested in this estate, domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on [**name**]. [The last three numbers of [**name**]'s driver's license number are [**numbers**]./[**Name**] has not been issued a driver's license.] [The last three numbers of [**name**]'s Social Security number are [**numbers**]./[**Name**] has not been issued a Social Security number.] [**Name**] is an individual interested in this estate, domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on [**name**]. [The last three numbers of [**name**]'s driver's license number are [**numbers**]./[**Name**] has not been issued a driver's license.] [The last three numbers of [**name**]'s Social Security number are [**numbers**]./[**Name**] has not been issued a Social Security number.]

Or

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1. [**Name**] is an individual interested in this estate, domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on [**name**]. [The last three numbers of [**name**]'s driver's license number are [**numbers**]./[**Name**] has not been issued a driver's license.] [The last three numbers of [**name**]'s Social Security number are [**numbers**]./[**Name**] has not been issued a Social Security number.] [**Name**] is interested in this estate and is a [bank/trust company] domiciled in and situated at [**address**], [**county**] County, [**state**], the physical address at which service can be had on [**name**], and is acting herein by and through its duly authorized representative.

2. Decedent died on **1.07** in **1.09**, **1.09** County, **1.09**, at the age of **1.10** years. The last three numbers of Decedent's driver's license number are [**numbers**], and the last three numbers of Decedent's Social Security number are [**numbers**].

> Use the following as ¶3 if the answer to 6.08 of MIL is *yes*; if the answer is *no*, refer to Special Instruction 15 and substitute the appropriate paragraph.

3. This Court has jurisdiction and venue because Decedent was domiciled and had a fixed place of residence in this county on the date of death.

4. Decedent owned [personal/real and personal] property described generally as **6.09** [**e.g.**, home, cash, securities, automobiles, livestock, household goods, personal effects] of a probable value in excess of $**6.10**.

5. Decedent left a valid will ("Will") dated **2.02**, which was never revoked and [is filed herewith/was previously delivered to the clerk of this Court]. [**Include if applicable:** Decedent left a valid codicil ("Codicil") dated **2.17**, which was never revoked and [is filed herewith/was previously delivered to the clerk of this Court].]

¶6—There are three separate paragraphs, but only the first two are numbered. Refer to 6.11 of MIL. Use the first alternative if only 6.11C is applicable; use the second alternative if 6.11B is applicable, and include the optional wording if 6.11C is applicable. Then refer to 6.12 of MIL and, if the answer is *yes*, add the unnumbered paragraph; if the answer is *no*, omit the unnumbered paragraph. If there is a codicil, information should be added here, but substituting "Codicil" for "Will"; witness names for codicil are listed at 2.21 of MIL.

6. The names of the subscribing witnesses to the Will are **2.11** [**list all such witnesses**].

Or

6. The Will was wholly in the handwriting of Decedent, and Decedent's signature is subscribed thereto. [**Include if applicable:** The names of the subscribing witnesses to the Will are **2.11** [**list all such witnesses**].]

Include the following paragraph if applicable.

The Will was made self-proved in the manner prescribed by law.

¶7—Refer to 6.13 of MIL. Use the first alternative if 6.13B is applicable; use the second alternative if 6.13E is applicable.

7. No child or children were born to or adopted by Decedent after the date of the Will.

Or

7. After the date of the Will **3.52**, who survived Decedent, [was/were] [born to/ adopted by] Decedent.

¶8—Refer to 6.14 of MIL. Use the first alternative if 6.14A is applicable or if 6.14B is applicable and the answer to 3.25B is *no*; use the second alternative if 6.14B is applicable and the answer to 3.25B is *yes*. Repeat the second alternative if required for additional dissolved marriages.

8. After the date of Decedent's Will, no marriage of Decedent was dissolved.

Or

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8. On or about **3.25A**, which date is after the date of Decedent's Will, Decedent's marriage to **3.21** was dissolved.

9. A necessity exists for the administration of this estate.

> ¶10—Refer to 2.42 of MIL. Use the first alternative if 2.42 is answered *no*; use the second alternative if 2.42 is answered *yes*. In both instances, refer to D's will, select the appropriate designation(s) as used in the will, and select the appropriate alternative. If the second alternative is selected, add the optional last sentence only if the language selected from that alternative is "desires to waive the right to be so appointed."

10. The [Will/Codicil] named Applicant[s] to serve without bond or other security as independent [executor/executrix/executors/co-executors/executor and independent executrix, respectively/executrices], and Applicant[s] would not be disqualified by law from serving as such or from accepting letters testamentary, and Applicant[s] would be entitled to such letters.

Or

10. The [Will/Codicil] named **2.43** and **2.45(A)** [**include if applicable:** and **2.45(B)**] to serve without bond or other security as independent [executor/executrix/executors/co-executors/executor and independent executrix, respectively/executrices], **2.43** [is deceased/is unable to serve as such/is not willing to serve as such/is unqualified to serve as such] [**include if applicable:** and desires to waive the right to be so appointed], and, by virtue thereof, Applicant[s] should be appointed as independent executor[s]. [**Include if applicable:** The written waiver of the right of **2.43** to be appointed as independent executor will be filed with the clerk of this Court.]

> ¶11—Refer to 3.53 of MIL. If the answer is *no*, use the first alternative; if the answer is *yes*, use the second alternative. Repeat the second alternative if required for multiple devisees.

11. The [Will/Will and Codicil] did not name either the State of Texas, a governmental agency of the State of Texas, or a charitable organization as a devisee.

Or

11. The [Will/Codicil] named **3.58**, **3.61C**, [the State of Texas/a governmental agency of the State of Texas/a charitable organization], as a devisee.

Include ¶12 only if D's will does not provide power of sale. See Special Instruction 47 and Special Instruction 48.

12. The Will does not contain a power of sale or language sufficient to grant the executor[s] that authority. [Applicant requests/Applicants request] that the Court grant the executor[s] general authority to sell property without the further consent of Decedent's distributees. All Decedent's distributees agree to this request. Each distributee's consent will be filed with the clerk of this Court.

[Applicant prays/Applicants pray] that citation issue as required by law to all persons interested in this estate; that the [Will/Will and Codicil] be admitted to probate; that letters testamentary be issued to Applicant[s]; and that all other orders be signed as the Court may deem proper.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant(s).

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FORM 6—APPLICATION FOR PROBATE OF WILL (MT)

This is a combination form that is not to be completely copied; rather, appropriate alternative paragraphs are to be selected. Each application *must* have paragraphs that are numbered 1 through 13, *but* only one of each numbered paragraph is to be used.

Leave blanks in the caption unless the docket number and court assignment appear on prior pleadings or orders of the court.

If the will cannot be produced in court, supplement this application as instructed in Special Instruction 85—Wills Not Produced.

For the last three numbers of applicant's driver's license and Social Security numbers, refer to 2.34D and 2.34E of MIL.

[**Caption. See Special Instruction 87.**]

Application for Probate of [Will/Will and Codicil] as a Muniment of Title

2.29 ("Applicant") furnishes the following information to the Court for the probate of the [will/will and codicil] of **1.01** ("Decedent") as a muniment of title:

1. Applicant is an individual interested in this estate, domiciled in and residing at **2.31**, **2.32**, **2.33** County, [**state**]. [The last three numbers of Applicant's driver's license number are [**numbers**]./Applicant has not been issued a driver's license.] [The last three numbers of Applicant's Social Security number are [**numbers**]./Applicant has not been issued a Social Security number.]

2. Decedent died on **1.07** in **1.09**, **1.09** County, **1.09**, at the age of **1.10** years. The last three numbers of Decedent's driver's license number are [**numbers**], and the last three numbers of Decedent's Social Security number are [**numbers**].

Use the following as ¶3 if the answer to 6.08 of MIL is *yes*; if the answer is *no*, refer to Special Instruction 15 and substitute the appropriate paragraph.

3. This Court has jurisdiction and venue because Decedent was domiciled and had a fixed place of residence in this county on the date of death.

4. Decedent owned [personal/real and personal] property described generally as **6.09** [**e.g.,** home, cash, securities, automobiles, livestock, household goods, personal effects] of a probable value in excess of $**6.10**.

5. Decedent left a valid will ("Will") dated **2.02**, which was never revoked and [is filed herewith/was previously delivered to the clerk of this Court]. [**Include if applicable:** Decedent left a valid codicil ("Codicil") dated **2.17**, which was never revoked and [is filed herewith/was previously delivered to the clerk of this Court].]

> ¶6—There are three separate paragraphs, but only the first two are numbered. Refer to 6.11 of MIL. Use the first alternative if only 6.11C is applicable; use the second alternative if 6.11B is applicable, and include the optional wording if 6.11C is applicable. Then refer to 6.12 of MIL and, if the answer is *yes*, add the unnumbered paragraph; if the answer is *no*, omit the unnumbered paragraph. If there is a codicil, information should be added here, substituting "Codicil" for "Will"; witness names for codicil are listed at 2.21 of MIL.

6. The subscribing witnesses to the Will are **2.11** [**list all such witnesses**].

Or

6. The Will was wholly in the handwriting of Decedent, and Decedent's signature is subscribed thereto. [**Include if applicable:** The names of the subscribing witnesses to the Will are **2.11** [**list all such witnesses**].]

Include the following paragraph if applicable.

The Will was made self-proved in the manner prescribed by law.

> ¶7—Refer to 6.13 of MIL. Use the first alternative if 6.13B is applicable; use the second alternative if 6.13E is applicable.

7. No child or children were born to or adopted by Decedent after the date of the Will.

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Or

7. After the date of the Will **3.52**, who survived Decedent, [was/were] [born to/ adopted by] Decedent.

¶8—Refer to 6.14 of MIL. Use the first alternative if 6.14A is applicable or if 6.14B is applicable and the answer to 3.25B is *no*; use the second alternative if 6.14B is applicable and the answer to 3.25B is *yes*. Repeat the second alternative if required for additional dissolved marriages.

8. After the date of Decedent's Will, no marriage of Decedent was dissolved.

Or

8. On or about **3.25A**, which date is after the date of Decedent's Will, Decedent's marriage to **3.21** was dissolved.

¶9—Refer to 2.27 of MIL. If 2.27A or 2.27B is applicable, use the first alternative. If 2.27C is applicable, use the second alternative.

9. There are no unpaid debts owed by Decedent that are not secured by liens on real estate, and there is no necessity for any administration of this estate.

Or

9. [**State reason no administration needed, e.g.,** Although there are unpaid debts incurred by Decedent, they are unenforceable due to the statute of limitations, and there is no necessity for administration of this estate.]

¶10—Refer to 3.53 of MIL. If the answer is *no*, use the first alternative; if the answer is *yes*, use the second alternative. Repeat the second alternative if required for multiple devisees.

10. The [Will/Will and Codicil] did not name either the State of Texas, a governmental agency of the State of Texas, or a charitable organization as a devisee.

Or

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10. The [Will/Codicil] named **3.58**, **3.61C**, [the State of Texas/a governmental agency of the State of Texas/a charitable organization], as a devisee.

> ¶11—Refer to 21.34 and 21.35 of MIL. If the answer to 21.34 is *no*, use the first alternative; if the answer to 21.35 is *yes*, use the second alternative.

11. Decedent did not apply for and receive Medicaid benefits on or after March 1, 2005.

Or

11. The Texas Department of Aging and Disability Services has waived any claim against Decedent's estate.

> ¶12—Refer to 2.45 of MIL. Use the first alternative if an executor was named in D's will; use the second alternative if no executor was named in D's will.

12. **2.45**, who resides in [**state**], was named in the [Will/Codicil] to be executor. The physical address at which service may be had is [**address**].

Or

12. No one was named in the [Will/Will or Codicil] to be executor.

> ¶13—Use the first alternative if four years have not elapsed since D died. Use the second alternative if filing will (and codicil) for probate more than four years after date of D's death.

13. Four years have not elapsed since Decedent's death.

Or

13. Although it has been more than four years since Decedent died, Applicant is not in default in failing to present the Will for probate within four years of Decedent's death. The names and physical addresses where service can be had of all of Decedent's heirs, the relationship of each heir to Decedent, and whether each heir is an adult or a minor are as follows:

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Name	*Address*	*Relationship*	*Adult/Minor*

¶14 is recommended but optional.

14. Applicant asks the Court not to require Applicant to file a sworn statement stating specifically the terms of the [Will/Will and Codicil] that have been fulfilled and the terms of the [Will/Will and Codicil] that have been unfulfilled.

Applicant prays that citation issue as required by law to all persons interested in this estate; that the [Will/Will and Codicil] be admitted to probate as a muniment of title and without any administration thereon; and that all other orders be signed as the Court may deem proper.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 7—PROOF OF DEATH AND OTHER FACTS (IA)

This is a combination form that is not to be completely copied; rather, appropriate alternative paragraphs are to be selected. Each Proof of Death and Other Facts *must* have paragraphs that are numbered 1 through 7, *but* only one of each numbered paragraph is to be used.

If the will cannot be produced in court, supplement this proof as instructed in Special Instruction 85—Wills Not Produced.

It is assumed in this form that the personal representative to be appointed is an executor named in the will. If the appointee has instead been designated as administrator by a person granted the authority to make such a designation, see Special Instruction 95 and adapt appropriate language.

[**Caption. See Special Instruction 87.**]

Proof of Death and Other Facts

On **6.25 3.83** ("Affiant") personally appeared in open court and, after being duly sworn, stated the following:

1. **6.02** ("Decedent") died on **1.07** in **1.09**, **1.09** County, **1.09**, at the age of **1.10** years, and four years have not elapsed since the date of Decedent's death.

Use the following as ¶2 if the answer to 6.08 of MIL is *yes*; if the answer is *no*, refer to Special Instruction 15 and substitute the appropriate paragraph.

2. Decedent was domiciled and had a fixed place of residence in this county at the date of death.

3. The document dated **2.02**, now shown to me and which purports to be Decedent's will ("Will"), was never revoked as far as I know. [**Include if D had a codicil:** The document dated **2.17**, now shown to me and which purports to be Decedent's codicil ("Codicil"), was never revoked as far as I know.]

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4. A necessity exists for the administration of this estate.

¶5—Refer to 6.13 of MIL. Use the first alternative if 6.13B is applicable; use the second alternative if 6.13E is applicable.

5. No child or children were born to or adopted by Decedent after the date of the Will.

Or

5. After the date of the Will **3.52**, who survived Decedent, [was/were] [born to/ adopted by] Decedent.

¶6—Refer to 6.14 of MIL. Use the first alternative if 6.14A is applicable or if 6.14B is applicable and the answer to 3.25B is *no*; use the second alternative if 6.14B is applicable and the answer to 3.25B is *yes*. Repeat the second alternative if required for additional dissolved marriages.

6. After the date of Decedent's Will, no marriage of Decedent was dissolved.

Or

6. On or about **3.25A**, which date is after the date of Decedent's Will, Decedent's marriage to **3.21** was dissolved.

¶7—Refer to D's will and codicil, select the appropriate designation(s) as used in the will or codicil, and select the appropriate alternative.

7. The independent [executor/executrix/executors/executor and independent executrix/executrices] named in the [Will/Codicil] [is/are] not disqualified by law from accepting letters testamentary or from serving as such and [is/are] entitled to such letters.

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SIGNED on _____.

_____
3.83, Affiant
3.85
3.86

SUBSCRIBED AND SWORN TO BEFORE ME by **3.83** on _____

_____.

Insert the following if the proof is to be sworn before the court clerk.

6.16
Clerk of the **6.03** Court of **6.04** County, Texas

By _____
Deputy

Insert the following if the proof is to be sworn before a notary.

_____
Notary Public, State of Texas

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FORM 8—PROOF BY SUBSCRIBING WITNESS

Separate proofs should be prepared for D's will and for D's codicil.

[**Caption. See Special Instruction 87.**]

Proof by Subscribing Witness

On **6.25 2.11 T/C or 2.21 T/C** ("Affiant") personally appeared in open court and, after being duly sworn, stated the following:

> On the same day that the [will/codicil] is dated, I was present and saw **1.01** ("Decedent") sign the document now shown to me and which purports to be Decedent's [will/codicil], and Decedent published and declared to **2.11 or 2.21** [**names of all witnesses to will or codicil other than name of this witness**] and to me that this document was Decedent's [will/codicil]. At Decedent's request, **2.11 or 2.21** [**names of all witnesses to will or codicil other than name of this witness**] and I, then each being credible witnesses above the age of fourteen years, subscribed our names to this document in the presence of Decedent and of each other. On that date, Decedent was of sound mind and had attained the age of eighteen years.

SIGNED on _____.

_____
2.11 T/C or 2.21 T/C, Affiant
2.13 T/C or 2.23 T/C
2.14 T/C or 2.24 T/C

SUBSCRIBED AND SWORN TO BEFORE ME by **2.11 T/C or 2.21 T/C** on _____.

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Insert the following if the proof is to be sworn before the court clerk.

6.16
Clerk of the 6.03 Court of 6.04 County, Texas

By _____
Deputy

Insert the following if the proof is to be sworn before a notary.

_____
Notary Public, State of Texas

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FORM 9—INTERROGATORIES TO SUBSCRIBING WITNESS

[**Caption. See Special Instruction 87.**]

Direct Interrogatories to Be Propounded to Subscribing Witness [name of witness]

Interrogatory No. 1 State your name and address.

Interrogatory No. 2 Were you acquainted with **6.02**, who will be referred to as Decedent?

Interrogatory No. 3 Attached hereto is a certified copy of a document dated **2.02** and filed in the **6.03** Court of **6.04** County, Texas, on **6.23**, purporting to be and offered for probate as Decedent's [will/codicil]. Please examine this copy and state whether or not you signed the original as a witness.

Interrogatory No. 4 If your answer to Interrogatory No. 3 is yes, did Decedent sign the original in your presence on the same date as the document is dated?

Interrogatory No. 5 Were you acquainted with **2.11 or 2.21** [**names of all witnesses to will or codicil other than this witness**], the other [witness/witnesses] to the document?

Interrogatory No. 6 If your answer to Interrogatory No. 5 is yes, did Decedent sign the original in your presence and in the presence of **2.11 or 2.21** [**names of all witnesses to will or codicil other than this witness**] on the same date as the document is dated?

Interrogatory No. 7 On that occasion, did Decedent declare the original to be Decedent's [will/codicil]?

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Interrogatory No. 8 Did you and **2.11 or 2.21** [**names of all witnesses to will or codicil other than this witness**] all subscribe your names as witnesses to the original at the request of Decedent and in the presence of Decedent and in the presence of each other?

Interrogatory No. 9 On that occasion was Decedent at least eighteen years old?

Interrogatory No. 10 On that occasion was Decedent of sound mind?

Interrogatory No. 11 On that occasion were each of you witnesses at least fourteen years old?

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 10—INTERROGATORIES AND ANSWERS TO INTERROGATORIES BY SUBSCRIBING WITNESS

[**Caption. See Special Instruction 87.**]

Interrogatories and Answers of Witness [name of witness] to Interrogatories

On _____, **2.11 T/D or 2.21 T/D** ("Witness") personally appeared before me, the undersigned officer, and, after being duly sworn, gave the following answers on oath to the numerically corresponding interrogatories of **2.29 or 2.45 or 2.101** ("Applicant"), copies of which are attached hereto:

Interrogatory No. 1	State your name and address.
Answer to Interrogatory No. 1	**2.11 T/D or 2.21 T/D**, **2.13 T/D or 2.23 T/D**, **2.14 T/D or 2.24 T/D**
Interrogatory No. 2	Were you acquainted with **6.02**, who will be referred to as Decedent?
Answer to Interrogatory No. 2	
Interrogatory No. 3	Attached hereto is a certified copy of a document dated **2.02** and filed in the **6.03** Court of **6.04** County, Texas, on **6.23**, purporting to be and offered for probate as Decedent's [will/codicil]. Please examine this copy and state whether or not you signed the original as a witness.
Answer to Interrogatory No. 3	

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Interrogatory No. 4	If your answer to Interrogatory No. 3 is yes, did Decedent sign the original in your presence on the same date as the document is dated?
Answer to Interrogatory No. 4	
Interrogatory No. 5	Were you acquainted with **2.11** **or** **2.21** [**names of all witnesses to will or codicil other than this witness**], the other [witness/witnesses] to the document?
Answer to Interrogatory No. 5	
Interrogatory No. 6	If your answer to Interrogatory No. 5 is yes, did Decedent sign the original in your presence and in the presence of **2.11** **or** **2.21** [**names of all witnesses to will or codicil other than this witness**] on the same date as the document is dated?
Answer to Interrogatory No. 6	
Interrogatory No. 7	On that occasion, did Decedent declare the original to be Decedent's [will/codicil]?
Answer to Interrogatory No. 7	
Interrogatory No. 8	Did you and **2.11** **or** **2.21** [**names of all witnesses to will or codicil other than this witness**] all subscribe your names as witnesses to the original at the request of Decedent and in the presence of Decedent and in the presence of each other?
Answer to Interrogatory No. 8	
Interrogatory No. 9	On that occasion was Decedent at least eighteen years old?
Answer to Interrogatory No. 9	
Interrogatory No. 10	On that occasion was Decedent of sound mind?

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Answer to Interrogatory No. 10

Interrogatory No. 11 On that occasion were each of you witnesses at least fourteen years old?

Answer to Interrogatory No. 11

_____

2.11 T/D or 2.21 T/D

Upon the appearance of the Witness, I proceeded to take the above answers of the Witness to the attached interrogatories, reduced such answers to writing, and caused the same to be signed and sworn to by the Witness, and such answers were signed and sworn to by the Witness before me, to certify which witness my hand and seal of office, on the date above specified.

_____

Notary Public, State of Texas

Forms 11 and 12 are reserved.

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FORM 13—NOTICE FOR DEPOSITION ON WRITTEN QUESTIONS

[**Caption. See Special Instruction 87.**]

Notice of Intent to Take Deposition on Written Questions

Notice is hereby given of the intent of **2.29 or 2.45 or 2.101** to take the answers of a witness to the interrogatories attached to this notice. The name of the witness is **2.11 T/D or 2.21 T/D or 2.05 T/D or 2.160 T/D or 2.170 T/D**. The address of the witness is **2.13 T/D or 2.23 T/D or 2.06 T/D or 2.162 T/D or 2.172 T/D**, **2.14 T/D or 2.24 T/D or 2.07 T/D or 2.163 T/D or 2.173 T/D**. The deposition is to be used in the above-numbered and -entitled proceeding.

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for 2.29, 2.45, or 2.101.

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FORM 14—PROOF OF DECEDENT'S HANDWRITING AND SIGNATURE FOR HOLOGRAPHIC WILL

Two witnesses must appear in court or be deposed to furnish this information in proving a holographic will. A separate form is to be prepared for each of these witnesses who appears in court.

[**Caption. See Special Instruction 87.**]

Proof of Decedent's Handwriting and Signature

On **6.25 2.05 T/C** ("Affiant") personally appeared in open court and, after being duly sworn, stated the following:

I was personally acquainted with **6.02** ("Decedent") and was well acquainted with the handwriting and signature of Decedent. The document dated **2.02**, now shown to me and which purports to be Decedent's [will/codicil], is wholly in the handwriting of Decedent, and Decedent's signature is subscribed thereto. On that date Decedent was of sound mind and had attained the age of eighteen years.

SIGNED on _____.

_____
2.05 T/C, Affiant
2.06 T/C
2.07 T/C

SUBSCRIBED AND SWORN TO BEFORE ME by **2.05 T/C** on _____.

Insert the following if the proof is to be sworn before the court clerk.

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6.16
Clerk of the 6.03 Court of 6.04 County, Texas

By _____
Deputy

Insert the following if the proof is to be sworn before a notary.

_____
Notary Public, State of Texas

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FORM 15—APPOINTMENT OF RESIDENT AGENT—INDIVIDUAL EXECUTOR OR ADMINISTRATOR

[**Caption. See Special Instruction 87.**]

Appointment of Resident Agent

The undersigned appoints **5.02**, whose address is **5.05**, **5.06**, to be resident agent to accept service of process in all actions or proceedings with respect to this estate pursuant to the provisions of the Texas Estates Code and in anticipation of the appointment of the undersigned as [independent] [executor/administrator/administrator with will annexed] of this estate.

SIGNED on _____.

_____
2.45 or **2.76**

STATE OF TEXAS)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on _____ by **2.45** or **2.76**.

_____
Notary Public, State of Texas

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FORM 16—APPOINTMENT OF RESIDENT AGENT—CORPORATE EXECUTOR OR ADMINISTRATOR

[**Caption. See Special Instruction 87.**]

Appointment of Resident Agent

The undersigned appoints **5.02**, whose address is **5.05**, **5.06**, to be resident agent to accept service of process in all actions or proceedings with respect to this estate pursuant to the provisions of the Texas Estates Code and in anticipation of the appointment of the undersigned as [independent] [executor/administrator/administrator with will annexed] of this estate.

SIGNED on _____.

_____
2.45

By _____
2.61, **2.63**

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day personally appeared **2.61**, **2.63** of **2.45**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that [he/she] executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on _____ _____.

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_____

Notary Public, State of Texas

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FORM 17—ORDER ADMITTING WILL TO PROBATE (IA)

Note: An increasing number of judges are requiring practitioners to include other or additional language in the orders for their courts. Determine local practice and comply with their idiosyncratic terminology.

Note: No appointment of appraisers is made in this order, and although this patronage system has been eliminated in almost all Texas counties you should check to see if it still exists in the county in which the proceedings have been filed.

If the will could not be produced in court, supplement this order as instructed in Special Instruction 85—Wills Not Produced.

It is assumed in this form that the personal representative appointed in the order is an executor named in the will. If the appointee has instead been designated as administrator by a person granted the authority to make such a designation, see Special Instruction 95 and adapt appropriate language. In such a case, the order will be entitled "Order Admitting [Will/Will and Codicil] to Probate and Authorizing Letters of Independent Administration with Will Annexed."

[**Caption. See Special Instruction 87.**]

Order Admitting [Will/Will and Codicil] to Probate and Authorizing Letters Testamentary

On this day the Court heard the Application for Probate of [Will/Will and Codicil] and Issuance of Letters Testamentary filed by **2.45** ("Applicant") in the Estate of **6.02**, Deceased ("Decedent").

The Court heard the evidence and reviewed the will [**include if applicable:** , the codicil,] and the other documents filed herein and finds that the allegations contained in the application are true; that notice and citation have been given in the manner and for the length of time required by law; that Decedent is dead and that four years have not elapsed since the date of Decedent's death on **1.07** [**include if applicable:** and before **6.23**, the date the application for pro-

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bate was filed]; that this Court has jurisdiction and venue of Decedent's estate; that Decedent left a will ("Will") dated **2.02**, [**include if applicable:** and a codicil ("Codicil") dated **2.17**, each] executed with the formalities and solemnities and under the circumstances required by law to make a valid [will/will and codicil]; that on **2.02** Decedent had attained the age of eighteen years and was of sound mind; that the [Will was/Will and Codicil were] not revoked by Decedent; that no objection to or contest of the probate of the [Will/Will or Codicil] has been filed; that all the necessary proof required for the probate of the [Will/Will and Codicil] has been made; that the [Will is/Will and Codicil are] entitled to probate; that, in the Will, Decedent named **2.45** as independent [executor/executors/executrix/executor and independent executrix, respectively/executrices], to serve without bond, who [is/are] duly qualified and not disqualified by law to act as such and to receive letters testamentary; [**include if applicable:** that all Decedent's distributees consent to the grant to the executor[s] of the general authority to sell property without the further consent of Decedent's distributees;] that a necessity exists for the administration of this estate; and that no interested person has applied for the appointment of appraisers and none are deemed necessary and appointment of appraisers is waived by the Court.

It is ORDERED that the [Will is/Will and Codicil are] admitted to probate, and the clerk of this Court is ORDERED to record the [Will/Will and the Codicil], together with the application, in the judge's probate docket of this Court.

It is ORDERED that no bond or other security is required and that, upon the taking and filing of the oath required by law, letters testamentary shall issue to **2.45**, who [is/are] appointed as independent executor[s] of Decedent's will [**include if applicable:** , codicil,] and estate, and no other action shall be had in this Court other than the return of an inventory, appraisement, and list of claims or an affidavit in lieu thereof and compliance with Chapter 308 of the Texas Estates Code as required by law. [**Include if applicable:** It is further ORDERED that the inde-

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pendent executor[s] shall have the general authority to sell real and personal property without order of this Court or the consent of Decedent's distributees.]

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 18—OATH OF INDIVIDUAL (IA, ADE, AWA, TBA, AP)

[**Caption. See Special Instruction 87.**]

Oath

I do solemnly swear that the [writing that has/writings that have] been offered for probate [is/are] the last [will/will and codicil] of **1.01**, as far as I know or believe, and that I will well and truly perform all the duties of [independent] [executor of the will and/executor of the will and codicil and/administrator/administrator with will annexed] of the Estate of **6.02**, Deceased.

_____
2.45

SUBSCRIBED AND SWORN TO BEFORE ME by **2.45** on _____ _____.

Insert the following if the oath is to be taken before the clerk.

6.16
Clerk of the **6.03** Court of **6.04** County, Texas

By _____
Deputy

Insert the following if the oath is to be taken before a notary.

_____
Notary Public, State of Texas

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FORM 19—OATH OF CORPORATE EXECUTOR OR ADMINISTRATOR (IA, ADE, TBA, AP)

[**Caption. See Special Instruction 87.**]

Oath

I, **2.61**, **2.63** of **2.45**, duly authorized to make this oath on its behalf, do solemnly swear that the [writing that has/writings that have] been offered for probate [is/are] the last [will/will and codicil] of **1.01**, as far as I know or believe, and that **2.45** will well and truly perform all the duties of [independent] [executor of the will and/executor of the will and codicil and/administrator/administrator with will annexed] of the Estate of **6.02**, Deceased.

2.45

By _____
2.61, **2.63**

SUBSCRIBED AND SWORN TO BEFORE ME by **2.61** on _____ _____.

Insert the following if the oath is to be taken before the clerk.

6.16
Clerk of the **6.03** Court of **6.04** County, Texas

By _____
Deputy

Insert the following if the oath is to be taken before a notary.

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_____

Notary Public, State of Texas

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FORM 20—NEWSPAPER NOTICE TO CREDITORS

Notice to Creditors

Notice is hereby given that original Letters [Testamentary/of Administration] for the Estate of **6.02**, Deceased, were issued on **6.39**, under Docket No. **6.01**, pending in the **6.03** Court of **6.04** County, Texas, to **2.45 or 2.76**.

Claims may be presented as follows:

Representative,
Estate of **6.02**, Deceased
c/o **5.02**
5.05
5.06

All persons having claims against this estate, which is currently being administered, are required to present them within the time and in the manner prescribed by law.

DATED [**date**].

5.01 or 5.02

By _____
Attorney(s) for Applicant

Publisher's Affidavit

I solemnly swear that the above notice was published once in **21.19**, a newspaper of general circulation in **21.25** County, Texas, as provided in the Texas Estates Code for the service of citation or notice by publication, and the date that the issue of said newspaper bore in which said notice was published was _____. A copy of the notice published, clipped from the newspaper, is attached hereto.

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_____
Publisher

SUBSCRIBED AND SWORN TO BEFORE ME by _____

on _____.

_____
Notary Public, State of Texas

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FORM 21—PROOF OF SERVICE OF NOTICE TO SECURED CREDITORS

[**Caption. See Special Instruction 87.**]

Proof of Service of Notice on Secured Claimants

STATE OF TEXAS)(
)(
COUNTY OF **6.04**)(

BEFORE ME, the undersigned authority, on this day personally appeared **2.45 or 2.61**, **2.63** of **2.45**, **or 2.76** and, after being duly sworn, stated that:

Attached to this affidavit are copies of all notices sent as required by law to all creditors whose claims are secured by real or personal property of the estate in compliance with Section 308.053 of the Texas Estates Code. Copies of the [return receipts/proof of delivery receipts] are also attached to this affidavit.

Insert the following signature line if proof is to be signed by an individual.

_____
2.45 or 2.76, 2.85

Insert the following signature block if proof is to be signed for a corporate fiduciary.

2.45, 2.85

By _____
2.61, 2.63

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SUBSCRIBED AND SWORN TO BEFORE ME by **2.45 or 2.61 or 2.76** on

_____.

_____
Notary Public, State of Texas

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FORM 22—INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

The list of claims is a listing of the claims owed *to* the estate and not the claims owed *by* the estate.

Note: This form of inventory, appraisement, and list of claims illustrates two formats in which the required information may be presented. See Special Instruction 23 regarding the choice between using schedules or including the information in the body of the form.

[**Caption. See Special Instruction 87.**]

Inventory, Appraisement, and List of Claims

Date of Death: **1.07**

The following is a full, true, and complete inventory and appraisement of all real property located in Texas and all personal property regardless of where located, together with a list of claims due and owing to this estate as of the date of death, that have come to the possession or knowledge of the undersigned.

[Decedent was married at the time of death./Decedent was not married at the time of death.] [All the items listed were the separate property of the decedent./All the items listed were the community property of the decedent and the decedent's spouse./All the items listed were separate or community property as indicated.]

Inventory and Appraisement

Select one of the following formats.

Real Property (See Schedule A)	$[**amount**]
Stocks and Bonds (See Schedule B)	$[**amount**]
Mortgages, Notes, and Cash (See Schedule C)	$[**amount**]

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Insurance Payable to Estate (See Schedule D)	$[**amount**]
Jointly Owned Property (See Schedule E)	$[**amount**]
Miscellaneous Property (See Schedule F)	$[**amount**]
Annuities (See Schedule I)	$[**amount**]
Total	$[**amount**]

Or

Community Property *Value*

Examples of some of the most common assets are listed below. For additional assets, see Index to Special Instructions.

1. Real Property

See Special Instruction 26 for further information and additional examples. Only real property located in Texas is included on the inventory. A timeshare estate is real property. *See* Property Code, Section 221.002(24). A timeshare use is not. Property Code, Section 221.002(30); Texas Attorney General Opinion Number MW-407. A timeshare use should be listed among Miscellaneous Property, even if located in another state or country. See Special Instruction 94 for further information on timeshares.

Parcel #1
LEGAL DESCRIPTION:
House and lot, 6544 Valley, Houston, Texas, residence of Decedent, described as Lot 6, Block 7, Champions West, an addition in Harris County, Texas, per Harris County Appraisal District.

Land:	$15,000.00
Improvements:	$70,000.00

Total value of asset: $85,000.00

2. Stocks and Bonds

See Special Instruction 28 for further information and additional examples.

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Account #1
2,119 shares, Metropolitan Industries Incorporated, common, NYSE (CUSIP No. 442161 10 5). Unit value $30.00. Securities account number XXX3334 styled "Harry D. Green" at Edward Jones.

Total value of asset: $63,570.00

Dividend of $.30 declared on October 28, 2007, payable on December 1, 2010, to stockholders of record on November 15, 2010.

Total value of dividend: $30.00

3. Mortgages, Notes, and Cash

See Special Instruction 20 for further information and additional examples.

Account #1
Checking account number XX3-333 styled "Harry D. or Mary L. Green" at First National Bank of Bellaire, Texas. Balance per bank on date of death $1,202.95 less outstanding checks totaling $362.15. Adjusted balance.

Total value of asset: $841.00

Account #2
Savings account number X-X3702 styled "Mary L. Green" at Dallas Federal Savings Association, Dallas, Texas. Balance per association on date of death including accrued interest of $12.00.

Total value of asset: $7,462.00

Account #3
Certificate of deposit number XX1559 in the name of "Harry David Green" issued by Champions Bank, Austin, Texas. Face amount $10,000.00. Accrued interest to date of death $663.65.

Total value of asset: $10,664.00

4. Insurance Payable to Estate

See Special Instruction 7 for further information and additional examples.

Account #1
American General Life Insurance Company, ordinary life insurance policy number XX4322 insuring life of Decedent; beneficiary Estate of Harry D. Green; face amount $75,000. Net proceeds.

Total value of asset: $75,000.00

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5. Miscellaneous Property

> See Special Instructions 34 and 35 for further information and additional examples.

Item #1
Household goods, furniture, furnishings, clothing, and personal items.

Total value of asset: $1,000.00

> See Special Instruction 14 for further information and additional examples. IRAs are generally nonprobate assets.

Item #2
Paid to D's estate
IRA Account XX9325, Prudent Bank of Houston, Texas, in the name of Harry D. Green. Beneficiary is Decedent's estate.

Total value of asset: $13,206.00

Item #3
IRA of surviving spouse
IRA Account XX6325, Prudent Bank of Houston, Texas, in the name of Mary L. Green. Beneficiary is Harry D. Green, Decedent.

Total value of asset: $9,337.00

> See Special Instruction 32 for further information and additional examples.

Item #4
Description: 2006 Oldsmobile four-door sedan,
VIN# XXXXXXXXXXXXXX0000.

Total value of asset: $935.00

Total:	$267,045.00
Less surviving spouse share:	<$133,522.50>
Community Property:	$133,522.50

Separate Property *Value*

1. Real Property

See Special Instruction 26 for additional examples.

Parcel #1
.0051735 royalty interest in 80 acres of land, part of Addie Jo Taylor Gas Unit No. 1, Duncan Field Wharton County, Texas. Robert Massey, Operator, D/N 5195-04-01.

Total value of asset:	$1,450.00

Separate Property:	$1,450.00
Total Community and Separate Property:	$134,972.50

Continue with the following.

List of Claims

There are no claims due or owing to the estate other than those shown on the foregoing inventory and appraisement.

Or

Community Property
Item #1
Personal loan to Ronald L. Smith, residing at 122 Main St., Houston, Texas, on January 1, 2005. 0% interest rate. Due on January 1, 2015.

Total value of asset:	$5,000.00

Total Claims:	$5,000.00
Less surviving spouse share:	<$2,500.00>
Community Property:	$2,500.00

Separate Property	*Value*

Item #1
Personal loan to Jerry Smith, residing at 122 Main St., Houston, Texas, on January 1, 2005. 0% interest rate. Due on January 1, 2015.

Total value of asset:	$5,000.00

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Total Claims: $5,000.00

Include the following paragraph unless affidavit in lieu of inventory will be filed.

The foregoing Inventory, Appraisement, and List of Claims should be approved and ordered entered of record.

Continue with the following.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for 2.85.

Insert the following affidavit for each individual.

STATE OF TEXAS)(
)(
COUNTY OF _____)(

I, **2.29 or 2.45 or 2.76**, having been duly sworn, hereby state on my oath that the foregoing Inventory, Appraisement, and List of Claims is a true and complete statement of all the property and claims of the estate that have come to my knowledge.

_____
2.29 or 2.45 or 2.76, **2.85**

SUBSCRIBED AND SWORN TO BEFORE ME by **2.29 or 2.45 or 2.76** on _____.

_____
Notary Public, State of Texas

Insert the following affidavit for a corporate fiduciary.

STATE OF TEXAS)(
)(

© STATE BAR OF TEXAS

COUNTY OF _____)(

I, **2.61**, having been duly sworn, hereby state on oath that I am a **2.63** of **2.45**; that I have been fully authorized to act herein for and on behalf of said corporate fiduciary; and that the foregoing Inventory, Appraisement, and List of Claims is a true and complete statement of all the property and claims of the estate that have come to the knowledge of said corporate fiduciary.

2.45, **2.85**

By _____
2.61, **2.63**

SUBSCRIBED AND SWORN TO BEFORE ME by **2.61** on _____ _____.

_____
Notary Public, State of Texas

Include the following unless affidavit in lieu of inventory will be filed.

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order Approving Inventory, Appraisement, and List of Claims

The Inventory, Appraisement, and List of Claims of the above estate filed on **6.87** having been filed and presented, and the Court having considered and examined the same and being satisfied that it should be approved, and there having been no objections made thereto, it is in all respects APPROVED and ORDERED entered of record.

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SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for 2.85.

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FORM 23—DISCLAIM FULL INTEREST IN ESTATE

[**Caption. See Special Instruction 87.**]

Disclaimers

Pursuant to Chapter 122 of the Texas Estates Code, Chapter 240 of the Texas Property Code, and Sections 2046 and 2518 of the Internal Revenue Code and regulations thereunder, I, **6.71**, hereby disclaim any interest in any property that I may be entitled to receive from the estate or by virtue of the death [**include if D left a will:** or under the will] of **1.01**, Deceased. I also disclaim any income attributable to the disclaimed interest. These disclaimers are an unqualified refusal to accept these interests and are irrevocable.

I represent and warrant that I have not accepted any of the above interests, that I have not authorized anyone else to do so on my behalf, that I have not received any consideration for making these disclaimers, and that I have not been administratively determined or judged by a court to be in child support arrears.

DATED _____.

_____
6.71

STATE OF TEXAS)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on _____ by **6.71**.

_____
Notary Public, State of Texas

© STATE BAR OF TEXAS

Receipt of this disclaimer is acknowledged by me on _____.

_____

2.45 or 2.76, 2.85

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FORM 24—IRREVOCABLE STOCK POWER

Prepare a separate signature line or signature block for each person signing this form.

Irrevocable Stock Power

For value received, the undersigned [does/do] hereby sell, assign, and transfer to **9.56 or 9.139 or 9.181 or 10.101**, **9.60 or 9.143 or 9.185 or 10.105**, **9.61 or 9.144 or 9.186 or 10.106** shares of [**omit if this is transfer of shares in a mutual fund: 9.22**, **9.23**, **or 10.15** stock of] **9.21 or 9.111 or 9.151 or 10.02** represented by Certificate No. [**information from the certificate to be transferred**] standing in the name of **9.28 or 9.123 or 9.159 or 10.43** on the books of said Company.

The undersigned [does/do] hereby irrevocably constitute and appoint _____ _____ attorney to transfer the said stock on the books of said Company, with full power of substitution in the premises.

DATED _____

In presence of _____

Insert the following signature line if power is to be signed by an individual executor or administrator.

_____
2.45 or 2.76, **2.85**, Estate of **6.02**, Deceased

Insert the following signature block if power is to be signed by a corporate fiduciary.

2.45, **2.85**, Estate of **6.02**, Deceased

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By _____
2.61, **2.63**

Insert the following signature line if power is to be signed in connection with a muniment of title proceeding. Repeat for each devisee of an interest in this stock.

_____
9.56 or 9.139 or 9.181 or 10.101,
Devisee under the Will of **1.01**, Deceased

Insert the following signature line if power is to be signed in connection with a proceeding to declare heirship or small estate proceeding. Repeat for each heir.

_____
9.56 or 9.139 or 9.181 or 10.101, Heir of **6.02**,
Deceased

Insert the following signature line if power is to be signed by a joint tenant with right of survivorship who survived D. Repeat for each joint tenant. Each joint tenant must sign exactly as certificate is currently registered.

_____
9.54 or 9.137 or 9.179 or 10.90, Joint Tenant

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FORM 25—IRREVOCABLE BOND POWER

Prepare a separate signature line or signature block for each person signing this form.

Irrevocable Bond Power

For value received, the undersigned [does/do] hereby sell, assign, and transfer to **9.99 or 10.151**, **9.103 or 10.155**, **9.73**, **9.72 or 10.112**, **10.113**, **10.116** bonds of **9.71 or 10.02** in the principal amount of $**9.77 or 10.156**, Bond No. **9.78 or 10.115** standing in the name of **9.80 or 10.117** on the books of said Company.

The undersigned [does/do] hereby irrevocably constitute and appoint _____ _____ attorney to transfer the said bond(s) on the books of said Company, with full power of substitution in the premises.

DATED _____

In presence of _____

Insert the following signature line if power is to be signed by an individual executor or administrator.

_____
2.45 or 2.76, **2.85**, Estate of **6.02**, Deceased

Insert the following signature block if power is to be signed by a corporate fiduciary.

2.45, **2.85**, Estate of **6.02**, Deceased

By _____
2.61, **2.63**

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Insert the following signature line if power is to be signed in connection with a muniment of title proceeding. Repeat for each devisee of an interest in this bond.

_____

9.99 or 10.151, Devisee under the Will of **1.01**, Deceased

Insert the following signature line if power is to be signed in connection with a proceeding to declare heirship or small estate proceeding. Repeat for each heir.

_____

9.99 or 10.151, Heir of **6.02**, Deceased

Insert the following signature line if power is to be signed by a joint tenant with right of survivorship who survived D. Repeat for each joint tenant. Each joint tenant must sign exactly as bond is currently registered.

_____

9.97 or 10.140, Joint Tenant

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FORM 26—AFFIDAVIT AS TO DECEDENT'S DOMICILE

Affidavit of Domicile

STATE OF TEXAS)(
)(
COUNTY OF _____)(

2.45 or 2.61 or 2.76 or 2.101 or 9.54 or 9.56 or 9.97 or 9.99 or 9.137 or 9.139 or 9.181 or 10.90 or 10.101 or 10.140 or 10.151, after being duly sworn, stated that:

My address is **2.47 or 2.78 or 2.103 or 9.54 or 9.58 or 9.97 or 9.101 or 9.137 or 9.141 or 9.183 or 10.90 or 10.103 or 10.140 or 10.153**, **2.48 or 2.79 or 2.104 or 9.54 or 9.59 or 9.97 or 9.102 or 9.137 or 9.142 or 9.184 or 10.90 or 10.104 or 10.140 or 10.154**. I am personally familiar with the Estate of **6.02**, Deceased ("Decedent"). At the time of death the domicile and legal residence of Decedent was at **1.11**. Decedent was domiciled in the state of Texas since **1.14** and was not domiciled in any other state at the time of death.

The transfer of the securities being made by the undersigned is not a sale or exchange but is a distribution of assets of the estate.

It is hereby certified that the delivery and transfer of the attached certificate(s) is not subject to the New York Stock Transfer Tax under Section 28(d) of the Securities Exchange Act of 1934 and that no transaction subject to tax has occurred.

Insert the following signature line and jurat if affidavit is to be signed by an individual executor or administrator.

_____
2.45 or 2.76, **2.85**, Estate of **6.02**, Deceased

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SUBSCRIBED AND SWORN TO BEFORE ME by **2.45 or 2.76** on

_____.

_____
Notary Public, State of Texas

Insert the following signature block and jurat if affidavit is to be signed by a corporate fiduciary.

2.45, **2.85**, Estate of **6.02**, Deceased

By _____
2.61, **2.63**

SUBSCRIBED AND SWORN TO BEFORE ME by **2.61** on _____

_____.

_____
Notary Public, State of Texas

Insert the following signature line and jurat if affidavit is to be signed in connection with a muniment of title proceeding.

_____
9.56 or 9.99 or 9.139 or 9.181 or 10.101 or 10.151,
Devisee under the Will of **1.01**, Deceased

SUBSCRIBED AND SWORN TO BEFORE ME by **9.56 or 9.99 or 9.139 or 9.181 or 10.101 or 10.151** on _____.

_____
Notary Public, State of Texas

Insert the following signature line and jurat if affidavit is to be signed in connection with a proceeding to declare heirship or small estate proceeding.

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_____
2.101 or 9.56 or 9.99 or 9.139 or 9.181 or 10.101 or 10.151, Heir of **6.02**, Deceased

SUBSCRIBED AND SWORN TO BEFORE ME by **2.101 or 9.56 or 9.99 or 9.139 or 9.181 or 10.101 or 10.151** on _____.

_____
Notary Public, State of Texas

Insert the following signature line and jurat if affidavit is to be signed by a joint tenant with right of survivorship who survived D. Repeat for each joint tenant. Each joint tenant must sign exactly as certificate is currently registered.

_____
9.54 or 9.97 or 9.137 or 10.90 or 10.140, Joint Tenant

SUBSCRIBED AND SWORN TO BEFORE ME by **9.54 or 9.97 or 9.137 or 10.90 or 10.140** on _____.

_____
Notary Public, State of Texas

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FORM 27—EXTENSION OF TIME FOR FILING INVENTORY

Note: Some courts are reluctant to grant an extension of the duration indicated in this form. Determine local practice and make necessary modifications.

[**Caption. See Special Instruction 87.**]

Application for Extension of Time in Which to File Inventory, Appraisement, and List of Claims

2.29 or 2.45 or 2.76, 2.85 of this estate, ("Applicant") requests an extension of time within which to file the Inventory, Appraisement, and List of Claims ("Inventory") for this estate. Decedent died on **1.07**. Applicant is attempting to obtain adequate information on the nature, extent, and value of the assets of this estate but will not be able to conclude the preparation of the Inventory within the time prescribed by law. Since this information will be required for the preparation of Decedent's death tax returns, Applicant requests an extension of time until **26.28** (nine months from the date of Decedent's death) for the filing of the Inventory. This additional time is not requested by reason of any lack of diligence.

Applicant prays that this Court sign an order extending the date for filing the Inventory as requested.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order Extending Time in Which to File Inventory, Appraisement, and List of Claims

On this day the Court heard and considered the Application for Extension of Time in Which to File Inventory, Appraisement, and List of Claims filed on [**date**].

The application is found to be in order, and good cause has been shown to exist.

It is ORDERED that the date for filing the Inventory is extended to **26.28**.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 28—APPLICATION FOR PROBATE OF WILL (ADE)

This is a combination form that is not to be completely copied; rather, appropriate alternative paragraphs are to be selected. Each application *must* have paragraphs that are numbered 1 through 12, *but* only one of each numbered paragraph is to be used.

Leave blanks in the caption unless the docket number and court assignment appear on prior pleadings or orders of the court.

If the will cannot be produced in court, supplement this application as instructed in Special Instruction 85—Wills Not Produced.

[**Caption. See Special Instruction 87.**]

Application for Probate of [Will/Will and Codicil] and Issuance of Letters Testamentary

[**Name(s) of applicant(s); see 2.45(A), 2.45(B), 2.66(A)**] ("Applicant") furnishes/"Applicants" furnish] the following information to the Court for the probate of the [will/will and codicil] of **1.01** ("Decedent") and for issuance of letters testamentary to Applicant[s]:

¶1—Refer to 2.45 and 2.66(A) of MIL. If only one individual is named as executor, select the first alternative; if a corporate fiduciary is named as sole executor, select the second alternative; if two individuals are named as co-executors, select the third alternative; if an individual and a corporate fiduciary are named as co-executors, select the fourth alternative. For names, addresses, driver's license numbers, Social Security numbers, counties, and states of domicile, refer to 2.45–2.52 and 2.66(A) of MIL.

1. Applicant is an individual interested in this estate, domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on Applicant. [The last three numbers of Applicant's driver's license number are [**numbers**]./Applicant has not been issued a driver's license.] [The last three

numbers of Applicant's Social Security number are [**numbers**]./Applicant has not been issued a Social Security number.]

Or

1. Applicant is interested in this estate and is a [bank/trust company] domiciled in and situated at [**address**], [**county**] County, [**state**], the physical address at which service can be had on Applicant, and is acting herein by and through its duly authorized representative.

Or

1. [**Name**] is an individual interested in this estate, domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on [**name**]. [The last three numbers of [**name**]'s driver's license number are [**numbers**]./[**Name**] has not been issued a driver's license.] [The last three numbers of [**name**]'s Social Security number are [**numbers**]./[**Name**] has not been issued a Social Security number.] [**Name**] is an individual interested in this estate, domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on [**name**]. [The last three numbers of [**name**]'s driver's license number are [**numbers**]./[**Name**] has not been issued a driver's license.] [The last three numbers of [**name**]'s Social Security number are [**numbers**]./[**Name**] has not been issued a Social Security number.]

Or

1. [**Name**] is an individual interested in this estate, domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on [**name**]. [The last three numbers of [**name**]'s driver's license number are [**numbers**]./[**Name**] has not been issued a driver's license.] [The last three numbers of [**name**]'s Social Security number are [**numbers**]./[**Name**] has not been issued a

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Social Security number.] [**Name**] is interested in this estate and is a [bank/trust company] domiciled in and situated at [**address**], [**county**] County, [**state**], the physical address at which service can be had on [**name**], and is acting herein by and through its duly authorized representative.

2. Decedent died on **1.07** in **1.09**, **1.09** County, **1.09**, at the age of **1.10** years. The last three numbers of Decedent's driver's license number are [**numbers**], and the last three numbers of Decendent's Social Security number are [**numbers**].

> Use the following as ¶3 if the answer to 6.08 of MIL is *yes*; if the answer is *no*, refer to Special Instruction 15 and substitute the appropriate paragraph.

3. This Court has jurisdiction and venue because Decedent was domiciled and had a fixed place of residence in this county on the date of death.

4. Decedent owned [personal/real and personal] property described generally as **6.09** [**e.g.,** home, cash, securities, automobiles, livestock, household goods, personal effects] of a probable value in excess of $**6.10**.

5. Decedent left a valid will ("Will") dated **2.02**, which was never revoked and [is filed herewith/was previously delivered to the clerk of this Court]. [**Include if applicable:** Decedent left a valid codicil ("Codicil") dated **2.17**, which was never revoked and [is filed herewith/was previously delivered to the clerk of this Court].]

> ¶6—There are three separate paragraphs, but only the first two are numbered. Refer to 6.11 of MIL. Use the first alternative if only 6.11C is applicable; use the second alternative if 6.11B is applicable, and include the optional wording if 6.11C is applicable. Then refer to 6.12 of MIL and, if the answer is *yes*, add the unnumbered paragraph; if the answer is *no*, omit the unnumbered paragraph. If there is a codicil, information should be added here, substituting "Codicil" for "Will"; witness names for codicil are listed at 2.21 of MIL.

6. The names of the subscribing witnesses to the Will are **2.11** [**list all such witnesses**].

Or

6. The Will was wholly in the handwriting of Decedent, and Decedent's signature is subscribed thereto. [**Include if applicable:** The names of the subscribing witnesses to the Will are **2.11** [**list all such witnesses**].]

Include the following paragraph if applicable.

The Will was made self-proved in the manner prescribed by law.

¶7—Refer to 6.13 of MIL. Use the first alternative if 6.13B is applicable; use the second alternative if 6.13E is applicable.

7. No child or children were born to or adopted by Decedent after the date of the Will.

Or

7. After the date of the Will **3.52**, who survived Decedent, [was/were] [born to/ adopted by] Decedent.

¶8—Refer to 6.14 of MIL. Use the first alternative if 6.14A is applicable or if 6.14B is applicable and the answer to 3.25B is *no*; use the second alternative if 6.14B is applicable and the answer to 3.25B is *yes*. Repeat the second alternative if required for additional dissolved marriages.

8. After the date of Decedent's Will, no marriage of Decedent was dissolved.

Or

8. On or about **3.25A**, which date is after the date of Decedent's Will, Decedent's marriage to **3.21** was dissolved.

9. A necessity exists for the administration of this estate.

¶10—Refer to 2.57 of MIL regarding requirement of a bond.

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10. The [Will/Codicil] named Applicant[s] to serve [**include if bond was waived:** without bond or other security] as [executor/executors/executrix/executor and executrix, respectively,/executrices] but did not specify that Applicant[s] would be independent [executor/executors/executrix/executor and executrix, respectively/executrices], nor did Decedent specify that no action shall be had in any court in relation to the settlement of the estate other than the probating and recording of the [Will/Will and Codicil] and the return of an inventory, appraisement, and list of claims of the estate.

11. [Applicant is/Applicants are] Decedent's **2.50**, [is/are] qualified to be appointed as executor[s] of this estate, and [is/are] not disqualified by law to act as such.

> ¶12—Refer to 3.53 of MIL. If the answer is *no*, use the first alternative; if the answer is *yes*, use the second alternative. Repeat the second alternative if required for multiple devisees.

12. The [Will/Will and Codicil] did not name either the State of Texas, a governmental agency of the State of Texas, or a charitable organization as a devisee.

Or

12. The [Will/Codicil] named **3.58**, **3.61C**, [the State of Texas/a governmental agency of the State of Texas/a charitable organization], as a devisee.

[Applicant prays/Applicants pray] that citation issue as required by law to all persons interested in this estate; that the [Will/Will and Codicil] be admitted to probate; that letters testamentary be issued to Applicant[s]; and that all other orders be signed as the Court may deem proper.

Respectfully submitted,

> Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant(s).

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FORM 29—PROOF OF DEATH AND OTHER FACTS (ADE)

This is a combination form that is not to be completely copied; rather, appropriate alternative paragraphs are to be selected. Each Proof of Death and Other Facts *must* have paragraphs that are numbered 1 through 7, *but* only one of each numbered paragraph is to be used.

If the will cannot be produced in court, supplement this proof as instructed in Special Instruction 85—Wills Not Produced. Civil Practice & Remedies Code, Section 132.001.

[**Caption. See Special Instruction 87.**]

Proof of Death and Other Facts

On **6.25 3.83** ("Affiant") personally appeared in open court and, after being duly sworn, stated the following:

1. **6.02** ("Decedent") died on **1.07** in **1.09**, **1.09** County, **1.09**, at the age of **1.10** years, and four years have not elapsed since the date of Decedent's death.

Use the following as ¶2 if the answer to 6.08 of MIL is *yes*; if the answer is *no*, refer to Special Instruction 15 and substitute the appropriate paragraph.

2. Decedent was domiciled and had a fixed place of residence in this county at the date of death.

3. The document dated **2.02**, now shown to me and which purports to be Decedent's will ("Will"), was never revoked as far as I know. [**Include if D had a codicil:** The document dated **2.17**, now shown to me and which purports to be Decedent's codicil ("Codicil"), was never revoked as far as I know.]

4. A necessity exists for the administration of this estate.

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¶5—Refer to 6.13 of MIL. Use the first alternative if 6.13B is applicable; use the second alternative if 6.13E is applicable.

5. No child or children were born to or adopted by Decedent after the date of the Will.

Or

5. After the date of the Will **3.52**, who survived Decedent, [was/were] [born to/ adopted by] Decedent.

¶6—Refer to 6.14 of MIL. Use the first alternative if 6.14A is applicable or if 6.14B is applicable and the answer to 3.25B is *no*; use the second alternative if 6.14B is applicable and the answer to 3.25B is *yes*. Repeat the second alternative if required for additional dissolved marriages.

6. After the date of Decedent's Will, no marriage of Decedent was dissolved.

Or

6. On or about **3.25A**, which date is after the date of Decedent's Will, Decedent's marriage to **3.21** was dissolved.

7. **2.45**, Applicant[s] herein, [is/are] not disqualified by law from accepting letters testamentary or from serving as executor[s] of this estate and [is/are] entitled to such letters.

SIGNED on _____.

_____
3.83, Affiant
3.85
3.86

SUBSCRIBED AND SWORN TO BEFORE ME by **3.83** on _____ _____.

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Insert the following if the proof is to be sworn before the court clerk.

6.16
Clerk of the **6.03** Court of **6.04** County, Texas

By _____
Deputy

Insert the following if the proof is to be sworn before a notary.

_____
Notary Public, State of Texas

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FORM 30—RECEIPT AND RELEASE

Note: An independent executor may not be required to deliver property to a distributee without a signed receipt or other proof of delivery but may not require a waiver or release as a condition of delivery. Estates Code, Section 405.002.

[**Caption. See Special Instruction 87.**]

Receipt and Release

The undersigned hereby acknowledges receipt of the following, in full and complete satisfaction of that portion of this estate to which the undersigned is entitled:

List each asset paid or delivered to this heir or beneficiary.

This receipt is also a RELEASE of the estate and all persons acting for or on behalf of the estate with respect to any and all claims or demands that the undersigned may have with respect to the estate or any of its assets.

DATED _____.

_____
[**Name of heir or beneficiary**]

STATE OF TEXAS)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on _____ by [**name of heir or beneficiary**].

_____
Notary Public, State of Texas

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FORM 31—PROOF OF DEATH AND OTHER FACTS (MT)

This is a combination form that is not to be completely copied; rather, appropriate alternative paragraphs are to be selected. Each Proof of Death and Other Facts *must* have paragraphs that are numbered 1 through 8, *but* only one of each numbered paragraph is to be used.

If the will cannot be produced in court, supplement this proof as instructed in Special Instruction 85—Wills Not Produced. Civil Practice & Remedies Code, Section 132.001.

[**Caption. See Special Instruction 87.**]

Proof of Death and Other Facts

On **6.25 2.29 or 2.36 or 3.83** ("Affiant") personally appeared in open court and, after being duly sworn, stated the following:

¶1—Use the first alternative if filing will (and codicil) for probate within four years of D's death; use the second alternative if filing will (and codicil) for probate more than four years after date of D's death.

1. **6.02** ("Decedent") died on **1.07** in **1.09**, **1.09** County, **1.09**, at the age of **1.10** years, and four years have not elapsed since the date of Decedent's death.

Or

1. **6.02** ("Decedent") died on **1.07** in **1.09**, **1.09** County, **1.09**, at the age of **1.10** years. Although it has been more than four years since Decedent's death, Applicant is not in default in failing to present Decedent's [will/will and codicil] for probate within four years of Decedent's death.

Use the following as ¶2 if the answer to 6.08 of MIL is *yes*; if the answer is *no*, refer to Special Instruction 15 and substitute the appropriate paragraph.

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2. Decedent was domiciled and had a fixed place of residence in this county at the date of death.

3. The document dated **2.02**, now shown to me and which purports to be Decedent's will ("Will"), was never revoked as far as I know. [**Include if D had a codicil:** The document dated **2.17**, now shown to me and which purports to be Decedent's codicil ("Codicil"), was never revoked as far as I know.]

> ¶4—Refer to 6.13 of MIL. Use the first alternative if 6.13B is applicable; use the second alternative if 6.13E is applicable.

4. No child or children were born to or adopted by Decedent after the date of the Will.

Or

4. After the date of the Will **3.52**, who survived Decedent, [was/were] [born to/ adopted by] Decedent.

> ¶5—Refer to 6.14 of MIL. Use the first alternative if 6.14A is applicable or if 6.14B is applicable and the answer to 3.25B is *no*; use the second alternative if 6.14B is applicable and the answer to 3.25B is *yes*. Repeat the second alternative if required for additional dissolved marriages.

5. After the date of Decedent's Will, no marriage of Decedent was dissolved.

Or

5. On or about **3.25A**, which date is after the date of Decedent's Will, Decedent's marriage to **3.21** was dissolved.

> ¶6—Refer to 21.34 and 21.35 of MIL. If the answer to 21.34 is *no*, use the first alternative; if the answer to 21.35 is *yes*, use the second alternative.

6. Decedent did not apply for and receive Medicaid benefits on or after March 1, 2005.

Or

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6. The Texas Department of Aging and Disability Services has waived any claim against Decedent's estate.

¶7—Refer to 2.27 of MIL. If 2.27A or 2.27B is applicable, use the first alternative. If 2.27C is applicable, use the second alternative.

7. I have personal and full knowledge of the financial affairs of Decedent. There is no necessity for any administration of Decedent's estate, because there are no debts owed by Decedent that are not secured by liens on real estate.

Or

7. I have personal and full knowledge of the financial affairs of Decedent. There is no necessity for administration of this estate. [**State reason no administration needed, e.g.,** Although there are unpaid debts incurred by Decedent, they are unenforceable due to the statute of limitations.]

Continue with the following.

8. Citation has been served and returned in the manner and for the length of time required by the Texas Estates Code.

SIGNED on _____.

_____
2.29 or 2.36 or 3.83, Affiant
2.31 or 2.38 or 3.85
2.32 or 2.39 or 3.86

SUBSCRIBED AND SWORN TO BEFORE ME by **2.29 or 2.36 or 3.83** on _____.

Insert the following if the proof is to be sworn before the court clerk.

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6.16
Clerk of the **6.03** Court of **6.04** County, Texas

By _____
Deputy

Insert the following if the proof is to be sworn before a notary.

_____
Notary Public, State of Texas

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FORM 32—ORDER ADMITTING WILL TO PROBATE (MT)

Note: An increasing number of judges are requiring practitioners to include other or additional language in the orders for their courts. Determine local practice and comply with their idiosyncratic terminology.

If the will could not be produced in court, supplement this order as instructed in Special Instruction 85—Wills Not Produced.

[**Caption. See Special Instruction 87.**]

Order Admitting [Will/Will and Codicil] to Probate as a Muniment of Title

On this day the Court heard the Application for Probate of [Will/Will and Codicil] as a Muniment of Title filed by **2.29** ("Applicant") in the Estate of **6.02**, Deceased ("Decedent").

The Court heard the evidence and reviewed the will [**include if applicable:** , the codicil,] and the other documents filed herein and finds that the allegations contained in the application are true; that notice and citation have been given in the manner and for the length of time required by law; that Decedent is dead; that this Court has jurisdiction and venue of Decedent's estate; that Decedent left a will ("Will") dated **2.02**, [**include if applicable:** and a codicil ("Codicil") dated **2.17**, each] executed with the formalities and solemnities and under the circumstances required by law to make a valid [will/will and codicil]; that on **2.02** Decedent had attained the age of eighteen years and was of sound mind; that the [Will was/Will and Codicil were] not revoked by Decedent; that [four years have not elapsed since the date of Decedent's death on **1.07** [**include if applicable:** and before **6.23**, the date the application for probate was filed]/Applicant was not in default in failing to present the [Will/Will and Codicil] for probate within four years of Decedent's death on **1.07** and that the requirements of Texas Estates Code, Chapter 258, have been satisfied]; that no objection to or contest of the probate of the [Will/Will or Codicil] has been filed; that all the necessary proof required for the probate of the [Will/

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Will and Codicil] has been made; that the [Will is/Will and Codicil are] entitled to probate; that [Decedent did not apply for and receive Medicaid benefits on or after March 1, 2005/the Texas Department of Aging and Disability Services has waived any claim against Decedent's estate]; that [there are no unpaid debts owing by the estate of Decedent other than those secured by liens on real estate/[**state reason no administration needed, e.g.,** although there are unpaid debts incurred by Decedent, they are barred by the applicable statute of limitations]]; and that there is no necessity for administration of the estate.

It is ORDERED that the [Will is/Will and Codicil are] admitted to probate as a muniment of title only, and the clerk of this Court is ORDERED to record the [Will/Will and Codicil], together with the application, in the judge's probate docket of this Court, and this order shall constitute sufficient legal authority to all persons purchasing from or otherwise dealing with Decedent's estate and to those persons owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to Decedent's estate, for payment or transfer by them, without liability, to the persons described in the [Will/Will and Codicil].

The Court WAIVES the filing of a sworn affidavit stating specifically the terms of the [Will/Will and Codicil] that have been fulfilled and the terms of the [Will/Will and Codicil] that have been unfulfilled.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 33—ORDER ADMITTING WILL TO PROBATE (ADE)

Note: An increasing number of judges are requiring practitioners to include other or additional language in the orders for their courts. Determine local practice and comply with their idiosyncratic terminology.

Note: No appointment of appraisers is made in this order, and although this patronage system has been eliminated in almost all Texas counties you should check to see if it still exists in the county in which the proceedings have been filed.

If the will could not be produced in court, supplement this order as instructed in Special Instruction 85—Wills Not Produced.

[**Caption. See Special Instruction 87.**]

Order Admitting [Will/Will and Codicil] to Probate and Authorizing Letters Testamentary

On this day the Court heard the Application for Probate of [Will/Will and Codicil] and Issuance of Letters Testamentary filed by **2.45** ("Applicant") in the Estate of **6.02**, Deceased ("Decedent").

To complete the portions bracketed in the following paragraph, refer to the will itself and to 2.57 of MIL and select the appropriate alternatives.

The Court heard the evidence and reviewed the will [**include if applicable:** , the codicil,] and the other documents filed herein and finds that the allegations contained in the application are true; that notice and citation have been given in the manner and for the length of time required by law; that Decedent is dead and that four years have not elapsed since the date of Decedent's death on **1.07** [**include if applicable:** and before **6.23**, the date the application for probate was filed]; that this Court has jurisdiction and venue of Decedent's estate; that Decedent left a will ("Will") dated **2.02**, [**include if applicable:** and a codicil ("Codicil") dated **2.17**, each]

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executed with the formalities and solemnities and under the circumstances required by law to make a valid [will/will and codicil]; that on **2.02** Decedent had attained the age of eighteen years and was of sound mind; that the [Will was/Will and Codicil were] not revoked by Decedent; that no objection to or contest of the probate of the [Will/Will or Codicil] has been filed; that all the necessary proof required for the probate of the [Will/Will and Codicil] has been made; that the [Will is/Will and Codicil are] entitled to probate; that, in the Will, Decedent named **2.45** [**include if applicable:** to serve without bond] as [executor/executrix/executors/executrices/executor and executrix, respectively,] but did not specify that **2.45** would be independent [executor/executrix/executors/executrices/executor and executrix, respectively,] or otherwise provide for an independent administration of the estate; that **2.45** [is/are] duly qualified and not disqualified by law to act as such and to receive letters testamentary; that a necessity exists for the administration of this estate; and that no interested person has applied for the appointment of appraisers and none are deemed necessary and appointment of appraisers is waived by the Court.

It is ORDERED that the [Will is/Will and Codicil are] admitted to probate, and the clerk of this Court is ORDERED to record [the Will/the Will and the Codicil], together with the application, in the judge's probate docket of this Court.

To complete the portions bracketed in the following paragraph, refer to the will itself and to 2.57 of MIL and select the appropriate alternative.

It is ORDERED that [a bond in the sum of $_____ payable and conditioned as required by law shall be required, and that with the filing of the bond/no bond or other security is required] and upon the taking and filing of the oath required by law, letters testamentary shall issue to **2.45**, who [is/are] appointed as executor[s] of Decedent's will [**include if applicable:** , codicil,] and estate.

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SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

Forms 34 and 35 are reserved.

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FORM 36—SUPPLEMENTAL INVENTORY

[**Caption. See Special Instruction 87.**]

Supplemental Inventory

An Inventory, Appraisement, and List of Claims of this estate was filed on **6.87**. After the inventory was filed the following property, not included therein, came to the knowledge of the undersigned, who reports it herewith pursuant to the provisions of the Texas Estates Code:

Description of Additional Property *Fair Market Value*

Set forth a complete listing and valuation of all such property and, if decedent was married at the time of death, which portion of the property, if any, is separate and which portion of the property, if any, is community.

This Supplemental Inventory should be approved and ordered entered of record.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

Insert the following affidavit for each individual.

STATE OF TEXAS)(
)(
COUNTY OF **6.04**)(

I, **2.29 or 2.45 or 2.76**, having been duly sworn, hereby state on my oath that the foregoing Supplemental Inventory is true and complete to the best of my knowledge and belief.

_____
2.29 or 2.45 or 2.76, **2.85**

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SUBSCRIBED AND SWORN TO BEFORE ME by **2.29 or 2.45 or 2.76** on

_____.

_____
Notary Public, State of Texas

Insert the following affidavit for a corporate fiduciary.

STATE OF TEXAS)(
)(
COUNTY OF _____)(

I, **2.61**, having been duly sworn, hereby state on oath that I am a **2.63** of **2.45**, that I have been fully authorized to act herein for and on behalf of said corporate fiduciary, and that the foregoing Supplemental Inventory is true and complete.

2.45, **2.85**

By _____
2.61, **2.63**

SUBSCRIBED AND SWORN TO BEFORE ME by **2.61** on _____

_____.

_____
Notary Public, State of Texas

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order Approving Supplemental Inventory

The Supplemental Inventory of the above estate filed on [**date**] having been filed and presented, and the Court having considered and examined the same and being satisfied that it

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should be approved, and there having been no objections made thereto, it is in all respects APPROVED and ORDERED entered of record.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 37—AFFIDAVIT REGARDING DEBTS AND TAXES

Affidavit Regarding Debts and Taxes

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day personally appeared **2.45 or 2.61 or 2.29 or 2.76 or 2.101** and, after being duly sworn, stated that:

My name is **2.45 or 2.61 or 2.29 or 2.76 or 2.101**. I am familiar with the Estate of **6.02**, Deceased, who died on **1.07**.

There are sufficient funds for the payment of all debts, expenses, and taxes due in connection with this estate, including federal estate taxes, if any.

Insert the following signature line for an individual.

_____
2.45 or 2.29 or 2.76 or 2.101

Insert the following signature block for a corporate fiduciary.

2.45, **2.85**

By _____
2.61, **2.63**

SUBSCRIBED AND SWORN TO BEFORE ME by **2.45 or 2.61 or 2.29 or 2.76 or 2.101** on _____.

_____
Notary Public, State of Texas

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Insert the following acknowledgment for each individual.

STATE OF TEXAS)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on _____ by

2.45 or 2.29 or 2.76 or 2.101.

_____
Notary Public, State of Texas

Insert the following acknowledgment for a corporate fiduciary.

STATE OF TEXAS)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on _____ by

2.61, **2.63** of **2.45**.

_____
Notary Public, State of Texas

Form 38 is reserved.

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FORM 39—APPLICATION FOR COURT-APPROVED SALE OF REAL PROPERTY

The legal description of and D's interest in the property should be prepared on a separate page and designated as Exhibit A.

Form 40 is the statement showing the condition of the estate and its supporting affidavit. It should be prepared on separate page(s) and designated as Exhibit B.

[**Caption. See Special Instruction 87.**]

Application for Sale of Real Property

2.45 or 2.76, **2.85** of this estate, ("Applicant") furnishes the following information to the Court:

1. The Inventory, Appraisement, and List of Claims of this estate has been approved.

2. A full legal description of the real property ("the Property") sought to be sold and a description of the estate's ownership interest in that property is attached to this application, designated as Exhibit A, and made a part hereof for all purposes.

3. A statement, verified by affidavit, showing fully and in detail the condition of the estate, the charges and claims that have been approved or established by suit or that have been rejected and may yet be established, the amount of each claim, the property of the estate remaining on hand and liable for the payment of those claims, and all other facts tending to show the necessity and advisability of this proposed sale, is attached to this application, designated as Exhibit B, and made a part hereof for all purposes.

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4. It is deemed to be in the best interest of the estate to sell the estate's interest in the Property, and it is necessary and advisable to sell the estate's interest in the Property in order to pay [**include one or more as applicable:** expenses of administration/ funeral expenses/expenses of last illness/allowances/claims against the estate].

> The terms of sale are subject to the limitations of Chapter 356 of the Estates Code.

5. It will be in the best interest of the estate for the Property to be sold at a private sale [for cash/on credit under the following terms: [**specify**]].

Applicant requests that citation be issued to all persons interested in this estate, as required by law, and that the Court sign an order authorizing Applicant to sell the estate's interest in the Property described in Exhibit A at a private sale on the terms set forth above, and such other orders as the Court may deem proper.

Respectfully submitted,

> Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

> Insert the following for each individual.

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day personally appeared **2.45** **or** **2.76**, known to me to be the **2.85** of the Estate of **6.02**, Deceased, and, after being duly sworn by me, stated that the facts contained in the application to which this affidavit is attached are true and correct.

_____
2.45 **or** **2.76**, **2.85**

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SUBSCRIBED AND SWORN TO BEFORE ME by **2.45 or 2.76** on

_____.

_____
Notary Public, State of Texas

Insert the following for a corporate fiduciary.

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day personally appeared **2.61**, **2.63** of **2.45**, **2.85** of the Estate of **6.02**, Deceased, and, after being duly sworn by me, stated that the facts contained in the application to which this affidavit is attached are true and correct.

2.45, **2.85**

By _____
2.61, **2.63**

SUBSCRIBED AND SWORN TO BEFORE ME by **2.61** on _____

_____.

_____
Notary Public, State of Texas

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FORM 40—VERIFIED EXHIBIT TO BE ATTACHED TO APPLICATION FOR COURT-APPROVED SALE OF PROPERTY

This form is to be attached to Form 39 (Application for Court-Approved Sale of Real Property) and Form 47 (Application for Court-Approved Sale of Personal Property). Be sure to attach the legal description of the property as Exhibit A to Form 39.

Verified Exhibit Showing Condition of the Estate

STATE OF TEXAS)(
)(
COUNTY OF **6.04**)(

BEFORE ME, the undersigned authority, on this day personally appeared **2.45 or 2.61**, **2.63** of **2.45 or 2.76** ("Affiant") and, after being duly sworn, stated that:

1. **2.45 or 2.76** is the duly appointed and qualified **2.85** of the Estate of **6.02**, Deceased, all of the facts set forth herein and in the application to which this exhibit is attached are true and correct, and in support of the Application for Sale of Property, this exhibit is submitted to the Court to show fully and in detail the condition of the estate, as follows:

   a. *Charges and Claims*

   The following are all of the charges and claims against the estate that have been approved or established by suit or have been rejected and may yet be established:

Nature of Claim or Charge	*Approved/Rejected*	*Amount*
For each item, specify the nature, whether approved or rejected, and the amount.		
Total Amount of Unpaid Charges and Claims		$[**amount**]

b. *Property Remaining on Hand*

The following is a full and complete list of all property owned by the estate still remaining on hand and liable for the payment of the above charges and claims:

Description of Property	*Value of Property*
For each item, specify the description and value.	
Total Value of Property Remaining on Hand	$[**amount**]

2. The sale sought in the foregoing Application for Sale of Property is deemed to be in the best interest of the estate and is necessary and advisable in order to pay [**include one or more as applicable:** expenses of administration/funeral expenses/ expenses of last illness/allowances/claims against the estate].

Insert the following signature line for each individual.

_____
2.45 or 2.76, Affiant

Insert the following signature block for a corporate fiduciary.

_____
2.45, **2.85**

By _____
2.61, **2.63**

SUBSCRIBED AND SWORN TO BEFORE ME by **2.45 or 2.61 or 2.76** on _____.

_____
Notary Public, State of Texas

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FORM 42—ORDER PERMITTING SALE OF REAL PROPERTY

The reason for the sale must be identical to the reason specified in the Application for Sale of Real Property (Form 39).

The terms of sale are generally identical to the terms specified in that application but are discretionary with the court as long as they comply with Estates Code, Chapter 356.

A copy of the description of the property must be designated as "Exhibit A" and be attached to all copies of this order.

[**Caption. See Special Instruction 87.**]

Order of Sale of Real Property

On this day the Court considered the Application for Sale of Real Property filed on [**date**] and finds that citation has been issued and served as required by law; that the application is accompanied by an exhibit, verified by affidavit, showing the condition of the estate, and the application and exhibit meet all requirements of law; [that, at a hearing, the Court determined that a sale should be made/that no hearing was requested or necessary/that no opposition to the sale has been made]; that the real property to be sold ("the Property") is fully described in Exhibit A attached to and made a part of this order; that the application should be granted and the sale of the Property should be made at a private sale; that it is in the best interest of the estate for the Property to be sold; that the sale is necessary and advisable in order to pay [**include one or more as applicable:** expenses of administration/funeral expenses/expenses of last illness/ allowances/claims against the estate].

The Court, after examining the general bond of **2.45 or 2.76**, **2.85** of this estate, finds that the amount of the bond is [sufficient as required by law at this time/insufficient and shall be increased to $[**an amount equal to or greater than the amount of liquid assets in the estate after receiving the proceeds of the sale of the real property**]].

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It is ORDERED that the Property described in the attached Exhibit A shall be sold at a private sale [for cash/on credit under the following terms: [**specify**]].

It is ORDERED that, after the sale has been made, a Report of Sale shall be filed and returned in accordance with law.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 43—REPORT TO COURT OF SALE OF REAL PROPERTY

Attach a copy of the description of the property as Exhibit A. Attach a copy of the settlement statement as Exhibit B. Attach a copy of the sales contract as Exhibit C. Attach supporting appraisals and items required by judge, if any, as Exhibit D.

If D died on or after September 1, 2019, select the bracketed language referring to a contract for sale.

[**Caption. See Special Instruction 87.**]

Report of [Contract for] Sale of Real Property

2.45 or 2.76, **2.85** of this estate, reports the following:

1. The Order of Sale of Real Property in this estate is dated **6.107**.

2. A description of the property [**include if D died on or after September 1, 2019:** being] sold is attached and designated as Exhibit A.

3. The property was [sold at a private sale/placed under contract] on **6.108** at **6.109**.

4. The name of the purchaser is **6.111**.

5. The total sales price of the property [sold/placed under contract] was $**6.112**, less estimated costs and expenses of sale in the sum of $**6.113**, leaving a net sales price of $**6.114**. The settlement statement is attached as Exhibit B.

6. This sale is in the best interest of the estate. As specified in the contract, a copy of which is attached as Exhibit C, the following terms apply:

Use the identical terms specified in the Order of Sale (Form 42).

7. The purchaser is ready to comply with the Order of Sale of Real Property.

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8. All the facts set forth herein are true and correct.

Insert the following signature line for each individual.

_____

2.45 or 2.76, 2.85

Insert the following signature block for a corporate fiduciary.

2.45, 2.85

By _____

2.61, 2.63

SUBSCRIBED AND SWORN TO BEFORE ME by **2.45 or 2.61 or 2.76** on

_____.

_____

Notary Public, State of Texas

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FORM 44—ORDER CONFIRMING OR APPROVING SALE OF REAL PROPERTY

Attach the legal description of the property as Exhibit A.

If D died before September 1, 2019, this order *confirms* the sale. If D died on or after that date, the order *approves* the sale. If D died on or after that date, select the bracketed language referring to a contract for sale and a proposed sale.

[**Caption. See Special Instruction 87.**]

Order [Confirming/Approving] Sale of Real Property [and Increasing Bond]

On this day the Court heard and considered the Report of [Contract for] Sale of Real Property filed on [**date**] ("the Report"). The Court finds that at least five days have expired since the filing of the Report and that the real property has been [sold at a private sale/placed under contract] for a fair price and the [sale was/proposed sale is] in the best interest of the estate, properly made, and in conformity with law. The property is described on the page attached hereto, designated as Exhibit A and made a part of this order.

The terms of sale should be identical to the terms specified in the Report of [Contract for] Sale (Form 43), but this is up to the discretion of the court.

It is ORDERED that the sale described in the Report is hereby [APPROVED and CONFIRMED/APPROVED] and conveyance of the property is authorized upon compliance by the purchaser with the terms of sale, which sale is to be [for cash/on credit under the following terms: [**specify**]].

IT IS FURTHER ORDERED that the title company shall not disburse any proceeds to the **2.85** until the increased bond is approved by the Court.

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SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 45—DEED FOR SALE OF REAL PROPERTY FOLLOWING COURT APPROVAL OF SALE

Attach a proper legal description of the property as Exhibit A.

The notice must be in 12-point bold-faced type or 12-point uppercase letters.

Deed

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

STATE OF TEXAS)(
)(KNOW ALL MEN BY THESE PRESENTS THAT:
COUNTY OF 7.11)(

Whereas, the Estate of **6.02**, Deceased ("the Estate"), now pending in the **6.03** Court of **6.04** County, Texas ("the Court"), under Docket No. **6.01**, owns an interest in the real property described on the page attached and designated as Exhibit A, reference to which is here made for all purposes, ("the Property"); and

Whereas, **2.45 or 2.76**, the duly appointed, qualified, and acting **2.85** of the Estate, determined that the sale of the Property is in the best interest of the Estate and thereafter made application to the Court for an order to sell the Property; and

Whereas, the Court made and signed an order, dated **6.107**, directing the sale of the Property, after which, on **6.108**, and pursuant to such order, **2.45 or 2.76** sold the Property at a private sale to **6.111** ("Grantee"); and

Whereas, the Report of Sale in this proceeding was filed on **6.110**, after which date the sale was in all respects confirmed by an order of the Court signed on **6.116**; and

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Whereas, Grantee has complied with the terms of the sale.

This deed assumes the sale was made for cash. If it was made for part cash and part credit, appropriate changes must be made, a vendor's lien *must* be retained, and the purchaser must also give a deed of trust as additional security. In either situation, the actual consideration and terms should be specified.

NOW THEREFORE, **2.45 or 2.76**, as **2.85** of the Estate of **6.02**, Deceased, for and in consideration of the sum of [**number**] Dollars ($[**amount**]), paid by Grantee, the receipt of which is hereby acknowledged, [has/have] GRANTED, SOLD, AND CONVEYED and by these presents [do/does] GRANT, SELL, AND CONVEY unto Grantee all of the real property in **7.11** County, Texas, described in the attached Exhibit A.

TO HAVE AND TO HOLD the above-described premises, together with all and singular the rights and appurtenances thereto in any way belonging, unto Grantee and Grantee's heirs and assigns, forever.

No warranty clause should be added.

EXECUTED on _____.

Insert the following signature line if to be signed by an individual.

_____
2.45 or 2.76, **2.85** of the Estate of **6.02**,
Deceased

Insert the following signature block if to be signed by a corporate fiduciary.

2.45, **2.85** of the Estate of **6.02**, Deceased

By _____
2.61, **2.63**

Use the following acknowledgment for an individual executor or administrator.

STATE OF TEXAS)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on _____ by **2.45 or 2.76** as **2.85** of the Estate of **6.02**, Deceased.

_____
Notary Public, State of Texas

Use the following acknowledgment for a corporate fiduciary.

STATE OF TEXAS)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on _____ by **2.61**, **2.63** of **2.45**, **2.85** of the Estate of **6.02**, Deceased.

_____
Notary Public, State of Texas

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FORM 46—APPLICATION AND ORDER TO SET ASIDE ORDER CONFIRMING OR APPROVING SALE OF REAL PROPERTY

Attach a proper legal description of the property as Exhibit A.

If D died before September 1, 2019, the prior order *confirmed* the sale. If D died on or after that date, the order *approved* the sale. If D died on or after that date, select the bracketed language referring to a contract for sale.

[**Caption. See Special Instruction 87.**]

Application to Set Aside Report of [Contract for] Sale and Order [Confirming/Approving] Sale

2.45 or 2.76, **2.85** of this estate, ("Applicant") furnishes the following information to the Court:

1. On **6.107**, this Court signed and entered an Order of Sale of Real Property, directing Applicant to sell the real property ("the Property") described in the attached Exhibit A.

2. Pursuant to that order, Applicant entered into a contract with **6.111** ("Purchaser") to sell the Property, as described in a Report of [Contract for] Sale previously filed on **6.110**.

3. On **6.116** this Court signed and entered an Order [Confirming/Approving] Sale in which Applicant was directed to convey the Property to Purchaser.

4. This sale has not been consummated, and it cannot be consummated because Purchaser is unable to consummate the purchase.

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5. For Applicant to be able to negotiate with other potential purchasers of the Property, it would be desirable for the Report of [Contract for] Sale and Order [Confirming/Approving] Sale, previously entered in this cause, to be set aside.

Applicant requests this Court to sign an order setting aside and holding for naught the above-described Report of [Contract for] Sale and Order [Confirming/Approving] Sale.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order Setting Aside Report of [Contract for] Sale and Order [Confirming/Approving] Sale

On this day the Court heard and considered the Application to Set Aside Report of [Contract for] Sale filed on **6.110** and Order [Confirming/Approving] Sale entered on **6.116**, and the Court finds that the application should be granted.

It is ORDERED that the above-described Report of [Contract for] Sale and Order [Confirming/Approving] Sale are hereby set aside and held for naught.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 47—APPLICATION FOR COURT-APPROVED SALE OF PERSONAL PROPERTY

Form 40 is the statement showing the condition of the estate and its supporting affidavit. It should be prepared on separate page(s) and attached to the application.

Note: Estates Code, Chapter 356, Subchapter D, has special requirements if sale of livestock is desired.

[**Caption. See Special Instruction 87.**]

Application for Sale of Personal Property under Section 356.101 of the Estates Code

2.45 or 2.76, **2.85** of this estate, ("Applicant") furnishes the following information to the Court:

1. The Inventory, Appraisement, and List of Claims of this estate has been approved.

2. The following described personal property ("the Property") belonging to this estate should be sold because it would be in the best interest of the estate to do so in order that the proceeds of such sale may be used to pay [**include one or more as applicable:** expenses of administration/funeral expenses/expenses of last illness/allowances/claims against the estate] as follows:

Describe the property to be sold.

3. The Property is not the kind of property required to be sold under Section 356.051 of the Texas Estates Code, nor is it exempt property, nor is it in the class of specific legacies.

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4. The Property should be sold at a private sale [for cash/on credit under the following terms: [**specify**]].

5. A statement, verified by affidavit, showing fully and in detail the condition of the estate, the charges and claims that have been approved or established by suit or that have been rejected and may yet be established, the amount of each claim, the property of the estate remaining on hand and liable for the payment of those claims, and all other facts tending to show the necessity and advisability of this proposed sale, is attached to this application and made a part hereof for all purposes.

Applicant requests that citation be issued to all persons interested in this estate, as required by law, and that the Court sign an order authorizing Applicant to sell the estate's interest in the above-described personal property at a private sale on the terms set forth above, and such other orders as the Court may deem proper.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

Insert the following for each individual.

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day personally appeared **2.45 or 2.76**, known to me to be the **2.85** of the Estate of **6.02**, Deceased, and, after being duly sworn by me, stated that the facts contained in the application to which this affidavit is attached are true and correct.

_____
2.45 or 2.76, 2.85

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SUBSCRIBED AND SWORN TO BEFORE ME by **2.45 or 2.76** on

_____.

_____
Notary Public, State of Texas

Insert the following for a corporate fiduciary.

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day personally appeared **2.61**, **2.63** of **2.45**, **2.85** of the Estate of **6.02**, Deceased, and, after being duly sworn by me, stated that the facts contained in the application to which this affidavit is attached are true and correct.

2.45, **2.85**

By _____
2.61, **2.63**

SUBSCRIBED AND SWORN TO BEFORE ME by **2.61** on _____

_____.

_____
Notary Public, State of Texas

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FORM 48—ORDER PERMITTING SALE OF PERSONAL PROPERTY

The reason for the sale must be identical to the reason in the Application for Sale of Personal Property (Form 47).

The terms of the sale are generally identical to the terms specified in that application but are discretionary with the court as long as they comply with Estates Code, Chapter 356, Subchapter C.

Note: Estates Code, Chapter 356, Subchapter D, has special requirements for sale of livestock.

[**Caption. See Special Instruction 87.**]

Order of Sale of Personal Property under Section 356.101 of the Estates Code

On this day the Court considered the Application for Sale of Personal Property under Section 356.101 of the Texas Estates Code filed on [**date**]. The Court finds that citation has been issued and served as required by law; that the application is accompanied by an exhibit, verified by affidavit, showing the condition of the estate, and the application and exhibit meet all requirements of law; [that, at a hearing, the Court determined that a sale should be made/that no hearing was requested or necessary/that no opposition to the sale has been made]; that the personal property sought to be sold ("the Property") belongs to this estate and does not include any exempt property or specific legacies; that the application should be granted and the sale of the Property should be made at a private sale; that it is in the best interest of this estate for the Property to be sold; that the sale is necessary and advisable in order to pay [**include one or more as applicable:** expenses of administration/funeral expenses/expenses of last illness/allowances/claims against the estate].

It is ORDERED that the Property described hereafter shall be sold [for cash/on credit under the following terms: [**specify**]].

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The Property to be sold is described as follows:

Describe the property to be sold.

It is ORDERED that, after the sale has been made, a Report of Sale shall be filed and returned in accordance with law.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 49—REPORT TO COURT OF SALE OF PERSONAL PROPERTY

Note: Estates Code, Chapter 356, Subchapter D, has special requirements for sale of livestock. If livestock was sold through a commission merchant, the commission is limited to five percent of the sales price, and a verified copy of the merchant's account of sale is to be attached.

If D died on or after September 1, 2019, select the bracketed language referring to a contract for sale.

[**Caption. See Special Instruction 87.**]

Report of [Successful Bid or Contract for] Sale of Personal Property

2.45 or 2.76, **2.85** of this estate, reports the following:

1. The Order of Sale of Personal Property in this estate is dated **6.91**.

2. A description of the property [**include if D died on or after September 1, 2019:** being] sold ("the Property") is as follows:

Describe the property. Use the identical description contained in the Order of Sale (Form 48).

3. The Property was [sold at a private sale/placed under contract] on **6.92**.

4. The name of the purchaser is **6.93**.

5. The total sales price of the Property [sold/placed under contract] was $**6.94**, less estimated costs and expenses of sale in the sum of $**6.95**, leaving a net sales price of $**6.96**. [**Include if applicable:** A copy of the sales receipt is attached as Exhibit A.]

6. This sale is in the best interest of the estate, the following terms apply:

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Use the identical terms specified in the Order of Sale (Form 48).

7. The purchaser is ready to comply with the Order of Sale of Personal Property.

8. All the facts set forth herein are true and correct.

Insert the following signature line for each individual.

_____

2.45 or 2.76, 2.85

Insert the following signature block for a corporate fiduciary.

2.45, 2.85

By _____

2.61, 2.63

SUBSCRIBED AND SWORN TO BEFORE ME by **2.45 or 2.61 or 2.76** on

_____.

_____

Notary Public, State of Texas

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FORM 50—ORDER CONFIRMING OR APPROVING SALE OF PERSONAL PROPERTY

The terms of sale should be identical to the terms specified in the Report of [Successful Bid or Contract for] Sale of Personal Property (Form 49), but this is up to the discretion of the court.

If D died before September 1, 2019, this order *confirms* the sale. If D died on or after that date, the order *approves* the sale. If D died on or after that date, select the bracketed language referring to a contract for sale and a proposed sale.

[**Caption. See Special Instruction 87.**]

Order [Confirming/Approving] Sale of Personal Property

On this day the Court heard and considered the Report of [Contract for] Sale of Personal Property filed on [**date**] ("the Report"). The Court finds that at least five days have expired since the filing of the Report and that the personal property has been [sold at private sale/placed under contract] for a fair price and the [sale was/proposed sale is] in the best interest of the estate, properly made, and in conformity with law. The property is described as follows:

Describe the property sold. Use the identical description contained in the Order of Sale (Form 48).

It is ORDERED that the sale described in the Report is hereby [APPROVED and CONFIRMED/APPROVED]. Upon compliance by the purchaser with the terms of sale, which sale is to be [for cash/on credit under the following terms: [**specify**]], right and title of the estate to the personal property shall vest in the purchaser, **6.93**, without further action.

SIGNED on _____.

_____
Judge Presiding

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Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 51—APPLICATION FOR COURT-APPROVED DISPOSITION OF PERSONAL EFFECTS

[**Caption. See Special Instruction 87.**]

Application to Dispose of Personal Effects

2.45 or 2.76, **2.85** of this estate, ("Applicant") furnishes the following information to the Court:

1. The Inventory, Appraisement, and List of Claims of this estate has been approved.

2. At the time of Decedent's death, Decedent owned clothing, personal effects, household implements, and other similar personal property having no substantial commercial value and that should be donated to one or more charitable institutions or otherwise disposed of promptly.

Applicant requests the Court to sign an order authorizing the disposition of all of such clothing, personal effects, household implements, and other similar personal property of no substantial commercial value belonging to this estate.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

© STATE BAR OF TEXAS

Order Approving Application to Dispose of Personal Effects

On this day the Court heard and considered the Application to Dispose of Personal Effects, and the Court is of the opinion that the application should be granted.

It is ORDERED that the **2.85** of this estate is hereby authorized and shall have full discretion to give Decedent's clothing, personal effects, household implements, and other similar items of no substantial commercial value to charitable institutions or otherwise dispose of such property.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 52—APPLICATION FOR SALE OF PERSONAL PROPERTY LIKELY TO PERISH OR WASTE OR DETERIORATE IN VALUE

[**Caption. See Special Instruction 87.**]

Application for Sale of Personal Property under Section 356.051 of the Estates Code

2.45 or 2.76, **2.85** of this estate, ("Applicant") furnishes the following information to the Court:

1. The Inventory, Appraisement, and List of Claims of this estate has been approved.

2. This application is made pursuant to the provisions of Section 356.051 of the Texas Estates Code.

3. The following described personal property ("the Property") belonging to this estate should be sold promptly because it [is liable to perish, waste, or deteriorate in value/ will be an expense or disadvantage to the estate if kept]:

Describe the property to be sold.

4. The Property is not exempt property, it is not subject to a specific legacy, and it is not necessary to carry on a farm, ranch, factory, or other business that is thought best to operate.

5. The Property should be sold at a private sale for cash or on credit not to exceed six months.

Applicant requests the Court to sign an order authorizing the prompt sale of the above-described personal property with such other orders as the Court may deem proper.

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Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order of Sale of Personal Property under Section 356.051 of the Estates Code

On this day the Court heard and considered the Application for Sale of Personal Property under Section 356.051 of the Texas Estates Code. After hearing the evidence in support of the application, the Court finds that no additional bond shall be required at this time and that the personal property sought to be sold should be sold at a private sale and without further delay because it [is liable to perish, waste, or deteriorate/will be an expense or disadvantage to the estate if kept].

It is ORDERED that the following described property shall be sold by the **2.85** of this estate promptly at a private sale for cash or on credit not to exceed six months:

Describe the property to be sold.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

© STATE BAR OF TEXAS

FORM 53—APPLICATION FOR FAMILY ALLOWANCE

This is a combination form that is not to be completely copied; rather, appropriate alternate paragraphs are to be selected. Each Application for Family Allowance *must* have paragraphs that are numbered 1 through 3, *but* only one of each numbered paragraph is to be used.

[**Caption. See Special Instruction 87.**]

Application for Family Allowance

2.45 or 2.76, **2.85** of this estate, ("Applicant") furnishes the following information to the Court:

¶1—Refer to 6.88 and 6.89 of MIL. Use the first alternative if 6.88 is applicable; use the second alternative if 6.89 is applicable.

1. The Inventory, Appraisement, and List of Claims of this estate has been approved.

Or

1. The Affidavit in Lieu of Inventory, Appraisement, and List of Claims of this estate has been filed.

2. **6.02** ("Decedent") was survived by [**include as applicable: 3.03** ("Decedent's Surviving Spouse") [and]/**3.37**, minor [child/children] [and]/**3.37**, [an adult incapacitated child who was/adult incapacitated children who were] being supported by Decedent at the time of Decedent's death]. Decedent's [**include as applicable:** Surviving Spouse [and]/minor [child/children] [and]/adult incapacitated [child/children]] [do/does] not have separate property adequate for [his/her/their] maintenance.

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¶3—*Note:* Select applicable wording from the bracketed portion, considering the condition of the estate and the method of payment desired by D's family.

3. The amount of the family allowance should be determined by the facts and circumstances now existing and those anticipated to exist during the first year after Decedent's death, and that allowance should be in the amount of $[**amount**], payable [in a lump sum/in monthly installments of $[**amount**] each].

Applicant requests the Court to sign an order to set the amount of the family allowance and specify the fund or other property from which the allowance should be paid.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order for Family Allowance

On this day the Court heard and considered the Application for Family Allowance. The Court finds that a fair and reasonable allowance should be paid for the support of Decedent's [**include as applicable:** Surviving Spouse [and]/minor [child/children] [and]/incapacitated adult [child/children]], based on the facts now existing and those expected to exist during the first year after the death of Decedent, in the sum of $_____.

It is ORDERED that a family allowance of $_____ shall be paid [in a lump sum/in monthly installments of $_____ each] to Decedent's [**include as applicable:** Surviving Spouse, **3.03**, [and]/minor [child/children] [and]/incapacitated adult [child/children]] and that the **2.85** pay the allowance from the funds belonging to the estate.

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SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

© STATE BAR OF TEXAS

FORM 54—APPLICATION TO SET ASIDE EXEMPT PROPERTY

This is a combination form that is not to be completely copied; rather, appropriate paragraphs are to be selected, and only one of each numbered paragraph is to be used.

[**Caption. See Special Instruction 87.**]

Application to Set Aside Exempt Property

2.45 or 2.76, **2.85** of this estate, ("Applicant") furnishes the following information to the Court:

¶1—Refer to 6.88 and 6.89 of MIL. Use the first alternative if 6.88 is applicable; use the second alternative if 6.89 is applicable.

1. The Inventory, Appraisement, and List of Claims of this estate has been approved.

Or

1. The Affidavit in Lieu of Inventory, Appraisement, and List of Claims of this estate has been filed.

¶2—If D's surviving spouse is *not* the parent of all of the children or if some children are adults and some are minors, appropriate changes must be made.

2. **6.02** ("Decedent") was survived by [**3.03** ("Decedent's Surviving Spouse")/**3.37**, [child/children]/**3.03** ("Decedent's Surviving Spouse") and by **3.37**, [child/children]]. [**Include if D's surviving spouse was the parent of the child(ren):** Decedent's Surviving Spouse is the parent of the [child/children].]

Include ¶3 through ¶5 if D left a homestead and is survived by a spouse or minor child.

3. The following real property ("the Homestead") belonging to the estate is exempt property described by Section 41.001 of the Texas Property Code:

Give the legal description of the homestead.

4. The Homestead should be set aside for the use and benefit of [Decedent's Surviving Spouse/**3.37**, Decedent's minor [child/children],/Decedent's Surviving Spouse and **3.37**, Decedent's minor [child/children],] pursuant to Section 353.051(a)(1) of the Texas Estates Code.

5. The Homestead should be delivered to [Decedent's Surviving Spouse/the guardian of Decedent's minor [child/children]].

6. The following personal property ("the Other Exempt Property") belonging to the estate is exempt property described by Section 42.002(a) of the Texas Property Code:

Give a general description of the exempt personal property.

7. The Other Exempt Property should be set aside for the use and benefit of [**include as applicable:** Decedent's Surviving Spouse/[and]/**3.37**, Decedent's minor [child/children],/ [and]/**3.37**, Decedent's unmarried adult [child/children] remaining with Decedent's family,/[and]/**3.37**, other adult incapacitated [child/children] of Decedent,] pursuant to Section 353.051(a)(2) of the Texas Estates Code.

8. The Other Exempt Property should be delivered to [**include as applicable:** Decedent's Surviving Spouse/[and]/the guardian of Decedent's minor [child/children]/[and]/Decedent's unmarried adult [child/children] remaining with Decedent's family/[and]/the guardian of Decedent's adult incapacitated [child/children] or other appropriate person as determined by the Court].

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Applicant requests the Court to enter an order setting aside the Homestead and Other Exempt Property for the use and benefit of Decedent's [Surviving Spouse/[child/children]/Surviving Spouse and [child/children].

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order to Set Aside Exempt Property

On this day the Court heard the Application to Set Aside Exempt Property, and the Court finds that the application is true and correct and should be granted.

Include the following two paragraphs if D left a homestead and surviving spouse and/or minor child.

It is ORDERED that the Homestead is hereby set aside for the use and benefit of Decedent's [Surviving Spouse/minor [child/children]/Surviving Spouse and minor [child/children]]:

Describe the homestead to be set aside.

It is ORDERED that the Homestead shall be delivered by the **2.85**, without delay, to [Decedent's Surviving Spouse/the guardian of Decedent's minor [child/children]].

Continue with the following.

It is ORDERED that the Other Exempt Property is hereby set aside for the use and benefit of Decedent's [**include as applicable:** Surviving Spouse/[and]/minor [child/children]/[and]/

unmarried adult [child/children] remaining with Decedent's family/[and]/adult incapacitated [child/children]]:

Describe the other exempt property to be set aside.

That Other Exempt Property shall be delivered by the **2.85**, without delay, as follows:

Specify to whom the other exempt property is to be delivered.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 55—APPLICATION FOR ALLOWANCE IN LIEU OF EXEMPT PROPERTY

This is a combination form that is not to be completely copied; rather, appropriate alternate paragraphs are to be selected. Each Application for Allowance in Lieu of Exempt Property *must* have paragraphs that are numbered 1 through 6, *but* only one of each numbered paragraph is to be used.

Note: The form must be modified if there are children but no surviving spouse.

[**Caption. See Special Instruction 87.**]

Application for Allowance in Lieu of Exempt Property

2.45 or 2.76, **2.85** of this estate, ("Applicant") furnishes the following information to the Court:

¶1—Refer to 6.88 and 6.89 of MIL. Use the first alternative if 6.88 is applicable; use the second alternative if 6.89 is applicable.

1. The Inventory, Appraisement, and List of Claims of this estate has been approved.

Or

1. The Affidavit in Lieu of Inventory, Appraisement, and List of Claims of this estate has been filed.

2. **6.02** ("Decedent") and **3.03** ("Decedent's Surviving Spouse") did not own a homestead at the time of Decedent's death.

¶3—The amount to be requested is to be furnished by the attorney.

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3. Pursuant to Section 353.053 of the Texas Estates Code, the Court should make a reasonable allowance in lieu of the homestead to be paid to Decedent's Surviving Spouse, and the sum of $[**amount**] is a reasonable allowance for that purpose.

4. Decedent did not own other exempted property at the time of Decedent's death.

¶5—The amount to be requested is to be furnished by the attorney.

5. Pursuant to Section 353.053 of the Texas Estates Code, the Court should make a reasonable allowance in lieu of other exempted property to be paid to Decedent's Surviving Spouse, and the sum of $[**amount**] is a reasonable allowance for that purpose.

6. The allowance should be paid in a lump sum out of the funds belonging to the estate.

Applicant requests the Court to sign an order making a reasonable allowance in lieu of exempt property and directing the allowance to be paid to Decedent's Surviving Spouse out of the funds belonging to the estate.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order for Allowance in Lieu of Exempt Property

On this day the Court heard the Application for Allowance in Lieu of Exempt Property, and the Court finds that the application is true and correct and should be granted.

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It is ORDERED that the **2.85** of this estate shall pay to Decedent's Surviving Spouse, **3.03**, an allowance in lieu of exempt property in the lump sum of $_____ payable out of the funds belonging to the estate.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 56—APPLICATION TO ENTER INTO MINERAL LEASE AT PRIVATE SALE

This form is to be signed by the administrator or executor. Attach a copy of the proposed lease as an exhibit.

[**Caption. See Special Instruction 87.**]

Application to Lease Property for Mineral Exploration and Development at Private Sale Pursuant to Section 358.101 of the Estates Code

2.45 or 2.76, **2.85** of this estate, ("Applicant") files this Application to Lease Property for Mineral Exploration and Development at Private Sale Pursuant to Section 358.101 of the Texas Estates Code to obtain authority to lease property of the estate for mineral exploration and development and shows the Court the following:

1. A description of the property to be leased ("the Property") and the interest of the estate in the Property is set forth in the proposed lease, a copy of which is attached to this application, designated Exhibit A, reference to which is here made for all purposes.

2. The interest in the Property thought to be owned by the estate is **7.08**, and authority is hereby requested to include all interest owned by the estate.

3. The Property should be leased, because Applicant believes that the Property has prospective value for oil, gas, and mineral purposes, that the attached lease can be made to obtain certain revenues for the estate, and that the lease affords a method for development of potential value of the mineral interest.

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4. It would be more advantageous to the estate for this application to be heard and for the lease to be made privately without complying with the otherwise mandatory requirements of Chapter 358, Subchapter B, of the Texas Estates Code for entering into a lease, because the leasing transaction will be expedited and the funds will be made available sooner.

5. No order of the Court setting the time and place for hearing of this application or issuance, service, and return of notice or of citation should be required.

Applicant requests the Court to authorize the leasing of the Property for mineral exploration and development privately and without complying with the otherwise mandatory requirements of Chapter 358, Subchapter B, of the Texas Estates Code and to make such further orders as the Court considers proper.

DATED_____.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 57—ORDER AUTHORIZING MINERAL LEASE AT PRIVATE SALE

Attach a copy of the proposed lease as an exhibit.

[**Caption. See Special Instruction 87.**]

Order Granting Application to Lease Property for Mineral Exploration and Development at Private Sale

On this day the Court heard the Application to Lease Property for Mineral Exploration and Development at Private Sale Pursuant to Section 358.101 of the Texas Estates Code, filed on [**date**] by **2.45 or 2.76**, **2.85** of the above-named estate.

The Court finds that it has jurisdiction and venue of the subject matter of this proceeding and jurisdiction of all parties interested in this estate and all other persons of whom jurisdiction is required under the law; that the hearing on the application has been held more than five days but prior to the expiration of ten days after the date of filing the application and without an order setting time and place of hearing; that the lease has been or will be made for a fair and sufficient consideration and on fair terms and has been or will be properly made in conformity with law; that it is in the best interest of the estate for the lease to be made privately and without complying with the otherwise mandatory requirements of Chapter 358, Subchapter B, of the Texas Estates Code; that the name of the lessee is **6.121**; that the actual cash consideration to be paid by the lessee is $**6.122**; that the general bond on file is sufficient; that a complete copy of the lease is attached hereto and fully incorporated by reference and made a part hereof and shows the name of the lessee, the date of the lease, an adequate description of the property being leased, and all other terms and provisions thereof; and that the lease should be made.

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It is ORDERED that **2.45 or 2.76**, **2.85**, shall be and is fully authorized in accordance with this order to lease the property in accordance with the terms of the attached lease and to execute and deliver the lease within thirty days after the date of this order without the necessity of advertising, notice, or citation or other action by this Court.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

© STATE BAR OF TEXAS

FORM 58—AUTHENTICATED UNSECURED CLAIM

Although claims are normally prepared and filed by the creditor, this form could be used in the rare instance in which the client desires to ensure payment to a particular creditor—for example, a caregiver. CAVEAT: Be sure to disclaim any attorney-client relationship with the creditor.

Authenticated Unsecured Claim

1. [**Name of claimant**] ("Claimant") is the owner of an unsecured claim against this estate in the sum of $[**amount**]. This claim is founded on the following:

Describe the nature of the claim. State whether it is based on a written instrument or account and, if on a written instrument, attach a copy as an exhibit.

2. Claimant requests allowance and payment of this claim.

_____
[**Name of claimant**]
[**Address of claimant, city, state, zip**]

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day personally appeared [**name of claimant**] and, after being duly sworn by me, stated that the foregoing unsecured claim is just and that all legal offsets, payments, and credits known to Claimant have been allowed.

_____
[**Name of claimant**]

SUBSCRIBED AND SWORN TO BEFORE ME by [**name of claimant**] on _____.

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_____
Notary Public, State of Texas

Memorandum of 2.85

The foregoing Authenticated Unsecured Claim was presented to me on _____ and is ALLOWED.

_____
2.45 or 2.76, 2.85

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order on Authenticated Unsecured Claim

The Authenticated Unsecured Claim of [**name of claimant**] in the sum of $[**amount**] was allowed by the **2.85** of this estate and has been on the Claim Docket of this Court for more than ten days. It is hereby _____ by this Court on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for claimant.

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FORM 59—APPLICATION TO EXPEND FUNDS

[**Caption. See Special Instruction 87.**]

Application for Authority to Expend Funds

2.45 or 2.76, **2.85** of this estate, ("Applicant") furnishes the following information to the Court:

1. The following expenses, debts, and claims against the estate are reasonable and necessary and should be paid by Applicant:

   List the items with descriptions, purposes, dates, and amounts.

2. These expenses, debts, and claims are just, and all legal offsets, payments, and credits known to Applicant have been allowed.

3. Sufficient funds are on hand to pay these amounts.

Applicant requests the Court to sign an order authorizing Applicant to pay these amounts.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

Insert the following affidavit for an individual.

© STATE BAR OF TEXAS

Affidavit of 2.85

STATE OF TEXAS)(
)(
COUNTY OF)(

I, **2.45 or 2.76**, having been duly sworn, hereby state on my oath that the foregoing Application for Authority to Expend Funds and the list of expenses, debts, and claims therein are true and correct in every respect.

_____
2.45 or 2.76, 2.85

SUBSCRIBED AND SWORN TO BEFORE ME by **2.45 or 2.76** on

_____.

_____
Notary Public, State of Texas

Insert the following affidavit for a corporate fiduciary.

Affidavit of 2.85

STATE OF TEXAS)(
)(
COUNTY OF)(

I, **2.61**, having been duly sworn, hereby state on oath that I am a **2.63** of **2.45**, **2.85** of the Estate of **6.02**, Deceased; that I have been fully authorized to act herein for and on behalf of said corporate fiduciary; that I have made diligent inquiry and examination; and that I believe that the expenses, debts, and claims in the foregoing Application for Authority to Expend Funds are just and that all legal offsets, payments, and credits made known to me have been allowed.

2.45, 2.85

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By _____
2.61, **2.63**

SUBSCRIBED AND SWORN TO BEFORE ME by **2.61** on

_____.

_____
Notary Public, State of Texas

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order Granting Application for Authority to Expend Funds

On this day the Court heard and considered the Application for Authority to Expend Funds filed on [**date**], and the Court finds that the payments should be made and that the application should be granted.

It is ORDERED that Applicant pay out of the funds belonging to this estate the expenses, debts, and claims listed in the foregoing application.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

© STATE BAR OF TEXAS

FORM 60—APPLICATION TO REIMBURSE EXECUTOR OR ADMINISTRATOR

[**Caption. See Special Instruction 87.**]

Application for Reimbursement

2.45 or 2.76, **2.85** of this estate, ("Applicant") furnishes the following information to the Court:

1. Applicant has made the following expenditures on behalf of this estate:

   List the expenditures with descriptions, purposes, dates, and amounts.

2. All the foregoing expenditures have been necessary in the best interest of this estate, and the sums expended are reasonable sums.

3. These expenditures are just, and all legal offsets, payments, and credits known to Applicant have been allowed.

4. There are sufficient funds belonging to the estate from which this reimbursement can be made.

Applicant requests the Court to sign an order authorizing this reimbursement.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

Insert the following affidavit for an individual.

© STATE BAR OF TEXAS

Affidavit of 2.85

STATE OF TEXAS)(
)(
COUNTY OF)(

I, **2.45 or 2.76**, having been duly sworn, hereby state on my oath that the foregoing Application for Reimbursement and the list of expenditures therein are true and correct in every respect.

_____
2.45 or 2.76, **2.85**

SUBSCRIBED AND SWORN TO BEFORE ME by **2.45 or 2.76** on

_____.

_____
Notary Public, State of Texas

Insert the following affidavit for a corporate fiduciary.

Affidavit of 2.85

STATE OF TEXAS)(
)(
COUNTY OF)(

I, **2.61**, having been duly sworn, hereby state on oath that I am a **2.63** of **2.45**, **2.85** of the Estate of **6.02**, Deceased; that I have been fully authorized to act herein for and on behalf of said corporate fiduciary; that I have made diligent inquiry and examination; and that I believe that the expenditures in the foregoing Application for Reimbursement are just and that all legal offsets, payments, and credits made known to me have been allowed.

2.45, **2.85**

© STATE BAR OF TEXAS

By _____
2.61, **2.63**

SUBSCRIBED AND SWORN TO BEFORE ME by **2.61** on

_____.

_____
Notary Public, State of Texas

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order Granting Application for Reimbursement

On this day the Court heard and considered the Application for Reimbursement filed on [**date**], and the Court finds that Applicant's expenditures were reasonable and necessary, that Applicant should be reimbursed, and that the application should be granted.

It is ORDERED that Applicant be reimbursed out of the funds belonging to this estate for the items listed in the foregoing application.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 61—APPLICATION TO PAY ATTORNEY'S FEES

The original or a copy of a detailed and itemized statement from the attorney is to be designated as Exhibit A and *must* be attached to this form. The statement should include a description of the particular services performed, the identity of each person who performed the services, approximately when the services were performed, the reasonable amount of time required to perform the services, and the reasonable hourly rate for each person performing the services. Check local rules for requirements regarding attorney's fee statements.

See form 135 for an attorney's fee affidavit.

[**Caption. See Special Instruction 87.**]

Application to Pay Attorney's Fees

2.45 or 2.76, **2.85** of this estate ("Applicant"), furnishes the following information to the Court:

1. Applicant has employed **5.01 or 5.02**, [a firm of duly licensed and practicing attorneys/a duly licensed and practicing attorney] with offices in **5.06**, Texas. Necessary legal services have been performed and necessary expenses have been advanced on behalf of this estate, as set forth in the statement attached hereto and designated Exhibit A, reference to which is here made for all purposes, and the attorney's fee affidavit attached as Exhibit B.

2. By reason of the performance of these legal services and the advancement of these expenses, the estate has become indebted to pay those fees and expenses in the total sum of $[**amount from attached statement**], which sum is reasonable under all the circumstances.

Applicant requests this Court to sign an order authorizing Applicant to pay the fees and expenses.

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Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

Insert the following affidavit for an individual.

Affidavit of 2.85

STATE OF TEXAS)(
)(
COUNTY OF)(

I, **2.45 or 2.76**, having been duly sworn, hereby state on my oath that the foregoing Application to Pay Attorney's Fees is true and correct in every respect and that I have made diligent inquiry and examined Exhibits A and B and believe this claim is just.

_____
2.45 or 2.76, 2.85

SUBSCRIBED AND SWORN TO BEFORE ME by **2.45 or 2.76** on

_____.

_____
Notary Public, State of Texas

Insert the following affidavit for a corporate fiduciary.

Affidavit of 2.85

STATE OF TEXAS)(
)(
COUNTY OF)(

I, **2.61**, having been duly sworn, hereby state on oath that I am a **2.63** of **2.45**, **2.85** of the Estate of **6.02**, Deceased; that I have been fully authorized to act herein for and on behalf of

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said corporate fiduciary; and that I have made diligent inquiry and examined Exhibits A and B and believe that the claim in the foregoing Application to Pay Attorney's Fees is just.

2.45, **2.85**

By _____
2.61, **2.63**

SUBSCRIBED AND SWORN TO BEFORE ME by **2.61** on

_____.

_____
Notary Public, State of Texas

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order Granting Application to Pay Attorney's Fees

On this day the Court heard and considered the Application to Pay Attorney's Fees filed on [**date**], and the Court finds that the attorney's fees and expenses are reasonable and just and should be paid and that the application should be granted.

It is ORDERED that Applicant pay the fees and expenses in the amount of $[**amount**] listed on Exhibit A, attached hereto, out of the funds belonging to this estate.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 62—ANNUAL ACCOUNT OF EXECUTOR OR ADMINISTRATOR

[**Caption. See Special Instruction 87.**]

Annual Account

2.45 or 2.76, **2.85** of this estate ("Applicant"), presents this verified exhibit pursuant to the provisions of Chapter 359 of the Texas Estates Code:

¶1—If this is the *second* annual account, the beginning date is 6.145A of MIL and the ending date is 6.145B; if this is the *third* annual account, the beginning date is 6.145B and the ending date is 6.145C; if this is the *fourth* annual account, the beginning date is 6.145C and the ending date is one year later.

1. This account covers the twelve-month period from **6.39** to **6.145A**.

2. The following claims against the estate have been presented, and the following action has been taken with respect to each:

Describe all claims presented and state whether they have been allowed or rejected and whether they have been paid. If there are no claims, state "NONE."

3. The property that has come to the knowledge or into the possession of Applicant and that was not previously listed or inventoried is as follows:

Describe and state the value.

4. The following changes have occurred in property of the estate but have not been reported:

Give details.

5. The receipts of the estate have been as follows:

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Give the amount, date, and nature of each.

6. The disbursements of the estate have been as follows:

Give the amount, date, and nature of each.

7. The description of the property being administered is the same as the property shown in the inventory previously filed herein [**include if changes occurred that were reported in a prior account or a supplemental inventory:** and in the annual account/and in the supplemental inventory/and in the annual account and the supplemental inventory] except as otherwise specified herein.

State the condition of the property and the use being made of it. If property is rented, give the terms and price for which rented. With respect to personal property, include how and where held for safekeeping.

8. The following cash belonging to the estate is on hand:

Give amounts, location of depositories, type of account, and whether account is subject to order of the court.

9. Attached to this account are proper vouchers for each item of credit claimed in this account.

10. Attached to this account are verifications from all depositories where money or other personal property belonging to this estate is being held in safekeeping.

11. During the period covered by this account, all required bond premiums have been paid. All returns have been filed and all taxes due and owing have been paid, and the date the taxes were paid and the governmental entity to which the taxes were paid are as follows:

Describe each tax return and give the amount of taxes paid, the date taxes were paid, and the governmental agency to which taxes were paid. Obtain the information from 26.70 of MIL.

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12. This account contains a correct and complete statement of the matters to which it relates.

Applicant requests the Court to hear and approve this account and sign such other orders as may be proper.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for 2.85.

Insert the following affidavit for an individual.

Affidavit of 2.85

STATE OF TEXAS)(
)(
COUNTY OF _____)(

I, **2.45 or 2.76**, having been duly sworn, hereby state on my oath that the foregoing Annual Account and all vouchers and other attachments thereto are true, correct, and complete in every respect.

_____
2.45 or 2.76, 2.85

SUBSCRIBED AND SWORN TO BEFORE ME by **2.45 or 2.76** on _____.

_____
Notary Public, State of Texas

Insert the following affidavit for a corporate fiduciary.

Affidavit of 2.85

STATE OF TEXAS)(
)(
COUNTY OF _____)(

I, 2.61, having been duly sworn, hereby state on oath that I am a 2.63 of 2.45, 2.85 of the Estate of 6.02, Deceased; that I have been fully authorized to act herein for and on behalf of said corporate fiduciary; and that the foregoing Annual Account and all vouchers and other attachments thereto are true, correct, and complete in every respect.

2.45, 2.85

By _____
2.61, 2.63

SUBSCRIBED AND SWORN TO BEFORE ME by 2.61 on _____
_____.

_____
Notary Public, State of Texas

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order Approving Annual Account

On this day the Court heard and considered the Annual Account filed on [**date**]. The Court finds that it has jurisdiction and venue of this proceeding; that the Annual Account has remained on file for a full ten days before being considered; that the Court is fully advised as to all the items of the account, possession of cash and other assets kept in safekeeping, as well as those on deposit; that all vouchers were produced and filed for each item of credit claimed in the account and that satisfactory evidence has been presented as to the status and existence

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of the assets of this estate; and that the facts stated in the account are true, correct, and complete and that this account should be approved.

It is ORDERED that the Annual Account is APPROVED.

If there are claims that have been allowed and approved but not yet paid, and if the estate is wholly solvent and there are sufficient funds, include the following paragraph.

It is further ORDERED that all unpaid claims allowed, approved, or established by judgment and described in the Annual Account shall be promptly paid out of the funds belonging to this estate.

Continue with the following.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for 2.85.

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FORM 63—VERIFICATION OF FUNDS ON DEPOSIT

[**Caption. See Special Instruction 87.**]

Verification of Funds on Deposit

If this verification is to be attached to the *second* annual account, the date to be inserted in place of 6.145A is 6.145B of MIL; for the *third* annual account, the date is 6.145C; for the *fourth* annual account, the date is one year later than 6.145C; for the account for final settlement, it is the date of the account for final settlement. If you are confident of the balance, consider filling in the amount for the benefit of the financial institution.

The undersigned, an officer of the financial institution named below, hereby certifies that **2.45 or 2.76**, **2.85** of this estate, has on deposit with this institution, in **11.09** account number **11.11**, funds belonging to this estate, and that as of **6.145A** the balance in that account is the sum of $_____.

The undersigned further certifies that under no circumstances will any of the funds, including any subsequent deposits or any interest or dividends credited to the account, in the account be delivered by this institution to anyone without written authority for such payment from the Court.

SIGNED on _____.

11.07

By _____

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FORM 64—CONFIRMATION OF SAFEKEEPING

[**Caption. See Special Instruction 87.**]

Confirmation of Safekeeping

> If this confirmation is to be attached to the *second* annual account, the date to be inserted in place of 6.145A is 6.145B of MIL; for the *third* annual account, the date is 6.145C; for the *fourth* annual account, the date is one year later than 6.145C; for the account for final settlement, it is the date of the account for final settlement.

The undersigned hereby certifies that **2.45 or 2.76**, **2.85** of this estate, has on deposit with this office as of **6.145A** the following described securities or other assets held subject to orders of the Court:

> Describe all items so held in detail, giving account numbers, certificate numbers, etc.

The undersigned further certifies that under no circumstances will any of those securities or other assets be delivered to anyone without written authority therefor from the Court.

SIGNED on _____.

6.16 or 6.29 or 11.07

By _____

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FORM 65—ACCOUNT FOR FINAL SETTLEMENT

[**Caption. See Special Instruction 87.**]

Account for Final Settlement

2.45 or 2.76, **2.85** of this estate ("Applicant"), presents this verified Account for Final Settlement pursuant to the provisions of the Texas Estates Code:

1. There is no further need for administration of this estate. Except as may be provided below, all debts known to exist against this estate have been paid.

2. The property belonging to the estate that has come into Applicant's hands is that property listed and described in the Inventory, Appraisement, and List of Claims previously filed herein [**include if changes occurred that were reported in an annual account or a supplemental inventory:** and in the Annual Account for the period ending [**date**]/and in the Supplemental Inventory/and in the Annual Account for the period ending [**date**] and in the Supplemental Inventory], reference to which is here made for all purposes. [**List any other disposition of any property that has been made.**]

3. The debts of the estate that have been paid by authorization of the Court are as follows:

Give the names of creditors and the amounts paid. If there are none, state "NONE."

4. The previously unreported receipts of the estate are as follows:

Give the amount, date, and nature of each. If there are none, state "NONE."

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5. The previously unreported disbursements of the estate have been as follows:

Give the amount, date, and nature of each. If there are none, state "NONE."

6. The debts and expenses still owing by the estate are as follows:

Give the names of creditors and the amounts remaining unpaid, and attach copies of supporting invoices and statements. If there are none, state "NONE."

7. The property of the estate remaining on hand is as follows:

List all property remaining on hand, using descriptions identical to those used in the inventory. Be complete. If there is none, state "NONE."

8. Attached to this account are proper vouchers for each item of credit claimed in this account.

9. Attached to this account are verifications from all depositories where money or other personal property belonging to this estate is being held in safekeeping.

10. All required bond premiums have been paid. The tax returns that have been filed, the taxes due and owing that have been paid, the date the taxes were paid, and the governmental entity to which taxes were paid are as follows:

Describe each tax return and give the amount of taxes paid, the date taxes were paid, and the governmental entity to which taxes were paid. If there are none, state "NONE."

11. The persons entitled to receive the property remaining on hand after the payment of all debts and expenses [**include for regular dependent administration:** have been determined pursuant to the Judgment Declaring Heirship previously entered in this estate and] are as follows:

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List all persons entitled to a portion of D's estate and indicate proper shares, their relationships to D, their residences, whether adults or minors, and, if minors, the names of their guardians.

12. All advances or payments made to persons entitled to receive portions of Decedent's estate are as follows:

Give the amounts, dates, and details of all advances and the names of those to whom the advances were made. If there are none, state "NONE."

13. Notice has been or will be given to all heirs and beneficiaries as required by law or by the Court.

14. This account contains a correct and complete statement of the matters to which it relates.

Applicant prays that citation be served as required by law, following which the Court audit, settle, and approve this account and authorize the payment of all unpaid debts and expenses and the distribution of the property remaining on hand to the persons entitled to receive that property, and sign such other orders as may be proper.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

Insert the following affidavit for an individual.

Affidavit of 2.85

STATE OF TEXAS)(
)(
COUNTY OF _____)(

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I, **2.45 or 2.76**, having been duly sworn, hereby state on my oath that the foregoing Account for Final Settlement and all vouchers and other attachments thereto are true, correct, and complete in every respect.

_____
2.45 or 2.76, 2.85

SUBSCRIBED AND SWORN TO BEFORE ME by **2.45 or 2.76** on _____.

_____
Notary Public, State of Texas

Insert the following affidavit for a corporate fiduciary.

Affidavit of 2.85

STATE OF TEXAS)(
)(
COUNTY OF _____)(

I, **2.61**, having been duly sworn, hereby state on oath that I am a **2.63** of **2.45**, **2.85** of the Estate of **6.02**, Deceased; that I have been fully authorized to act herein for and on behalf of said corporate fiduciary; and that the foregoing Account for Final Settlement and all vouchers and other attachments thereto are true, correct, and complete in every respect.

2.45, 2.85

By _____
2.61, 2.63

SUBSCRIBED AND SWORN TO BEFORE ME by **2.61** on _____ _____.

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_____

Notary Public, State of Texas

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FORM 66—ORDER APPROVING ACCOUNT FOR FINAL SETTLEMENT AND AUTHORIZING DISTRIBUTION OF ESTATE

[**Caption. See Special Instruction 87.**]

Order Approving Account for Final Settlement and Authorizing Distribution of Estate

On this day the Court heard and considered the Account for Final Settlement of this estate. After examining the account and the vouchers accompanying the same and hearing the evidence in support of same, the Court finds that citation has been duly served on all persons interested in this estate; that the Court has jurisdiction of this proceeding and of the subject matter as required by law; that the [affidavit/certificate] required by Section 362.005(f) of the Texas Estates Code has been filed; that the Account for Final Settlement has been audited and settled by the Court, complies with the law in every respect, and should be approved as filed; that all claims, debts, and expenses have been paid or are approved and should be paid; that this estate has been fully administered; that the property remaining on hand in this estate should be delivered to the persons named in the Account for Final Settlement; and that these persons are the persons entitled to receive that property.

It is ORDERED that the Account for Final Settlement is hereby APPROVED, that the debts and expenses remaining unpaid, as set forth in the Account for Final Settlement, shall be paid, and that all the property belonging to the estate and still remaining on hand after payment of all debts and expenses shall be delivered to the following persons, who are entitled to receive that property from Decedent's estate:

List each person entitled to a portion of D's estate and indicate specific assets or proper share.

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It is ORDERED that upon the distribution of the estate to these persons and the filing of proper receipts therefor, the **2.85** of this estate shall apply to this Court for an order of discharge and for a declaration that this estate is closed.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 67—APPLICATION TO CLOSE ESTATE AND TO DISCHARGE PERSONAL REPRESENTATIVE

[**Caption. See Special Instruction 87.**]

Application to Close Estate and to Discharge Personal Representative

2.45 or 2.76, **2.85** of this estate ("Applicant"), furnishes the following information to the Court:

1. This Court has previously signed its order approving the Account for Final Settlement of this estate and ordering Applicant to deliver the property remaining on hand to the persons entitled to receive that property.

2. Applicant has fully complied with that order, and there is no property belonging to this estate remaining in the hands of Applicant that can be applied for the payment of claims or for distribution to heirs.

Include ¶3 if applicable.

3. This Court has previously signed its order approving the Application to Withdraw Funds from Registry of Court for Payment to Comptroller, and Applicant has complied with that order.

Applicant requests this Court to sign an order discharging Applicant from this trust, discharging the surety on Applicant's bond and releasing the surety from further liability, and declaring this estate closed.

Respectfully submitted,

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Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 68—ORDER CLOSING ESTATE AND DISCHARGING PERSONAL REPRESENTATIVE

[**Caption. See Special Instruction 87.**]

Order Closing Estate and Discharging Personal Representative

On this day the Court considered the Application to Close Estate and Discharge Personal Representative filed by **2.45 or 2.76**, **2.85** of this estate. After reviewing the evidence in support of the application, the Court finds that this estate has been fully administered; that the Account for Final Settlement has previously been approved; [**include if applicable:** that with respect to the portion of the estate distributable to an unknown or missing person, the **2.85** has complied with the order of the Court to pay funds to the Comptroller of Public Accounts of the State of Texas;] that the **2.85** has distributed all property of the estate to the heirs and others entitled to receive it; that no property of the estate remains on hand for the payment of claims or for distribution; and that this estate should be closed.

It is ORDERED that **2.45 or 2.76**, **2.85** of this estate, is hereby discharged from this trust; that letters [testamentary/of administration] are canceled; that **6.29**, surety on the bond of the **2.85**, is hereby discharged and released from further liability under the bond; and that this estate is hereby declared to be closed.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 69—APPLICATION FOR PROBATE OF WILL (AWA)

This is a combination form that is not to be completely copied; rather, appropriate alternative paragraphs are to be selected. Each application *must* have paragraphs that are numbered 1 through 12, *but* only one of each numbered paragraph is to be used.

Leave blanks in the caption unless the docket number and court assignment appear on prior pleadings or orders of the court.

If the will cannot be produced in court, supplement this application as instructed in Special Instruction 85—Wills Not Produced.

For the last three numbers of applicant's driver's license and Social Security numbers, refer to 2.51 and 2.51A of MIL.

[**Caption. See Special Instruction 87.**]

Application for Probate of [Will/Will and Codicil] and Issuance of Letters of Administration with Will Annexed

2.45 ("Applicant") furnishes the following information to the Court for the probate of the [will/will and codicil] of **1.01** ("Decedent") and for issuance of letters of administration to Applicant:

Use ¶1 in all applications in which one individual is the applicant.

1. Applicant is an individual interested in this estate, domiciled in and residing at **2.47**, **2.48**, **2.52** County, [**state**], the physical address at which service can be had on Applicant. [The last three numbers of Applicant's driver's license number are [**numbers**]./Applicant has not been issued a driver's license.] [The last three numbers of Applicant's Social Security number are [**numbers**]./Applicant has not been issued a Social Security number.]

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2. Decedent died on **1.07** in **1.09**, **1.09** County, **1.09**, at the age of **1.10** years. The last three numbers of Decedent's driver's license number are [**numbers**], and the last three numbers of Decedent's Social Security number are [**numbers**].

> Use the following as ¶3 if the answer to 6.08 of MIL is *yes*; if the answer is *no*, refer to Special Instruction 15 and substitute the appropriate paragraph.

3. This Court has jurisdiction and venue because Decedent was domiciled and had a fixed place of residence in this county on the date of death.

4. Decedent owned [personal/real and personal] property described generally as **6.09** [**e.g.,** home, cash, securities, automobiles, livestock, household goods, personal effects] of a probable value in excess of $**6.10**.

5. Decedent left a valid will ("Will") dated **2.02**, which was never revoked and [is filed herewith/was previously delivered to the clerk of this Court]. [**Include if applicable:** Decedent left a valid codicil ("Codicil") dated **2.17**, which was never revoked and [is filed herewith/was previously delivered to the clerk of this Court].]

> ¶6—There are three separate paragraphs, but only the first two are numbered. Refer to 6.11 of MIL. Use the first alternative if only 6.11C is applicable; use the second alternative if 6.11B is applicable, and include the optional wording if 6.11C is applicable. Then refer to 6.12 of MIL and, if the answer is *yes*, add the unnumbered paragraph; if the answer is *no*, omit the unnumbered paragraph. If there is a codicil, information should be added here, substituting "Codicil" for "Will"; witness names for codicil are listed at 2.21 of MIL.

6. The names of the subscribing witnesses to the Will are **2.11** [**list all such witnesses**].

Or

6. The Will was wholly in the handwriting of Decedent, and Decedent's signature is subscribed thereto. [**Include if applicable:** The names of the subscribing witnesses to the Will are **2.11** [**list all such witnesses**].]

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Include the following paragraph if applicable.

The Will was made self-proved in the manner prescribed by law.

¶7—Refer to 6.13 of MIL. Use the first alternative if 6.13B is applicable; use the second alternative if 6.13E is applicable.

7. No child or children were born to or adopted by Decedent after the date of the Will.

Or

7. After the date of the Will **3.52**, who survived Decedent, [was/were] [born to/ adopted by] Decedent.

¶8—Refer to 6.14 of MIL. Use the first alternative if 6.14A is applicable or if 6.14B is applicable and the answer to 3.25B is *no*; use the second alternative if 6.14B is applicable and the answer to 3.25B is *yes*. Repeat the second alternative if required for additional dissolved marriages.

8. After the date of Decedent's Will, no marriage of Decedent was dissolved.

Or

8. On or about **3.25A**, which date is after the date of Decedent's Will, Decedent's marriage to **3.21** was dissolved.

9. A necessity exists for the administration of this estate.

¶10—Use the first alternative if no executor was named and no authority to designate an administrator was granted in the will. If using the second alternative, refer to 2.57 of MIL regarding requirement of a bond and add the optional last sentence only if the reason given for an appointee includes "desire(s) to waive the right to be so appointed." If authority to designate an administrator was granted (see 2.44B in MIL), see Special Instruction 95 for appropriate pleadings.

10. No one was named in the [Will/Will or Codicil] to be executor, and no one was granted authority to designate an administrator of the estate.

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Or

10. The [Will/Codicil] named [**name(s) of person(s) appointed in will or codicil; see 2.43, 2.45(A), 2.45(B), 2.66(A)**] to serve [**include if bond was waived:** without bond or other security] as [**state the appropriate designation(s) exactly as designated in the will or codicil, e.g.,** executor, executrix, independent executor], but [**state the reason that each person named will not or cannot serve, e.g., John Smith is deceased; Margaret Brown is not qualified to serve as such; Richard Jones is not willing to serve as such and desires to waive the right to be so appointed**]. [**Include if applicable:** The written waiver of the right of **2.43** to be appointed [independent executor/executor/administrator with will annexed] will be filed with the clerk of this Court.]

11. Applicant is [Decedent's **2.50**/not related to Decedent], is qualified to be appointed as administrator with will annexed of this estate, and is not disqualified by law to act as such.

¶12—Refer to 3.53 of MIL. If the answer is *no*, use the first alternative; if the answer is *yes*, use the second alternative. Repeat the second alternative if required for multiple devisees.

12. The [Will/Will and Codicil] did not name either the State of Texas, a governmental agency of the State of Texas, or a charitable organization as a devisee.

Or

12. The [Will/Codicil] named **3.58**, **3.61C**, [the State of Texas/a governmental agency of the State of Texas/a charitable organization], as a devisee.

Applicant prays that citation issue as required by law to all persons interested in this estate; that the [Will/Will and Codicil] be admitted to probate; that letters of administration be issued to Applicant; and that all other orders be signed as the Court may deem proper.

Respectfully submitted,

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Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 70—WAIVER AND RENUNCIATION OF RIGHT TO LETTERS (AWA)

[**Caption. See Special Instruction 87.**]

Waiver and Renunciation of Right to Letters of Administration with Will Annexed

2.43, **2.44** of **6.02** ("Decedent"), hereby waives and renounces the right to be appointed administrator with will annexed and to receive letters of administration in Decedent's estate in favor of **2.45**, who is a qualified person.

_____
2.43

STATE OF TEXAS)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on _____ by **2.43**.

_____
Notary Public, State of Texas

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FORM 71—PROOF OF DEATH AND OTHER FACTS (AWA)

This is a combination form that is not to be completely copied; rather, appropriate alternative paragraphs are to be selected. Each Proof of Death and Other Facts *must* have paragraphs that are numbered 1 through 8, *but* only one of each numbered paragraph is to be used.

If the will cannot be produced in court, supplement this proof as instructed in Special Instruction 85—Wills Not Produced.

[**Caption. See Special Instruction 87.**]

Proof of Death and Other Facts

On **6.25 3.83** ("Affiant") personally appeared in open court and, after being duly sworn, stated the following:

1. **6.02** ("Decedent") died on **1.07** in **1.09**, **1.09** County, **1.09**, at the age of **1.10** years, and four years have not elapsed since the date of Decedent's death.

Use the following as ¶2 if the answer to 6.08 of MIL is *yes*; if the answer is *no*, refer to Special Instruction 15 and substitute the appropriate paragraph.

2. Decedent was domiciled and had a fixed place of residence in this county at the date of death.

3. The document dated **2.02**, now shown to me and which purports to be Decedent's will ("Will"), was never revoked as far as I know. [**Include if D had a codicil:** The document dated **2.17**, now shown to me and which purports to be Decedent's codicil ("Codicil"), was never revoked as far as I know.]

4. A necessity exists for the administration of this estate.

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¶5—Refer to 6.13 of MIL. Use the first alternative if 6.13B is applicable; use the second alternative if 6.13E is applicable.

5. No child or children were born to or adopted by Decedent after the date of the Will.

Or

5. After the date of the Will **3.52**, who survived Decedent, [was/were] [born to/ adopted by] Decedent.

¶6—Refer to 6.14 of MIL. Use the first alternative if 6.14A is applicable or if 6.14B is applicable and the answer to 3.25B is *no*; use the second alternative if 6.14B is applicable and the answer to 3.25B is *yes*. Repeat the second alternative if required for additional dissolved marriages.

6. After the date of Decedent's Will, no marriage of Decedent was dissolved.

Or

6. On or about **3.25A**, which date is after the date of Decedent's Will, Decedent's marriage to **3.21** was dissolved.

¶7—Use the first alternative if no executor was named and no authority to designate an administrator was granted in the will; if using the second alternative, refer to D's will and codicil, select the appropriate designation(s) of those named in the will, determine the reason(s) for inability to serve, and select appropriate alternatives. If authority to designate an administrator was granted (see 2.44B in MIL), see Special Instruction 95 for suggested language and adapt as necessary.

7. No one was named in the [Will/Will or Codicil] to be executor, and no one was granted authority to designate an administrator of the estate.

Or

7. The [**state the appropriate designation(s) exactly as designated in the will or codicil, e.g.,** executor, executrix, independent executor] named in the [Will/Codicil] [is/are] not available to serve because [**state the reason that each person named will not or**

cannot serve, e.g., John Smith is deceased; Margaret Brown is not qualified to serve as such; Richard Jones is not willing to serve as such and has waived the right to be so appointed].

8. **2.45**, Applicant herein, is not disqualified by law from accepting letters of administration or from serving as administrator with will annexed of this estate and is entitled to such letters.

SIGNED on _____.

_____
3.83, Affiant
3.85
3.86

SUBSCRIBED AND SWORN TO BEFORE ME by **3.83** on _____ _____.

Insert the following if the proof is to be sworn before the court clerk.

6.16
Clerk of the **6.03** Court of **6.04** County, Texas

By _____
Deputy

Insert the following if the proof is to be sworn before a notary.

_____
Notary Public, State of Texas

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FORM 72—ORDER ADMITTING WILL TO PROBATE (AWA)

Note: An increasing number of judges are requiring practitioners to include other or additional language in the orders for their courts. Determine local practice and comply with their idiosyncratic terminology.

Note: No appointment of appraisers is made in this order, and although this patronage system has been eliminated in almost all Texas counties you should check to see if it still exists in the county in which the proceedings have been filed.

If the will could not be produced in court, supplement this order as instructed in Special Instruction 85—Wills Not Produced.

If the applicant is an administrator designated by a person granted authority in the will to make such a designation, or if such a designee is unwilling or unable to serve, see Special Instruction 95 and adapt appropriate language.

[**Caption. See Special Instruction 87.**]

Order Admitting [Will/Will and Codicil] to Probate and Authorizing Letters of Administration with Will Annexed

On this day the Court heard the Application for Probate of [Will/Will and Codicil] and Issuance of Letters of Administration filed by **2.45** ("Applicant") in the Estate of **6.02**, Deceased ("Decedent").

To complete the bracketed portions, refer to the will and to any codicil, determine if anyone was named as executor and, if so, select the appropriate designation(s) of the persons named therein, and determine the reason that the person named will not or cannot serve.

The Court heard the evidence and reviewed the will [**include if applicable:** , the codicil,] and the other documents filed herein and finds that the allegations contained in the application are true; that notice and citation have been given in the manner and for the length of time required by law; that Decedent is dead and that four years have not elapsed since the date of

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Decedent's death on **1.07** [**include if applicable:** and before **6.23**, the date the application for probate was filed]; that this Court has jurisdiction and venue of Decedent's estate; that Decedent left a will ("Will") dated **2.02**, [**include if applicable:** and a codicil ("Codicil") dated **2.17**, each] executed with the formalities and solemnities and under the circumstances required by law to make a valid [Will/Will and Codicil]; that on **2.02** Decedent had attained the age of eighteen years and was of sound mind; that the [Will was/Will and Codicil were] not revoked by Decedent; that no objection to or contest of the probate of the [Will/Will or Codicil] has been filed; that all the necessary proof required for the probate of the [Will/Will and Codicil] has been made; that the [Will is/Will and Codicil are] entitled to probate; that [Decedent did not name an executor in the [Will/Will or Codicil]/in the [Will/Codicil], Decedent named [**state the persons named**] as [**state the appropriate designation(s) exactly as designated in the will or codicil, e.g.,** executor, executrix, independent executor], but [**state the reason that each person named will not or cannot serve, e.g., John Smith is deceased; Margaret Brown is not qualified to serve as such; Richard Jones is not willing to serve as such and has waived the right to be so appointed**] and letters testamentary cannot be authorized; that Applicant is not disqualified, but is qualified to be administrator with will annexed of the estate and to receive letters of administration; that a necessity exists for the administration of this estate; that no interested person has applied for the appointment of appraisers and none are deemed necessary and the appointment of appraisers is waived by the Court.

It is ORDERED that the [Will is/Will and Codicil are] admitted to probate, and the clerk of this Court is ORDERED to record the [Will/Will and the Codicil], together with the application, in the judge's probate docket of this Court.

It is ORDERED that a bond in the sum of $_____ payable and conditioned as required by law shall be required and that, upon the taking and filing of the oath required by law, letters of administration shall issue to **2.45**, who is appointed as administrator with will annexed of this estate.

© STATE BAR OF TEXAS

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 73—APPLICATION FOR LETTERS OF ADMINISTRATION WHERE THERE IS NO WILL (RDA)

This is a combination form that is not to be completely copied; rather, appropriate alternative paragraphs are to be selected. Each application *must* have paragraphs that are numbered 1 through 8, *but* only one of each numbered paragraph is to be used.

Leave blanks in the caption unless the docket number and court assignment appear on prior pleadings or orders of the court.

Note: All heirs must be before the court by either (1) signing the application, (2) being personally served, (3) filing an answer, or (4) filing a waiver of citation.

For the last three numbers of applicant's driver's license and Social Security numbers, refer to 2.83 and 2.83A of MIL.

[**Caption. See Special Instruction 87.**]

Application for Letters of Administration

2.76 ("Applicant") furnishes the following information to the Court concerning the Estate of **6.02**, Deceased ("Decedent") and for issuance of letters of administration to Applicant:

1. Applicant is an individual interested in this estate, domiciled in and residing at **2.78**, **2.79**, **2.81** County, [**state**], is entitled to letters of administration, is not disqualified by law, and is Decedent's **2.82**. [The last three numbers of Applicant's driver's license number are [**numbers**]./Applicant has not been issued a driver's license.] [The last three numbers of Applicant's Social Security number are [**numbers**]./Applicant has not been issued a Social Security number.]

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2. Decedent died intestate on **1.07** in **1.09**, **1.09** County, **1.09**, at the age of **1.10** years. The last three numbers of Decedent's driver's license number are [**numbers**], and the last three numbers of Decedent's Social Security number are [**numbers**].

> Use the following as ¶3 if the answer to 6.08 of MIL is *yes*; if the answer is *no*, refer to Special Instruction 15 and substitute the appropriate paragraph.

3. This Court has jurisdiction and venue because Decedent was domiciled and had a fixed place of residence in this county on the date of death.

4. Decedent owned [personal/real and personal] property described generally as **6.09** [**e.g.**, home, cash, securities, automobiles, livestock, household goods, personal effects] of a probable value in excess of $**6.10**.

5. The name and address, whether the heir is an adult or a minor, and the relationship to Decedent of each heir is as follows:

Name	*Address*	*Adult/Minor*	*Relationship to Decedent*

State information for each heir.

> ¶6—Refer to 6.13 of MIL. Use the first alternative if 6.13B is applicable; use the second alternative if 6.13C is applicable; use the third alternative if 6.13D is applicable.

6. No child or children were born to or adopted by Decedent.

Or

6. The only child born to or adopted by Decedent was **3.37**, born **3.43** at **3.44**.

Or

6. The children born to or adopted by Decedent were:

Name	*Date of Birth*	*Place of Birth*

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State information for each child.

¶7—Refer to 6.14 of MIL. Use the first alternative if 6.14D is applicable; use the second alternative if 6.14E is applicable; use the third alternative if 6.14F is applicable. Repeat the second or third alternative if required for additional divorces.

7. Decedent was never divorced.

Or

7. Decedent was divorced from **3.21** on **3.25A**.

Or

7. Decedent was divorced from **3.21**, the date and place of which divorce are not known to Applicant.

8. A necessity exists for the administration of this estate because there are at least two debts against the estate and because the Court should partition the estate among the heirs.

Applicant prays that citation issue as required by law to all persons interested in this estate; that Applicant be appointed administrator of this estate; that letters of administration be issued to Applicant; that appraisers not be appointed; and that all other orders be signed as the Court may deem proper.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 74—WAIVER AND RENUNCIATION OF RIGHT TO LETTERS OF ADMINISTRATION (RDA, TDA, TBA, IBA)

[**Caption. See Special Instruction 87.**]

Waiver and Renunciation of Right to Letters of Administration

2.43, **2.44** of **6.02** ("Decedent"), hereby waives and renounces the right to be appointed administrator and to receive letters of [administration/temporary administration] in Decedent's estate in favor of **2.76 or 2.45**, who is a qualified person.

_____
2.43

STATE OF TEXAS)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on _____ by **2.43**.

_____
Notary Public, State of Texas

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FORM 75—PROOF OF DEATH AND OTHER FACTS (RDA, IBA)

[**Caption. See Special Instruction 87.**]

Proof of Death and Other Facts

On **6.25 3.83** ("Affiant") personally appeared in open court and, after being duly sworn, stated the following:

1. **6.02** ("Decedent") died on **1.07** in **1.09**, **1.09** County, **1.09**, at the age of **1.10** years, and four years have not elapsed since the date of Decedent's death.

2. Decedent was domiciled and had a fixed place of residence in this county at the date of death.

3. As far as I know and believe, Decedent did not leave a will.

4. A necessity exists for the administration of this estate.

5. **2.76 or 2.45**, Applicant herein, is not disqualified by law from accepting letters of administration or from serving as [**include if IBA:** independent] administrator of this estate and is entitled to such letters.

SIGNED on _____.

_____
3.83, Affiant
3.85
3.86

SUBSCRIBED AND SWORN TO BEFORE ME by **3.83** on _____ _____.

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Insert the following if the proof is to be sworn before the court clerk.

6.16
Clerk of the **6.03** Court of **6.04** County, Texas

By _____
Deputy

Insert the following if the proof is to be sworn before a notary.

_____
Notary Public, State of Texas

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FORM 76—ORDER AUTHORIZING LETTERS OF ADMINISTRATION (RDA)

Note: An increasing number of judges are requiring practitioners to include other or additional language in the orders for their courts. Determine local practice and comply with their idiosyncratic terminology.

Note: No appointment of appraisers is made in this order, and although this patronage system has been eliminated in almost all Texas counties you should check to see if it still exists in the county in which the proceedings have been filed.

[**Caption. See Special Instruction 87.**]

Order Authorizing Letters of Administration

On this day the Court heard the Application for Letters of Administration filed by **2.76** ("Applicant") in the Estate of **6.02**, Deceased ("Decedent").

The Court heard the evidence and reviewed the documents filed herein and finds that the allegations contained in the application are true; that notice and citation have been given in the manner and for the length of time required by law; that Decedent is dead and that four years have not elapsed since the date of Decedent's death on **1.07** [**include if applicable:** and before **6.23**, the date the application for letters of administration was filed]; that this Court has jurisdiction and venue of Decedent's estate; that Decedent died intestate; that there is a necessity for administration of this estate; that the Application for Letters of Administration should be granted; that Applicant is entitled by law to be appointed administrator of this estate and is not disqualified from acting as such administrator and is qualified to receive letters of administration; and that no interested person has applied for the appointment of appraisers and none are deemed necessary and appointment of appraisers is waived by the Court.

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It is ORDERED that a bond in the sum of $_____ payable and conditioned as required by law shall be required, and that upon the taking and filing of the oath required by law, letters of administration shall issue to **2.76**, who is appointed as administrator of this estate.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 77—APPLICATION TO DECLARE HEIRSHIP

This is a combination form that is not to be completely copied; rather, appropriate alternative paragraphs are to be selected. Each application *must* have the paragraphs that are numbered 1 through 7 and 11 below, *but* only one of each numbered paragraph is to be used. Paragraph 12 is used only in a proceeding to declare heirship.

Leave blanks in the caption unless the docket number and court assignment appear on prior pleadings or orders of the court.

Note: All heirs must be before the court by either (1) signing the application, (2) being personally served, (3) filing an answer, or (4) filing a waiver of citation. Owners of record of any real property interest described in the application are also necessary parties. Estates Code, Section 202.008.

Note: Although Estates Code, Section 202.004(5), permits an application to be filed by a trustee of a trust holding assets for D's benefit, the form for such an application is not included in this System.

[**Caption. See Special Instruction 87.**]

Application to Declare Heirship

2.76 or 2.101 ("Applicant"), who resides at **2.78 or 2.103**, **2.79 or 2.104**, furnishes the following information to the Court:

1. **6.02** ("Decedent") died intestate on **1.07** at **1.09**, **1.09** County, **1.09**.

¶2—Use the first alternative if this is a Regular Dependent Administration (RDA) or Independent Administration by Agreement Where There Is No Will (IBA); use the second alternative if this is a Proceeding to Declare Heirship (PDH).

2. An administration [is pending/has been requested] on Decedent's estate in the above-numbered and -entitled cause, and it is necessary and in the best interest of the estate for the Court to determine who are the heirs and only heirs of Decedent.

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Or

2. No administration is pending on Decedent's estate, and none appears necessary. It is necessary and in the best interest of the estate for the Court to determine who are the heirs and only heirs of Decedent.

> Include the following paragraph if the answer to 6.08 of MIL is *yes*; if the answer is *no*, refer to Special Instruction 15 and substitute the appropriate paragraph.

This Court has jurisdiction and venue because Decedent was domiciled and had a fixed place of residence in this county on the date of death.

3. Applicant claims to be the owner of a part of Decedent's estate. The names and physical addresses where service can be had of all of Decedent's heirs, the relationship of each heir to Decedent, whether each heir is an adult or a minor, and the true interest of Applicant and of each of the heirs in the estate of Decedent are as follows:

Name	*Address*	*Relationship*	*Adult/Minor*	*True Interest*

> Set forth a complete listing of the heirs and beneficiaries, including the applicant, and their service addresses and shares ("true interest") in the estate. State whether each is an adult or a minor. See 2.76, 2.101, 3.03, 3.37, 3.58, and 3.72 of MIL. If names or service addresses of all the heirs are not definitely known to the applicant, add all material facts and circumstances that might tend to identify and locate them.

4. At the time of Decedent's death, Decedent owned the following property:

> A complete description of properties subject to distribution in this proceeding (real property located in Texas and all personal property) and of all properties held in trust for D are recommended for a Proceeding to Declare Heirship (PDH), but a general description complies with the Code and should be adequate in a Regular Dependent Administration (RDA) or Independent Administration by Agreement Where There Is No Will (IBA). Indicate whether separate or community property. See 7.0–18.0 of MIL inclusive.

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5. Decedent was [**set forth D's *complete* marital history, e.g.,** never married/married to and survived by **3.03** on the date of death/married to and survived by **3.03** on the date of death, but had been married and divorced from **3.21** in about **3.25A** in **3.26**, and such divorced spouse of Decedent has no interest in Decedent's property/not married on the date of death, but had been married and divorced from **3.21** in about **3.25A** in **3.26**, and such divorced spouse of Decedent has no interest in Decedent's property/not married on the date of death, but had been married to **3.30**, who died on **3.33**/[**other possible combinations**]].

6. [**Set forth information concerning all children of D, e.g.,** No children were born to or adopted by Decedent/Only one child, **3.37**, was born to or adopted by Decedent/ Only [**number**] children, **3.37**, were born to or adopted by Decedent/[**other possible combinations, including combinations of natural and adopted children**].]

7. All children born to or adopted by Decedent have been listed. Each marriage of Decedent has been listed.

Use ¶8 *only* if D was not survived by descendants.

8. Decedent had the following parents:

Parent's Name	*Date of Birth*	*Date of Death or Current Address*

Set forth a complete listing of D's parents, including, for each parent, the date of birth and the date of death or service address, as applicable.

Include ¶9 *only* if D was not survived by descendants or by both parents.

9. Decedent had no siblings.

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Or

9. Decedent had the following sibling[s]:

Name of Sibling	*Names of Parents*	*Date of Birth*	*Date of Death or Current Address*

Set forth a complete listing of D's siblings, including, for each sibling, the names of both parents, the date of birth, and the date of death or service address, as applicable.

Include ¶10 *only* if D was not survived by descendants or by both parents and was predeceased by one or more siblings.

10. Decedent had no nieces or nephews born to the deceased sibling[s] in paragraph 9 above.

Or

10. Decedent had the following [niece[s]/nephew[s]/niece[s] and nephew[s]] born to the deceased sibling[s] in paragraph 9 above:

Name of Niece/Nephew and Current Address	*Date of Birth*	*Name of Niece's/Nephew's Deceased Parent*

Set forth a complete listing of the children of D's deceased siblings, including, for each niece and nephew, the service address, the date of birth, and the name of the niece's/ nephew's deceased parent related to D.

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> If D was predeceased by all heirs in the previous categories, adapt this form according to Estates Code, Chapter 201.

11. This application does not omit any information required by Texas Estates Code, Section 202.005.

> Use ¶12 *only* in a Proceeding to Declare Heirship (PDH).

12. There are no debts owed by Decedent that are not secured by liens on real estate, and there is no necessity for administration of this estate.

Applicant prays that citation issue as required by law; that upon hearing hereof, this Court determine who are the heirs and only heirs of Decedent and their respective shares and interests in this estate [**omit if there is a court-supervised administration:** and that no necessity exists for an administration of Decedent's estate].

Respectfully submitted,

> Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day personally appeared [**name of applicant**] and, after being duly sworn, stated that:

Insofar as is known to me, all the allegations of the foregoing application are true in substance and in fact and that no material fact or circumstance has, within my knowledge, been omitted from the application.

_____
[**Name of applicant**]

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SUBSCRIBED AND SWORN TO BEFORE ME by [**name of applicant**] on

_____.

_____
Notary Public, State of Texas

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FORM 78—MOTION TO APPOINT ATTORNEY AD LITEM

[**Caption. See Special Instruction 87.**]

Motion to Appoint Attorney Ad Litem

2.76 or 2.101 or 2.45, Applicant for the determination of heirship herein, requests the Court to appoint an attorney ad litem to represent Decedent's heirs whose names or locations are unknown.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order Appointing Attorney Ad Litem

On this day the Court considered the Motion to Appoint Attorney Ad Litem.

It is ORDERED that _____, an attorney licensed to practice before this Court, is appointed to defend the interests of Decedent's heirs whose names or locations are unknown.

SIGNED on _____.

_____
Judge Presiding

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Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

Form 79 is reserved.

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FORM 80—STATEMENT OF FACTS (PDH, RDA, IBA)

Two witnesses must appear in court to furnish this information. A separate form is to be prepared for each of these witnesses.

[**Caption. See Special Instruction 87.**]

Statement of Facts

On **6.25 3.83** ("Affiant") personally appeared in open court and, after being duly sworn, stated the following:

I am well acquainted with the family history of **6.02** ("Decedent"), who died in **1.09**, **1.09** County, **1.09**, on **1.07**. [**State the basis for the witness's familiarity with D's family history, including how the witness knew D, e.g.,** "I worked with Decedent's wife the last six years" **or** "I played bridge with Decedent every month."] To the best of my knowledge, Decedent died intestate.

Repeat language from paragraphs 5, 6, and 7 and, if PDH, also add language from paragraphs 5–10 and 12, of Application to Declare Heirship (Form 77).

I have no financial interest in the estate of Decedent.

SIGNED on _____.

_____
3.83, Affiant
3.85
3.86

SUBSCRIBED AND SWORN TO BEFORE ME by **3.83** in open court on _____ _____.

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Insert the following if the statement is to be sworn before the court clerk.

6.16
Clerk of the 6.03 Court of 6.04 County, Texas

By _____
Deputy

Insert the following if the statement is to be sworn before a notary.

_____
Notary Public, State of Texas

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FORM 81—JUDGMENT DECLARING HEIRSHIP

[**Caption. See Special Instruction 87.**]

Judgment Declaring Heirship

On this day the Court heard the sworn Application to Declare Heirship of the Estate of **6.02**, Deceased ("Decedent") wherein **2.45 or 2.76 or 2.101** is the applicant and Decedent's living heirs whose names are known are respondents and Decedent's heirs whose names or locations are unknown are defendants. It appears to the Court, and the Court so finds, that all parties interested in the estate of Decedent have been made parties to the application, have filed written waivers of service of citation, have appeared and answered herein, or have been duly and legally served with citation as required by law; that the Court appointed an attorney ad litem to appear and answer and to represent the defendants, and such attorney ad litem did so appear and filed an answer for the defendants; that this Court has jurisdiction of the subject matter and all persons and parties; that the evidence presented and admitted fully and satisfactorily proves each and every issue presented to the Court; [and] that Decedent died intestate on **1.07** and that the heirship of Decedent has been fully and satisfactorily proved, as well as the identity of the nature of Decedent's property as being separate or community and the interest and shares of each of the heirs therein [**include only in Proceeding to Declare Heirship (PDH):** ; and that no administration is necessary].

The Court finds that the names of the heirs of Decedent and their respective shares and interests in the real and personal property of Decedent are as follows:

Name and Relationship to Decedent	*Share of Separate Real Property*	*Share of Separate Personal Property*

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If D was married at the time of death, include the following.

Name and Relationship to Decedent	*Share of Community Real Property*	*Share of Community Personal Property*

If desired, include the following for specific property.

Name and Relationship to Decedent	*Share and Description of Separate/Community Real Property*	*Share and Description of Separate/Community Personal Property*

Set forth a complete listing of the heirs and beneficiaries, their shares and interests in and description of real property to which each is entitled, and their shares and interests in and description of personal property to which each is entitled. Refer to 2.76, 2.101, 3.03, 3.37, 3.58, and 3.72 of MIL for information concerning the heirs and beneficiaries. Refer to 7.0–18.0 of MIL inclusive for information concerning the property and indicate whether the property is separate or community. Note that some courts will not make a finding as to entitlement to specific assets.

It is ORDERED that the attorney ad litem appointed to represent the interests of the defendants is discharged from this case and is allowed a fee of $_____ to be paid out of the assets of Decedent.

Include the following paragraph only in a Proceeding to Declare Heirship (PDH).

The Court finds that there exists no necessity for administration of the estate of Decedent, none is ordered, and upon payment of all costs of Court no further proceedings shall be had in this cause.

SIGNED on _____.

_____
Judge Presiding

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APPROVED AND ENTRY REQUESTED:

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

6.126

By _____
Attorney Ad Litem for Defendants
State Bar No.: **6.127**
6.133
6.129
6.130
6.131
Fax: **6.132**

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FORM 82—SMALL ESTATE AFFIDAVIT AND ORDER

This affidavit *must* be signed and sworn to by all distributees who have legal capacity, by the natural guardian or next of kin of any minor distributee, and by the guardian of any other incapacitated distributee.

This is a combination form that is not to be completely copied; rather, appropriate paragraphs are to be selected, and only one of each numbered paragraph is to be used. In the case of paragraph 5, certain modifications may be necessary.

Leave blanks in the caption unless the docket number and court assignment appear on prior pleadings or orders of the court.

[**Caption. See Special Instruction 87.**]

Small Estate Affidavit

STATE OF TEXAS)(
)(
COUNTY OF **6.04**)(

Each of the undersigned ("Distributees"), being first duly sworn, states on oath and furnishes the following information to the Court:

1. I have personal knowledge of all facts set forth herein, and they are true and correct.

2. **6.02** ("Decedent") died on **1.07** in **1.09**, **1.09** County, **1.09**. To the best of my knowledge, Decedent died intestate.

3. Decedent's domicile was in **1.11** County, Texas, where the principal part of Decedent's property at the time of death was situated.

¶4—Refer to 3.01 of MIL. Use the first alternative if D was married; use the second alternative if D was not.

4. Decedent was married to and was survived by **3.03** on the date of Decedent's death.

Or

4. Decedent was not married on the date of Decedent's death.

¶5—Set forth a complete listing of children born to or adopted by D. Be sure to include references to the children who predeceased D and account for their descendants, if any. Refer to 3.35 of MIL. Use the first alternative if the answer is *no*; use the second alternative if the answer is *yes and* D was survived by an only child; use the third alternative if the answer is *yes and* D's only child predeceased D; use the fourth alternative if the answer is *yes and* D had two or more children. Some modification of the fourth alternative may be necessary.

5. No child was born to or adopted by Decedent.

Or

5. Only one child, **3.37**, who survived Decedent, was born to or adopted by Decedent.

Or

5. Only one child, **3.37**, who predeceased Decedent, was born to or adopted by Decedent. No children were born to or adopted by this child.

Or

5. Only **3.36** children, **3.37**, who survived Decedent, were born to or adopted by Decedent.

If there is no surviving spouse, include ¶6, selecting the applicable sentences, if seeking to exclude exempt property from the value of the estate assets or to qualify for transfer of title to homestead under the affidavit.

6. [**3.37** [is a minor child/are minor children] of Decedent./**3.37** [is an unmarried adult child/are unmarried adult children] of Decedent remaining with Decedent's family./ **3.37** [is an incapacitated adult child/are incapacitated adult children] of Decedent.]

7. No petition for the appointment of a personal representative is pending or has been granted for Decedent's estate.

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8. More than thirty days have elapsed since the death of Decedent.

9. The value of the estate assets, exclusive of homestead and exempt property, does not exceed $75,000, and the estate assets, excluding the homestead and exempt property, exceed the known liabilities of the estate, excluding any liabilities secured by homestead and exempt property. "Homestead" and "exempt property" mean only a homestead or other exempt property that would be eligible to be set aside under Section 353.051 of the Texas Estates Code if Decedent's estate were being administered.

10. The names and addresses of all the distributees, heirs, devisees, and assignees of the money or property of the estate of Decedent, and their right to receive the same, are as follows:

Name	*Address*	*Relationship to Decedent*	*Share of Estate*

> Set forth the relevant family history facts concerning heirship that show the rights of the distributees to receive D's money or property. This should include a complete listing of such persons, their residences, their rights to receive property, their relationship to D, whether they are heirs, devisees, or assignees, and their share of the estate. If any are minors or incapacitated persons, so state. See 3.03, 3.37, 3.58, and 3.72 of MIL.

11. The known assets and liabilities of Decedent's estate are as follows:

Assets

> Set forth a complete description of each item of property with estimated values and encumbrances. Indicate whether separate or community property and whether or not eligible. See 7.0–18.0 of MIL inclusive. If D's homestead is included in the listing, be sure to specify that it was D's homestead. "Eligible" means property eligible to be set aside under Estates Code, Section 353.051, if D's estate were being administered. The homestead is not eligible unless D was survived by a spouse or minor child. Estates Code, Section 353.051(a)(1). Other exempt property may be eligible if D was survived by a spouse, minor child, unmarried adult child remaining with D's family, or adult child who is incapacitated. Estates Code, Section 353.051(a)(2).

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Liabilities

Creditor *Amount of Liability*

Set forth a complete listing and description of each debt. See 21.0 of MIL.

12. Distributees pray that this affidavit and application be approved by the Court and recorded in the Small Estate Records and that the Clerk issue certified copies thereof, in order to allow Distributees to present the same to persons owing money to the estate, having custody or possession of property of the estate, or acting as registrar, fiduciary, or transfer agent of anyone having evidences of money, property, or other right belonging to the estate in order for those persons to pay, deliver, issue, or transfer the property.

Repeat the following signature line and jurat for each distributee who is not a minor or incapacitated.

_____
[**Name of distributee**], Distributee

SUBSCRIBED AND SWORN TO BEFORE ME by [**name of distributee**] on _____.

_____
Notary Public, State of Texas

Repeat the following signature block and jurat for each distributee who is a minor. See 3.37 and 3.43B of MIL if minor distributee is D's child.

[**Name of minor distributee**], Distributee

By _____
[**Name**], [natural guardian/next of kin]

SUBSCRIBED AND SWORN TO BEFORE ME by [**name**], [natural guardian/next of kin] of [**name of minor distributee**], Distributee, on _____.

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_____
Notary Public, State of Texas

Repeat the following signature block and jurat for each distributee who is an incapacitated person. See 3.37 and 3.43B of MIL if incapacitated distributee is D's child.

[**Name of incapacitated distributee**], Distributee

By _____
[**Name of guardian**], guardian

SUBSCRIBED AND SWORN TO BEFORE ME by [**name of guardian**], guardian of [**name of incapacitated distributee**], Distributee, on _____.

_____
Notary Public, State of Texas

Repeat the following paragraph, signature line, and jurat for each of the two disinterested witnesses.

The undersigned witness, being first duly sworn, states on oath that:

I have no financial or beneficial interest in the estate of Decedent under the laws of descent and distribution or otherwise. I have read the document to which my affidavit is attached and have personal knowledge of all matters set forth therein, and the facts therein set forth are true.

_____
3.83, Witness

SUBSCRIBED AND SWORN TO BEFORE ME by **3.83** on _____.

_____
Notary Public, State of Texas

© STATE BAR OF TEXAS

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order Approving Small Estate Affidavit

On this day the Court considered the Small Estate Affidavit of the distributees of this estate filed on [**date**]. The Court finds that the affidavit complies with the terms and provisions of the Texas Estates Code, that this Court has jurisdiction and venue, that this estate qualifies under the provisions of the Texas Estates Code as a small estate, that the appointment of a personal representative is not necessary, and that the affidavit should be approved.

It is ORDERED that the affidavit be and the same is hereby APPROVED and shall forthwith be recorded as an official public record under Chapter 194, Texas Local Government Code, that each of the distributees named therein is entitled to that portion of Decedent's estate as set forth in the affidavit, and that the clerk of this Court shall issue certified copies thereof to all persons entitled thereto.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 83—APPLICATION FOR TEMPORARY ADMINISTRATION—WHERE THERE IS NO WILL

This is a combination form that is not to be completely copied; rather, appropriate alternative paragraphs are to be selected. Each application *must* have paragraphs that are numbered 1 through 10, *but* only one of each numbered paragraph is to be used.

Leave blanks in the caption unless the docket number and court assignment appear on prior pleadings or orders of the court.

For an application for temporary administration where D left a will, see Form 84.

Note: Temporary administrations are fact-specific. This form is an example of an application under Estates Code, Chapter 452, Subchapter A, for appointment of a temporary administrator to operate a business. Significant adaptation is required for a temporary administration pending a contest of a will or administration, governed by Estates Code, Chapter 452, Subchapter B. The powers listed in paragraphs 5 through 10 of the affidavit are granted by statute to all personal representatives by Estates Code, Section 351.052, except for temporary administrators. Estates Code, Section 452.101.

For the last three numbers of applicant's driver's license and Social Security numbers, refer to 2.83 and 2.83A of MIL.

[**Caption. See Special Instruction 87.**]

Application for Temporary Administration

2.76 ("Applicant") furnishes the following information to the Court for the appointment of Applicant as temporary administrator and for the issuance of letters of temporary administration:

1. **1.02** ("Decedent") died on **1.07** in **1.09**, **1.09** County, **1.09**, at which time Decedent was domiciled and resided in **1.11**, **1.11** County, **1.11**. The last three numbers of Decedent's driver's license number are [**numbers**], and the last three numbers of

Decedent's Social Security number are [**numbers**]. Four years have not elapsed since the date of Decedent's death.

> Use the following as ¶2 if the answer to 6.08 of MIL is *yes*; if the answer is *no*, refer to Special Instruction 15 and substitute the appropriate paragraph.

2. This Court has jurisdiction and venue because Decedent was domiciled and had a fixed place of residence in this county on the date of death.

> ¶3—Facts describing the existence of some emergency situation requiring the immediate appointment of a temporary administrator must be set forth in this paragraph.

3. A necessity exists for the administration of Decedent's estate.

4. Applicant is domiciled and resides at **2.78**, **2.79**, **2.81** County, [**state**]. [The last three numbers of Applicant's driver's license number are [**numbers**]./Applicant has not been issued a driver's license.] [The last three numbers of Applicant's Social Security number are [**numbers**]./Applicant has not been issued a Social Security number.] Applicant is [Decedent's **2.82**/not related to Decedent].

5. Applicant believes that Decedent's estate is composed of [personal/real and personal] property described generally as **6.09** [**e.g.,** home, cash, securities, automobiles, livestock, household goods, personal effects] of a probable value in excess of $**6.10**. Applicant will file a complete inventory of the assets.

6. To the best of Applicant's knowledge, Decedent died intestate.

7. The name and address, if known, whether the heir is an adult or a minor, and the relationship, if any, of each heir to Decedent is as follows:

Name	*Address*	*Adult/Minor*	*Relationship to Decedent*

> State information for each heir.

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¶8—Refer to 6.13 of MIL. Use the first alternative if 6.13B is applicable; use the second alternative if 6.13C is applicable; use the third alternative if 6.13D is applicable.

8. No child or children were born to or adopted by Decedent.

Or

8. The only child born to or adopted by Decedent was **3.37**, born **3.43** at **3.44**.

Or

8. The children born to or adopted by Decedent were:

Name	*Date of Birth*	*Place of Birth*

State information for each child.

¶9—Refer to 6.14 of MIL. Use the first alternative if 6.14D is applicable; use the second alternative if 6.14E is applicable; use the third alternative if 6.14F is applicable. Repeat the second or third alternative if required for additional marriages.

9. Decedent was never divorced.

Or

9. Decedent was divorced from **3.21** on **3.25A**.

Or

9. Decedent was divorced from **3.21**, the date and place of which divorce are not known to Applicant.

Applicant requests the Court to make an immediate appointment of Applicant as temporary administrator of Decedent's estate to serve as such until discharged by order of this Court.

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Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

Verification

STATE OF TEXAS)(
)(
COUNTY OF _____)(

I, **2.76**, having been duly sworn, hereby state on my oath that the facts set forth in the foregoing application are within my personal knowledge and are true and correct.

_____
2.76, Applicant

SUBSCRIBED AND SWORN TO BEFORE ME by **2.76** on _____ _____.

_____
Notary Public, State of Texas

Affidavit of 2.76

2.76 appeared in person before me today and stated under oath:

"My name is **2.76**. I am above the age of eighteen years, and I am fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

"I am Applicant for appointment as temporary administrator of the estate of **1.02** ("Decedent"). I would be a suitable temporary representative. I am domiciled and reside at **2.78**, **2.79**, **2.81** County, [**state**]. I am [**describe the applicant's interest in and relation to the estate**].

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"The interest of Decedent's estate requires immediate appointment of a personal representative because [**specify, e.g.**, Decedent owned a retail hardware store, which Decedent operated as a sole proprietorship. This is a going business located in this county, and to keep the business in operation, an authorized person must take charge of the business immediately so that the doors may remain open, sales can be made, goods can be ordered and paid for, and payrolls can be met./Decedent owned a produce business, which has a large inventory of perishable property that must be sold before it spoils./Decedent owned a claim on which a suit must be immediately brought before it is barred by the statute of limitations.]

"The temporary administrator of this estate should be given the following duties and powers:

> ¶1 through ¶4—The following show a sample of a suggested list of powers for a temporary administrator charged with continuing the operation of D's business. This language should be changed for different fact situations.

1. To take charge and possession of the business known as "Morgan's Hardware Store," located at 711 South Main Street in Sunshine County, Texas ("the Business"), including all the assets belonging to the Business.

2. To carry on the usual and customary operation of the Business, including but not limited to the power to collect all accounts receivable, to pay all accounts payable and other debts of the Business when due, to pay the salaries of all employees, to order and pay for additional goods and merchandise, and to do every other act necessary to continue the operation of the Business pending further order of this Court.

3. To take possession of all cash on hand or on deposit belonging to Decedent or to the Business; to open new accounts and to be the authorized signatory on those accounts; to borrow money to continue the operation of the Business and to pledge any assets of the Business to secure the payment of any such loans.

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4. To execute and deliver any instruments necessary to continue the operation of the Business; to employ accountants, additional employees, and attorneys to assist in the operation of the Business and in this temporary administration; to pay court costs and all necessary expenses and attorney's fees; to sue or defend lawsuits; and to exercise any rights necessary to protect the Business or any assets of the Business.

Continue with the following.

5. To release a lien on payment at maturity of the debt secured by the lien.

6. To vote stocks by limited or general proxy.

7. To pay calls and assessments.

8. To insure the estate against liability in appropriate cases.

9. To insure estate property against fire, theft, and other hazards.

10. To pay taxes, court costs, and bond premiums.

"I am entitled to letters of temporary administration and am not disqualified by law from serving as temporary administrator of this estate.

"I believe that Decedent's estate is composed of [personal/real and personal] property described generally as **6.09** [**e.g.**, home, cash, securities, automobiles, livestock, household goods, personal effects] of a probable value in excess of $**6.10**. I will file a complete inventory of the assets."

_____

2.76, Applicant

SUBSCRIBED AND SWORN TO BEFORE ME by **2.76** on _____

_____.

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_____

Notary Public, State of Texas

© STATE BAR OF TEXAS

FORM 84—APPLICATION FOR TEMPORARY ADMINISTRATION—WHERE DECEDENT LEFT A WILL

This is a combination form that is not to be completely copied; rather, appropriate alternative paragraphs are to be selected. Each application *must* have paragraphs that are numbered 1 through 11, *but* only one of each numbered paragraph is to be used.

Leave blanks in the caption unless the docket number and court assignment appear on prior pleadings or orders of the court.

For an application for temporary administration where D did not leave a will, see Form 83.

Note: Temporary administrations are fact-specific. This form is an example of an application under Estates Code, Chapter 452, Subchapter A, for appointment of a temporary administrator to operate a business. Significant adaptation is required for a temporary administration pending a contest of a will or administration, governed by Estates Code, Chapter 452, Subchapter B. The powers listed in paragraphs 5 through 10 of the affidavit are granted by statute to all personal representatives by Estates Code, Section 351.052, except for temporary administrators. Estates Code, Section 452.101.

For the last three numbers of applicant's driver's license and Social Security numbers, refer to 2.83 and 2.83A of MIL.

[**Caption. See Special Instruction 87.**]

Application for Temporary Administration

2.76 ("Applicant") furnishes the following information to the Court for the appointment of Applicant as temporary administrator and for the issuance of letters of temporary administration:

1. **1.02** ("Decedent") died on **1.07** in **1.09**, **1.09** County, **1.09**, at the age of **1.10** years, at which time Decedent was domiciled and resided in **1.11**, **1.11** County, **1.11**. The last three numbers of Decedent's driver's license number are [**numbers**], and the

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last three numbers of Decedent's Social Security number are [**numbers**]. Four years have not elapsed since the date of Decedent's death.

> Use the following as ¶2 if the answer to 6.08 of MIL is *yes*; if the answer is *no*, refer to Special Instruction 15 and substitute the appropriate paragraph.

2. This Court has jurisdiction and venue because Decedent was domiciled and had a fixed place of residence in this county on the date of death.

> ¶3—Facts describing the existence of some emergency situation requiring the immediate appointment of a temporary administrator must be set forth in this paragraph.

3. A necessity exists for the administration of Decedent's estate.

4. Applicant is domiciled and resides at **2.78**, **2.79**, **2.81** County, [**state**], the physical address at which service can be had on Applicant. [The last three numbers of Applicant's driver's license number are [**numbers**]./Applicant has not been issued a driver's license.] [The last three numbers of Applicant's Social Security number are [**numbers**]./Applicant has not been issued a Social Security number.]

5. Applicant believes that Decedent's estate is composed of [personal/real and personal] property described generally as **6.09** [**e.g.,** home, cash, securities, automobiles, livestock, household goods, personal effects] of a probable value in excess of $**6.10**. Applicant will file a complete inventory of the assets.

6. Decedent left a valid will ("Will") dated **2.02**, which was never revoked and [is filed herewith/was previously delivered to the clerk of this Court]. [**Include if applicable:** Decedent left a valid codicil ("Codicil") dated **2.17**, which was never revoked and [is filed herewith/was previously delivered to the clerk of this Court].] [**Include if**

there are subscribing witnesses: The names of the subscribing witnesses to the Will are **2.11** [**list all such witnesses**].] [**If D left a codicil, include same information regarding the codicil; witness names for codicil are listed at 2.21 of MIL.**]

¶7—Refer to 6.13 of MIL. Use the first alternative if 6.13B is applicable; use the second alternative if 6.13E is applicable.

7. No child or children were born to or adopted by Decedent after the date of the Will.

Or

7. After the date of the Will **3.52**, who survived Decedent, [was/were] [born to/ adopted by] Decedent.

¶8—Refer to 6.14 of MIL. Use the first alternative if 6.14A is applicable or if 6.14B is applicable and the answer to 3.25B is *no*; use the second alternative if 6.14B is applicable and the answer to 3.25B is *yes*. Repeat the second alternative if required for additional marriages.

8. After the date of Decedent's Will, no marriage of Decedent was dissolved.

Or

8. On or about **3.25A**, which date is after the date of Decedent's Will, Decedent's marriage to **3.21** was dissolved.

9. The Will named [Applicant/[**name(s); see 2.45(A), 2.45(B), 2.66(A)**]] to serve as executor.

¶10—Refer to 3.53 of MIL. If the answer is *no*, use the first alternative; if the answer is *yes*, use the second alternative. Repeat the second alternative if required for multiple devisees.

10. The [Will/Will and Codicil] did not name either the State of Texas, a governmental agency of the State of Texas, or a charitable organization as a devisee.

Or

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10. The [Will/Codicil] named **3.58**, **3.61C**, [the State of Texas/a governmental agency of the State of Texas/a charitable organization], as a devisee.

Applicant requests the Court to make an immediate appointment of Applicant as temporary administrator of Decedent's estate to serve as such until discharged by order of this Court.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

Verification

STATE OF TEXAS)(
)(
COUNTY OF _____)(

I, **2.76**, having been duly sworn, hereby state on my oath that the facts set forth in the foregoing application are within my personal knowledge and are true and correct.

_____
2.76, Applicant

SUBSCRIBED AND SWORN TO BEFORE ME by **2.76** on _____ _____.

_____
Notary Public, State of Texas

Affidavit of 2.76

2.76 appeared in person before me today and stated under oath:

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"My name is **2.76**. I am above the age of eighteen years, and I am fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

"I am Applicant for appointment as temporary administrator of the estate of **1.02** ("Decedent"). I would be a suitable temporary representative. I am domiciled and reside at **2.78**, **2.79**, **2.81** County, [**state**]. I am [**describe the applicant's interest in and relation to the estate**].

"The interest of Decedent's estate requires immediate appointment of a personal representative because [**specify, e.g.**, Decedent owned a retail hardware store, which Decedent operated as a sole proprietorship. This is a going business located in this county, and to keep the business in operation, an authorized person must take charge of the business immediately so that the doors may remain open, sales can be made, goods can be ordered and paid for, and payrolls can be met./Decedent owned a produce business, which has a large inventory of perishable property that must be sold before it spoils./Decedent owned a claim on which a suit must be immediately brought before it is barred by the statute of limitations.]

"The temporary administrator of this estate should be given the following duties and powers:

> ¶1 through ¶4—The following show a sample of a suggested list of powers for a temporary administrator charged with continuing the operation of D's business. This language should be changed for different fact situations.

1. To take charge and possession of the business known as "Morgan's Hardware Store," located at 711 South Main Street in Sunshine County, Texas ("the Business"), including all the assets belonging to the Business.

2. To carry on the usual and customary operation of the Business, including but not limited to the power to collect all accounts receivable, to pay all accounts payable and other debts of the Business when due, to pay the salaries of all employees, to

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order and pay for additional goods and merchandise, and to do every other act necessary to continue the operation of the Business pending further order of this Court.

3. To take possession of all cash on hand or on deposit belonging to Decedent or to the Business; to open new accounts and to be the authorized signatory on those accounts; to borrow money to continue the operation of the Business and to pledge any assets of the Business to secure the payment of any such loans.

4. To execute and deliver any instruments necessary to continue the operation of the Business; to employ accountants, additional employees, and attorneys to assist in the operation of the Business and in this temporary administration; to pay court costs and all necessary expenses and attorney's fees; to sue or defend lawsuits; and to exercise any rights necessary to protect the Business or any assets of the Business.

Continue with the following.

5. To release a lien on payment at maturity of the debt secured by the lien.

6. To vote stocks by limited or general proxy.

7. To pay calls and assessments.

8. To insure the estate against liability in appropriate cases.

9. To insure estate property against fire, theft, and other hazards.

10. To pay taxes, court costs, and bond premiums.

"I am entitled to letters of temporary administration and am not disqualified by law from serving as temporary administrator of this estate.

"I believe that Decedent's estate is composed of [personal/real and personal] property described generally as **6.09** [**e.g.**, home, cash, securities, automobiles, livestock, household

goods, personal effects] of a probable value in excess of $**6.10**. I will file a complete inventory of the assets."

_____
2.76, Applicant

SUBSCRIBED AND SWORN TO BEFORE ME by **2.76** on _____ _____.

_____
Notary Public, State of Texas

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FORM 85—ORDER APPOINTING TEMPORARY ADMINISTRATOR

[**Caption. See Special Instruction 87.**]

Order Appointing Temporary Administrator

On this day the Court heard and considered the Application for Temporary Administration filed by **2.76** ("Applicant"). After hearing the evidence in support of the application, the Court finds that **6.02** ("Decedent") is dead and that four years have not elapsed since the date of Decedent's death on **1.07** [**include if applicable:** and before **6.23**, the date the application for temporary administration was filed]; that this Court has jurisdiction and venue over this estate, and the interest of this estate requires the immediate appointment of a personal representative; that the Application for Letters of Temporary Administration should be granted and Applicant would be a suitable temporary representative, is not disqualified from acting as such, and should be appointed temporary administrator of this estate.

It is ORDERED that **2.76** is hereby appointed temporary administrator of this estate to serve until _____, which is not longer than 180 days from the date hereof, and who shall give bond in the sum of $_____, conditioned as required by law; that unless this appointment is contested after service of citation, it shall be continued in force until _____ or for such period of time as the Court shall deem in the interest of this estate, or it shall be made permanent, if found by the Court to be necessary; that the clerk of this Court shall give such notice as may be required by law and shall issue letters of temporary administration within three days after the temporary administrator has qualified according to law; and that the temporary administrator shall have the following powers:

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Specific and detailed powers should be enumerated. These powers would generally be identical to the powers requested in paragraph 5 of the Application for Temporary Administration (Form 83 or 84).

SIGNED on _____.

_____
Judge Presiding

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FORM 86—OATH OF ADMINISTRATOR (RDA, IBA)

[**Caption. See Special Instruction 87.**]

Oath of Administrator

I do solemnly swear that **6.02** ("Decedent") died without leaving any lawful will, as far as I know or believe, and that I will well and truly perform all of the duties of [**include if IBA:** independent] administrator of Decedent's estate.

_____
2.45 or 2.76

SUBSCRIBED AND SWORN TO BEFORE ME by **2.45 or 2.76** on _____ _____.

Insert the following if the oath is to be taken before the clerk.

6.16
Clerk of the **6.03** Court of **6.04** County, Texas

By _____
Deputy

Insert the following if the oath is to be taken before a notary.

_____
Notary Public, State of Texas

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FORM 87—OATH OF TEMPORARY ADMINISTRATOR

[**Caption. See Special Instruction 87.**]

Oath of Temporary Administrator

I do solemnly swear that I will well and truly perform the duties of temporary administrator of the Estate of **6.02**, Deceased, in accordance with the law and with the order of the Court appointing me temporary administrator.

_____
2.76, Temporary Administrator

SUBSCRIBED AND SWORN TO BEFORE ME by **2.76** on _____ _____.

Insert the following if the oath is to be taken before the clerk.

6.16
Clerk of the **6.03** Court of **6.04** County, Texas

By _____
Deputy

Insert the following if the oath is to be taken before a notary.

_____
Notary Public, State of Texas

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FORM 88—LETTERS OF TEMPORARY ADMINISTRATION IF NOT PREPARED BY CLERK

[**Caption. See Special Instruction 87.**]

Letters of Temporary Administration

STATE OF TEXAS)(
)(
COUNTY OF **6.04**)(

I, **6.16**, Clerk of the **6.03** Court of **6.04** County, Texas, do hereby certify that on _____, **2.76** qualified according to law as temporary administrator of the Estate of **6.02**, Deceased, under Docket No. **6.01**, and such temporary administrator was granted the following powers:

Copy the specific powers granted in the Order Appointing Temporary Administrator (Form 85).

These Letters of Temporary Administration are given to prove the above-named temporary administrator's capacity to act as such.

WITNESS MY HAND and the seal of the **6.03** Court of **6.04** County, Texas, on _____.

6.16
Clerk of the **6.03** Court of **6.04** County, Texas

By _____
Deputy

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FORM 89—APPLICATION FOR ENLARGEMENT OF POWERS OF TEMPORARY ADMINISTRATOR

[**Caption. See Special Instruction 87.**]

Application for Enlargement of Powers of Temporary Administrator

2.76, temporary administrator of this estate, ("Applicant") furnishes the following information to the Court:

> The following paragraph provides an example of one additional power. Enumerate other additional powers as appropriate.

1. In the Order Appointing Temporary Administrator of this estate, dated **6.26**, the enumeration of the temporary administrator's powers does not include the power to [**specify as applicable, e.g.,** exercise stock rights of securities belonging to the estate. Applicant has received notice of such stock rights from a corporation in which the estate owns stock, and it is necessary and would be in the best interest of this estate for such rights to be exercised forthwith. Applicant has reason to believe that other stock rights will be received in the future].

Applicant requests the Court to sign an order enlarging Applicant's powers and directing the clerk of the Court to issue new letters of temporary administration that would include additional powers with respect to [**specify as applicable, e.g.,** the exercise of stock rights].

> Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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Verification

STATE OF TEXAS)(
)(
COUNTY OF)(

I, **2.76**, having been duly sworn, hereby state on my oath that the facts set forth in the foregoing application are within my personal knowledge and are true and correct.

_____
2.76, Applicant

SUBSCRIBED AND SWORN TO BEFORE ME by **2.76** on _____ _____.

_____
Notary Public, State of Texas

Affidavit of 2.76

2.76 appeared in person before me today and stated under oath:

"My name is [**name**]. I am above the age of eighteen years, and I am fully competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct."

State the facts recited in the application on which the request for enlargement of powers is based.

_____
2.76, Applicant

SUBSCRIBED AND SWORN TO BEFORE ME by **2.76** on _____ _____.

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_____

Notary Public, State of Texas

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FORM 90—ORDER GRANTING ADDITIONAL POWERS TO TEMPORARY ADMINISTRATOR

Note: The court may require additional bond commensurate with the additional power. If so, add appropriate language to this form and follow the procedures relating to bonds. If the court confers all powers and authorities of a permanent administrator with respect to claims, the bond will probably be for the full amount required of a permanent administrator.

[**Caption. See Special Instruction 87.**]

Order Granting Additional Powers to Temporary Administrator

On this day the Court heard and considered the Application for Enlargement of Powers of Temporary Administrator filed on [**date**]. After hearing the evidence in support of the application, the Court is of the opinion that the granting of the additional powers sought in the application would be in the best interest of the estate and that the application should be granted.

It is ORDERED that the temporary administrator of this estate is hereby granted the following additional powers:

The following is an example of one additional power.

To exercise any stock rights in connection with any securities owned by the estate, which power shall include the power to purchase, with funds belonging to the estate, additional shares of stock in the corporation issuing such stock rights, as well as the power to sell any fractional share of such stock. It shall also include the power to determine whether such stock rights should be exercised and whether such rights should be sold.

The clerk of this Court is ORDERED to issue new letters of temporary administration, which letters shall include as additional powers the powers granted in this order.

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SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 91—ORDER MAKING TEMPORARY ADMINISTRATION PERMANENT

Note: An increasing number of judges are requiring practitioners to include other or additional language in the orders for their courts. Determine local practice and comply with their idiosyncratic terminology.

[**Caption. See Special Instruction 87.**]

Order Making Temporary Administration Permanent

On this day the Court heard and considered the question of making the temporary administrator of this estate a permanent administrator. The Court finds that **6.02** ("Decedent") died [**include if applicable:** without leaving a will] and that four years have not elapsed since the date of Decedent's death on **1.07** [**include if applicable:** and before **6.23**, the date the application for probate was filed]; that the Court has jurisdiction and venue and there is a necessity for further administration of this estate; that this order is in the interest of this estate; that **2.76** was appointed temporary administrator of this estate by an order dated **6.26** and thereafter the temporary administrator duly qualified as such and has been acting as such since the date of qualification; that the temporary administrator is entitled to letters of permanent administration, is not disqualified by law, and should be appointed permanent administrator of this estate.

It is ORDERED that permanent administration be granted on this estate and that **2.76** is appointed as administrator of this estate and shall receive letters of administration upon taking and filing the oath required by law and upon giving and filing bond in the sum of $_____ conditioned as required by law.

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SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 92—FINAL ACCOUNT OF TEMPORARY ADMINISTRATOR

[**Caption. See Special Instruction 87.**]

Final Account of Temporary Administrator

2.76, temporary administrator of this estate ("Applicant"), furnishes the following information to the Court:

1. The following is a list of all property of this estate that has come into the hands of the Temporary Administrator:

List and describe the property.

2. The following is a return of all sales made by the temporary administrator:

Describe any sales made.

3. All required bond premiums have been paid. A full exhibit and account of all other acts of the temporary administrator is as follows:

Describe any other acts, such as payment of claims, debts, and expenses, etc. Some courts will require copies of canceled checks and other items.

4. The following described property belonging to this estate still remains in the hands of the temporary administrator:

Describe the property remaining on hand.

5. The foregoing is a true and complete list, return, exhibit, and account of this estate, as required by Section 452.151 of the Texas Estates Code, and the temporary

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administrator is ready to deliver the property still remaining on hand to the persons entitled to the possession of same.

Applicant requests the Court to sign an order approving this Final Account of Temporary Administrator and directing the delivery of the property remaining on hand to the persons entitled to receive that property.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

Affidavit of 2.76

STATE OF TEXAS)(
)(
COUNTY OF _____)(

I, **2.76**, having been duly sworn, hereby state on my oath that the foregoing final account is true and correct in every respect and that the account contains a correct and complete statement of the matters to which it relates.

_____
2.76, Temporary Administrator

SUBSCRIBED AND SWORN TO BEFORE ME by **2.76** on _____
_____.

_____
Notary Public, State of Texas

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FORM 93—ORDER APPROVING FINAL ACCOUNT OF TEMPORARY ADMINISTRATOR

[**Caption. See Special Instruction 87.**]

Order Approving Final Account of Temporary Administrator

On this day the Court heard and considered the Final Account of Temporary Administrator. After examining the account and hearing the evidence in support of same, the Court finds that the account complies with the law in every respect; that it should be approved as filed; and that the property remaining on hand in this estate should be delivered to the persons entitled to have possession of that property.

It is ORDERED that the Final Account of Temporary Administrator is hereby approved and that the temporary administrator shall deliver forthwith all the property belonging to the estate and still remaining on hand to the following named persons that the Court finds to be legally entitled to possession of the property:

Name and Address of Person *Description of Property*

> Provide the indicated information about the persons entitled to possession. If the temporary administrator is to deliver the items to a permanent executor or administrator, that person's name, address, and title should be inserted here.

It is further ORDERED that after this order has been fully complied with and there is no property remaining in the hands of the temporary administrator, the temporary administrator shall apply to this Court for an order of discharge and for a declaration that this temporary administration is closed.

© STATE BAR OF TEXAS

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 94—APPLICATION TO CLOSE TEMPORARY ADMINISTRATION

It is good practice to obtain receipts from all distributees and to file them along with this application.

[**Caption. See Special Instruction 87.**]

Application to Close Temporary Administration

2.76, temporary administrator of this estate, ("Temporary Administrator") furnishes the following information to the Court:

1. This Court has previously signed its order approving the Final Account of Temporary Administrator and ordering Temporary Administrator to deliver the property of the estate remaining in the possession of Temporary Administrator to the persons legally entitled to its possession.

2. Temporary Administrator has fully complied with that order, and there is no property belonging to this estate remaining in the possession of Temporary Administrator.

Temporary Administrator requests this Court to sign an order discharging Temporary Administrator from this trust, discharging the surety on Temporary Administrator's bond from further liability, and declaring the temporary administration of this estate to be closed.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 95—ORDER CLOSING TEMPORARY ADMINISTRATION

[**Caption. See Special Instruction 87.**]

Order Closing Temporary Administration

On this day the Court heard and considered the Application to Close Temporary Administration filed by the temporary administrator of this estate. After hearing the evidence in support of the application, the Court finds that this estate has been fully administered; that the Final Account of Temporary Administrator has previously been approved; that the temporary administrator has delivered all the property of the estate remaining on hand to the persons entitled to receive the same; and that this temporary administration should be closed.

It is ORDERED that **2.76**, temporary administrator of this estate, is hereby discharged from this trust; that **6.29**, surety on the bond of the temporary administrator, is hereby discharged from further liability under the bond; and that this temporary administration is hereby declared to be closed.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 96—WAIVER AND RENUNCIATION OF RIGHT TO LETTERS TESTAMENTARY (IA, ADE)

[**Caption. See Special Instruction 87.**]

Waiver and Renunciation of Right to Letters Testamentary

2.43, named to serve as [executor/independent executor] in the [will/codicil] of **6.02** ("Decedent"), hereby waives and renounces the right to be appointed [executor/independent executor] and to receive letters testamentary in Decedent's estate in favor of **2.45 or 2.66**, who is a qualified person.

_____
2.43

STATE OF TEXAS)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on _____ by **2.43**.

_____
Notary Public, State of Texas

© STATE BAR OF TEXAS

FORM 97—AFFIDAVIT REGARDING FULFILLMENT OF WILL ADMITTED TO PROBATE AS MUNIMENT OF TITLE

[**Caption. See Special Instruction 87.**]

Affidavit Regarding Fulfillment of Will Admitted to Probate as a Muniment of Title

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day personally appeared **2.29** and, after being duly sworn, stated that:

My name is **2.29**. I was the applicant for the admission to probate of the will of **6.02**, Deceased ("Decedent") as a muniment of title, and I do hereby make the following declaration:

1. The following terms of the will of Decedent have been fulfilled:

Specify terms that have been fulfilled.

2. The following terms of the will of Decedent have been unfulfilled:

Specify terms that have not been fulfilled.

_____
2.29, Applicant

SUBSCRIBED AND SWORN TO BEFORE ME by **2.29** on _____ _____.

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_____

Notary Public, State of Texas

© STATE BAR OF TEXAS

FORM 98—AFFIDAVIT OF NOTICE OF APPOINTMENT OF TEMPORARY ADMINISTRATOR

[**Caption. See Special Instruction 87.**]

Personal Representative's Affidavit of Compliance with Notice Requirements under Texas Estates Code, Section 452.006

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day appeared **2.76**, who on oath deposed and stated that:

My name is **2.76**. I am the **2.85** of the Estate of **6.02**, Deceased ("Decedent").

As contemplated by Section 452.006(a) of the Texas Estates Code, I gave notice of my appointment as temporary administrator to the following heirs of Decedent.

3.03 or 3.37 or 3.58
3.04 or 3.40 or 3.59
3.05 or 3.41 or 3.60

These notices were [mailed on [**date**] by [registered/certified] mail, return receipt requested,/deposited on [**date**] with [**specify approved private delivery service**]/hand delivered on [**date**] by courier]. The [return receipts/proof of delivery receipts] are attached to this affidavit.

Despite the exercise of reasonable diligence, the identities or addresses of the following heirs could not be ascertained:

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Provide the names and any other information necessary to explain the inability to give notice. If no beneficiary falls in this category, state "None."

I hereby certify that each of the foregoing statements is true and within my personal knowledge.

DATED _____.

_____
2.76

SUBSCRIBED AND SWORN TO BEFORE ME by **2.76**, **2.85** of the Estate of **6.02**, Deceased, on _____.

_____
Notary Public, State of Texas

Attach return receipts or proof of delivery receipts from Letter 98, Notice of Appointment of Temporary Administrator.

© STATE BAR OF TEXAS

FORM 99—TEXAS LAWYER'S CREED

The Texas Lawyer's Creed—A Mandate for Professionalism

Promulgated by

The Supreme Court of Texas and the Court of Criminal Appeals

November 7, 1989

I am a lawyer. I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that Professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this creed for no other reason than it is right.

I. OUR LEGAL SYSTEM

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.

1. I am passionately proud of my profession. Therefore, "My word is my bond."
2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.
3. I commit myself to an adequate and effective pro bono program.
4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.
5. I will always be conscious of my duty to the judicial system.

© STATE BAR OF TEXAS

II. LAWYER TO CLIENT

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

1. I will advise my client of the contents of this Creed when undertaking representation.

2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.

3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.

4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.

5. I will advise my client of proper and expected behavior.

6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.

7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.

8. I will advise my client that we will not pursue tactics which are intended primarily for delay.

9. I will advise my client that we will not pursue any course of action which is without merit.

© STATE BAR OF TEXAS

10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.

11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. LAWYER TO LAWYER

A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

1. I will be courteous, civil, and prompt in oral and written communications.

2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.

3. I will identify for other counsel or parties all changes I have made in documents submitted for review.

4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.

5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are canceled.

© STATE BAR OF TEXAS

6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.

7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.

8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.

9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.

10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.

11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of any opposing counsel, without first inquiring about that counsel's intention to proceed.

12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the Court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.

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13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.

14. I will not arbitrarily schedule a deposition, court appearance, or hearing until a good faith effort has been made to schedule it by agreement.

15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

16. I will refrain from excessive and abusive discovery.

17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.

18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.

19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

IV. LAWYER AND JUDGE

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

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1. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.

2. I will conduct myself in Court in a professional manner and demonstrate my respect for the Court and the law.

3. I will treat counsel, opposing parties, witnesses, the Court, and members of the Court staff with courtesy and civility.

4. I will be punctual.

5. I will not engage in any conduct which offends the dignity and decorum of proceedings.

6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.

7. I will respect the rulings of the Court.

8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.

9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.

Order of the Supreme Court of Texas and the Court of Criminal Appeals

The conduct of a lawyer should be characterized at all times by honesty, candor, and fairness. In fulfilling his or her primary duty to a client, a lawyer must be ever mindful of the profession's broader duty to the legal system.

© STATE BAR OF TEXAS

The Supreme Court of Texas and the Court of Criminal Appeals are committed to eliminating a practice in our State by a minority of lawyers of abusive tactics which have surfaced in many parts of our country. We believe such tactics are a disservice to our citizens, harmful to clients, and demeaning to our profession.

The abusive tactics range from lack of civility to outright hostility and obstructionism. Such behavior does not serve justice but tends to delay and often deny justice. The lawyers who use abusive tactics instead of being part of the solution have become part of the problem.

The desire for respect and confidence by lawyers from the public should provide the members of our profession with the necessary incentive to attain the highest degree of ethical and professional conduct. These rules are primarily aspirational. Compliance with the rules depends primarily upon understanding and voluntary compliance, secondarily upon reenforcement by peer pressure and public opinion, and finally when necessary by enforcement by the courts through their inherent powers and rules already in existence.

These standards are not a set of rules that lawyers can use and abuse to incite ancillary litigation or arguments over whether or not they have been observed.

We must always be mindful that the practice of law is a profession. As members of a learned art we pursue a common calling in the spirit of public service. We have a proud tradition. Throughout the history of our nation, the members of our citizenry have looked to the ranks of our profession for leadership and guidance. Let us now as a profession each rededicate ourselves to practice law so we can restore public confidence in our profession, faithfully serve our clients, and fulfill our responsibility to the legal system.

© STATE BAR OF TEXAS

FORM 100—BENEFICIARY'S WAIVER OF NOTICE

Note: Estates Code, Chapter 308, Subchapter A, provides that a written summary of the gifts made to the beneficiary under the will may be provided in lieu of a copy of the will. That procedure is not included in this System.

Leave blanks in the caption unless the docket number and court assignment appear on prior pleadings or orders of the court.

Waiver of Notice under Texas Estates Code, Chapter 308, Subchapter A

Regarding the Estate of **6.02**, Deceased, receipt is acknowledged of a copy of Decedent's [will/will and codicil] as admitted to probate. I waive the right to receive the notice prescribed by Chapter 308, Subchapter A, of the Texas Estates Code.

DATED _____.

_____
3.03 or 3.37 or 3.58

STATE OF TEXAS)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on _____ by **3.03 or 3.37 or 3.58**.

_____
Notary Public, State of Texas

© STATE BAR OF TEXAS

FORM 101—AFFIDAVIT OF NOTICE OF PROBATE

[**Caption. See Special Instruction 87.**]

Personal Representative's Affidavit of Compliance with Notice Requirements under Texas Estates Code, Chapter 308, Subchapter A

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day appeared **2.45**, who on oath deposed and stated that:

My name is **2.45**. I am the **2.85** of the Estate of **6.02**, Deceased ("Decedent"), whose [will was/will and codicil were] admitted to probate by an order dated **6.26** ("the Order").

I am not required to give notice to the following [beneficiary/beneficiaries], who received copies of the [will/will and codicil] and waived the right to receive the notice:

Provide the required information. If no beneficiary falls in this category, state "None."

I am not required to give notice to the following [beneficiary/beneficiaries], who made an appearance before the date of the Order:

Provide the required information. If no beneficiary falls in this category, state "None."

© STATE BAR OF TEXAS

I am not required to give notice to the following [beneficiary/beneficiaries], who will receive aggregate gifts under the [will/will and codicil] with an estimated value of $2,000 or less:

Provide the required information. If no beneficiary falls in this category, state "None."

I am not required to give notice to the following [beneficiary/beneficiaries], who received all gifts to which [he is/she is/they are] entitled under the [will/will and codicil] not later than the sixtieth day after the date of the Order:

Provide the required information. If no beneficiary falls in this category, state "None."

As contemplated by Chapter 308, Subchapter A, of the Texas Estates Code, I gave notice to the following [beneficiary/beneficiaries] entitled to receive real or personal property under the terms of Decedent's [will/will and codicil]. Each such notice was accompanied by copies of Decedent's [will/will and codicil] and the Order, and each notice was mailed by [registered/certified] mail, return receipt requested, or other qualified delivery method with proof of delivery.

3.03 or 3.37 or 3.58

Despite the exercise of reasonable diligence, the identity or address of the following [beneficiary/beneficiaries] could not be ascertained:

Provide the name and any other information necessary to explain the inability to give notice. If no beneficiary falls in this category, state "None."

I hereby certify that each of the foregoing statements is true and within my personal knowledge.

DATED _____.

© STATE BAR OF TEXAS

_____
2.45

SUBSCRIBED AND SWORN TO BEFORE ME by **2.45**, **2.85** of the Estate of **6.02**, Deceased, on _____.

_____
Notary Public, State of Texas

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for 2.85.

© STATE BAR OF TEXAS

FORM 102—CERTIFICATE OF NOTICE OF PROBATE

[**Caption. See Special Instruction 87.**]

Attorney's Certificate of Compliance with Notice Requirements under Texas Estates Code, Chapter 308, Subchapter A

My name is **5.02**. I am the attorney for **2.45**, who is the **2.85** of the Estate of **6.02**, Deceased ("Decedent"), whose [will was/will and codicil were] admitted to probate by an order dated **6.26** ("the Order"). I certify that the notice requirements set forth in Chapter 308, Subchapter A, of the Texas Estates Code have been satisfied as follows:

2.85 is not required to give notice to the following [beneficiary/beneficiaries], who received copies of the [will/will and codicil] and waived the right to receive the notice:

Provide the required information. If no beneficiary falls in this category, state "None."

2.85 is not required to give notice to the following [beneficiary/beneficiaries], who made an appearance before the date of the Order:

Provide the required information. If no beneficiary falls in this category, state "None."

2.85 is not required to give notice to the following [beneficiary/beneficiaries], who will receive aggregate gifts under the [will/will and codicil] with an estimated value of $2,000 or less:

Provide the required information. If no beneficiary falls in this category, state "None."

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2.85 is not required to give notice to the following [beneficiary/beneficiaries], who received all gifts to which [he is/she is/they are] entitled under the [will/will and codicil] not later than the sixtieth day after the date of the Order:

> Provide the required information. If no beneficiary falls in this category, state "None."

As contemplated by Chapter 308, Subchapter A, of the Texas Estates Code and acting on behalf of **2.45**, I gave notice to the following [beneficiary/beneficiaries] entitled to receive real or personal property under the terms of Decedent's [will/will and codicil]. Each such notice was accompanied by copies of Decedent's [will/will and codicil] and the Order, and each notice was mailed by [registered/certified] mail, return receipt requested, or other qualified delivery method with proof of delivery.

3.03 or 3.37 or 3.58

Despite the exercise of reasonable diligence, the identity or address of the following [beneficiary/beneficiaries] could not be ascertained:

> Provide the name and any other information necessary to explain the inability to give notice. If no beneficiary falls in this category, state "None."

DATED _____.

Respectfully submitted,

> Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for 2.85.

© STATE BAR OF TEXAS

FORM 103—AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

This form is used only in an independent administration.

[**Caption. See Special Instruction 87.**]

Affidavit in Lieu of Inventory, Appraisement, and List of Claims

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day appeared **2.45**, who on oath deposed and stated that:

My name is **2.45**. I am the independent [executor/administrator] of the Estate of **6.02**, Deceased ("Decedent"). [Decedent's [will was/will and codicil were] admitted to probate/I was appointed] by an order dated **6.26**.

All debts, except for secured debts, taxes, and administrative expenses of the estate, are paid.

Copies of a verified, full, and detailed inventory, appraisement, and list of claims have been received by all beneficiaries except as provided by Estates Code, Section 309.056.

I hereby certify that each of the foregoing statements is true and within my personal knowledge.

DATED _____.

© STATE BAR OF TEXAS

_____
2.45

SUBSCRIBED AND SWORN TO BEFORE ME by **2.45**, independent [executor/ administrator] of the Estate of **6.02**, Deceased, on _____.

_____
Notary Public, State of Texas

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for 2.45.

© STATE BAR OF TEXAS

FORM 104—AFFIDAVIT OF SERVICE OF CITATION (HEIRSHIP)

See 3.03, 3.37, 3.58, and 3.72 of MIL for information concerning heirs. See Special Instruction 16 regarding citation in a proceeding to declare heirship.

[**Caption. See Special Instruction 87.**]

Affidavit of Service of Citation

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day appeared [**name of applicant**], who on oath deposed and stated that:

My name is [**name of applicant**]. I am Applicant in the Application to Declare Heirship of the Estate of **6.02**, Deceased ("Decedent"), which was filed about [**date**]. Regarding that application:

As required by Section 202.052 of the Texas Estates Code, citation on Decedent's distributees whose names or locations are unknown was served by publication in this county [**include if D did not reside in the county in which the proceeding to declare heirship is commenced:** and in **1.11** County, the last residence of Decedent].

Include any of the following paragraphs that are applicable.

As required by Section 202.051(1) of the Texas Estates Code, citation was served on Decedent's following distributees, who are twelve years of age or older, by registered or certified mail or other qualified delivery method with proof of delivery: [**names of distributees so served**].

© STATE BAR OF TEXAS

As required by Section 202.051(2) of the Texas Estates Code, citation was served on the parent, managing conservator, or guardian of Decedent's following distributees younger than twelve years of age, by registered or certified mail or other qualified delivery method with proof of delivery:

[**Name of child**]: citation served on [**name of adult**], [**capacity**]

Citation on the following distributees was made by personal service: [**names of distributees and other defendants personally served citation**].

Service of citation is not required on the following distributees, who have waived in writing the right to receive notice: [**names of distributees who waived in writing**].

Service of citation is not required on the following distributees, who made an appearance before the date of the Order: [**names of distributees who appeared**].

Service of citation is not required on the following distributees younger than sixteen years of age, whose parent, managing conservator, guardian, attorney ad litem, or guardian ad litem waived citation under Section 202.056 of the Texas Estates Code:

[**Name of child**]: citation waived by [**name of adult**], [**capacity**]

Continue with the following.

I hereby certify that each of the foregoing statements is true and within my personal knowledge.

DATED _____.

_____

[**Name of applicant**]

© STATE BAR OF TEXAS

SUBSCRIBED AND SWORN TO BEFORE ME by [**name of applicant**] on

_____.

_____
Notary Public, State of Texas

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

© STATE BAR OF TEXAS

FORM 105—CERTIFICATE OF SERVICE OF CITATION (HEIRSHIP)

See 3.03, 3.37, 3.58, and 3.72 of MIL for information concerning heirs. See Special Instruction 16 regarding citation in a proceeding to declare heirship.

[**Caption. See Special Instruction 87.**]

Certificate of Service of Citation

My name is **5.02**. I am the attorney for [**name of applicant**], who is Applicant in the Application to Declare Heirship of the Estate of **6.02**, Deceased ("Decedent"). I certify that the notice requirements regarding that application, as set forth in Sections 202.051 through 202.057 of the Texas Estates Code, have been satisfied as follows:

As required by Section 202.052 of the Texas Estates Code, citation on Decedent's distributees whose names or locations are unknown was served by publication in this county [**include if D did not reside in the county in which the proceeding to declare heirship is commenced:** and in **1.11** County, the last residence of Decedent].

Include any of the following paragraphs that are applicable.

As required by Section 202.051(1) of the Texas Estates Code, citation was served on Decedent's following distributees, who are twelve years of age or older, by registered or certified mail or other qualified delivery method with proof of delivery: [**names of distributees so served**].

As required by Section 202.051(2) of the Texas Estates Code, citation was served on the parent, managing conservator, or guardian of Decedent's following distributees younger than twelve years of age, by registered or certified mail or other qualified delivery method with proof of delivery:

© STATE BAR OF TEXAS

[**Name of child**]: citation served on [**name of adult**], [**capacity**]

Citation on the following distributees was made by personal service: [**names of distributees and other defendants personally served citation**].

Service of citation is not required on the following distributees, who have waived in writing the right to receive notice: [**names of distributees who waived in writing**].

Service of citation is not required on the following distributees, who made an appearance before the date of the Order: [**names of distributees who appeared**].

Service of citation is not required on the following distributees younger than sixteen years of age, whose parent, managing conservator, guardian, attorney ad litem, or guardian ad litem waived citation under Section 202.056 of the Texas Estates Code:

[**Name of child**]: citation waived by [**name of adult**], [**capacity**]

Continue with the following.

I hereby certify that each of the foregoing statements is true and within my personal knowledge.

DATED _____.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

© STATE BAR OF TEXAS

FORM 106—DISTRIBUTEE'S AGREEMENT TO INDEPENDENT ADMINISTRATION (TBA, IBA)

Review Estates Code, Chapter 51 (Notices and Process in Probate Proceedings in General) before requesting citation. It sets out procedures unique to probate.

Waivers of citation must be dated *after* the application is filed and may not be verified by an attorney in the case. Texas Rules of Civil Procedure, Rule 119.

Generally, only an attorney may waive both citation and notice of hearing on behalf of another.

Attorneys and authorized agents may waive citation for another. Texas Rules of Civil Procedure, Rule 119. Estates Code, Section 51.201, permits attorneys, trustees, and certain foreign consul (but not authorized agents) to waive notice of hearing.

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.

Estates Code, Section 401.005, enables waiver of bond in certain cases. See Special Instruction 46—Bond.

This form, limited to consent to power of sale, may be used in Independent Administration (IA) if power is not granted in D's will. If so used, the form should be entitled "Distributee's Agreement to Power of Sale."

[**Caption. See Special Instruction 87.**]

Distributee's Agreement to Independent Administration [and Power of Sale], with Waiver of Citation and Notice

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day personally appeared [**name of affiant**], whose identity is known to me, and, after being duly sworn, stated that:

© STATE BAR OF TEXAS

Select one of the following.

My name is [**name of distributee**] ("Distributee"). I am a distributee of the estate of **6.02**, Deceased.

Or

My name is [**name of distributee's guardian or parent**]. I am the [guardian/parent] of [**name of distributee**] ("Distributee"), who is a distributee of the estate of **6.02**, Deceased. I am authorized to consent to independent administration on behalf of Distributee by Section 401.004(c) of the Texas Estates Code.

Or

My name is [**name of distributee's attorney**]. I am the attorney of [**name of distributee**] ("Distributee"), who is a distributee of the estate of **6.02**, Deceased. I am authorized to consent to independent administration on behalf of Distributee.

Or

My name is [**name of trustee**]. I am trustee of a trust created in the will of **6.02**, Deceased. [**Name of distributee**] ("Distributee") is a trust beneficiary and is incapacitated. I am not the person proposed to serve as independent [executor/administrator] of Decedent's estate. I am authorized to consent to independent administration on behalf of Distributee by Section 401.004(d) of the Texas Estates Code.

Or

My name is [**name of executor or administrator**]. I am [executor/administrator] of the estate of [**name of distributee**], Deceased ("Distributee"), who is a distributee of the estate of **6.02**, Deceased. I am authorized to consent to independent administration on behalf of Distributee by Section 401.004(h) of the Texas Estates Code.

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Continue with the following.

Distributee has received a copy of the [**title of application**] [**include if applicable:** and a copy of the purported will] filed by [**name(s) of applicant(s)**] ("Applicant[s]") about **6.23**. Distributee waives the issuance of citation and service of process. Distributee waives notice of hearing and trials and the making of a record.

Distributee agrees on the advisability of having an independent administration and designates Applicant[s] to serve as independent [executor/executors/administrator/administrators] without bond or other security and consents to [Applicant's/Applicants'] request that no other action be had in this Court in relation to the settlement of Decedent's estate other than the [**include if applicable:** probating and recording of the Will and the] return of an inventory, appraisement, and list of claims or affidavit in lieu of inventory.

Include the following paragraph if D did not have a will that contains a power of sale.

Distributee consents to [Applicant's/Applicants'] request that the Court grant the [executor/executors/administrator/administrators] general authority to sell property without the further consent of Distributee.

Include the following paragraph if D did not have a will that waives bond.

Distributee consents to [Applicant's/Applicants'] request that the Court waive the requirement of a bond.

_____

[**Name of affiant**]

SUBSCRIBED AND SWORN TO BEFORE ME by [**name of affiant**] on

_____.

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_____

Notary Public, State of Texas

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FORM 107—WAIVER OF CITATION AND NOTICE (IBA, PDH, RDA)

Review Estates Code, Chapter 51 (Notices and Process in Probate Proceedings in General) before requesting citation. It sets out procedures unique to probate.

Waivers of citation must be dated *after* the application is filed and may not be verified by an attorney in the case. Texas Rules of Civil Procedure, Rule 119.

Generally, only an attorney may waive both citation and notice of hearing on behalf of another. Edit this form accordingly.

Attorneys and authorized agents may waive citation for another. Texas Rules of Civil Procedure, Rule 119. Estates Code, Section 51.201, permits attorneys, trustees, and certain foreign consul (but not authorized agents) to waive notice of hearing.

Owners of real property described in the application are required parties and are referred to in this form as defendants. Estates Code, Section 202.008.

[**Caption. See Special Instruction 87.**]

[Distributee's/Defendant's] Waiver of Citation and Notice Regarding Proceeding to Declare Heirship

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day personally appeared [**name of affiant**], whose identity is known to me, and, after being duly sworn, stated that:

Select one of the following.

My name is [**name of distributee**] ("Distributee"). I am a distributee of the estate of **6.02**, Deceased.

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Or

My name is [**name of distributee's parent, managing conservator, guardian, attorney ad litem, or guardian ad litem**]. I am the [parent/managing conservator/ guardian/attorney ad litem/guardian ad litem] of [**name of distributee**] ("Distributee"), who is a distributee of the estate of **6.02**, Deceased, and who is younger than sixteen years of age.

Or

My name is [**name of owner of real property interest**] ("Defendant"). I am an owner of real property described in the [**title of application**].

Continue with the following.

[Distributee/Defendant] has received a copy of the [**title of application**] filed by [**name(s) of applicant(s)**] ("Applicant[s]") about **6.23 or 6.124**. [Distributee/Defendant] waives the issuance of citation and service of process. [Distributee/Defendant] waives notice of hearing and trials and the making of a record.

_____
[**Name of affiant**]

SUBSCRIBED AND SWORN TO BEFORE ME by [**name of affiant**] on _____.

_____
Notary Public, State of Texas

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FORM 108—APPLICATION FOR INDEPENDENT ADMINISTRATION OF INTESTATE ESTATE BY AGREEMENT (IBA)

This is a combination form that is not to be completely copied; rather, appropriate alternative paragraphs are to be selected. Each application *must* have paragraphs that are numbered 1 through 12, *but* only one of each numbered paragraph is to be used.

Leave blanks in the caption unless the docket number and court assignment appear on prior pleadings or orders of the court.

Note: All heirs must be before the court by either (1) signing the application, (2) being personally served, (3) filing an answer, or (4) filing a waiver of citation.

For the last three numbers of applicant's driver's license and Social Security numbers, refer to **2.51** and **2.51A** of MIL.

[**Caption. See Special Instruction 87.**]

Application for Independent Administration of Intestate Estate by Agreement and Letters of Independent Administration under Texas Estates Code, Section 401.003

2.45 ("Applicant") furnishes the following information to the Court concerning the Estate of **6.02**, Deceased ("Decedent") and for issuance of letters of independent administration to Applicant:

1. Applicant is an individual interested in this estate, domiciled in and residing at **2.47**, **2.48**, **2.52** County, [**state**], is entitled to letters of independent administration, is not disqualified by law, and is Decedent's **2.50**. [The last three numbers of Applicant's driver's license number are [**numbers**]./Applicant has not been issued a driver's license.] [The last three numbers of Applicant's Social Security number are [**numbers**]./Applicant has not been issued a Social Security number.]

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2. Decedent died intestate on **1.07** in **1.09**, **1.09** County, **1.09**, at the age of **1.10** years. The last three numbers of Decedent's driver's license number are [**numbers**], and the last three numbers of Decedent's Social Security number are [**numbers**].

> Use the following as ¶3 if the answer to 6.08 of MIL is *yes*; if the answer is *no*, refer to Special Instruction 15 and substitute the appropriate paragraph.

3. This Court has jurisdiction and venue because Decedent was domiciled and had a fixed place of residence in this county on the date of death.

4. Decedent owned [personal/real and personal] property described generally as **6.09** [**e.g.**, home, cash, securities, automobiles, livestock, household goods, personal effects] of a probable value in excess of $**6.10**.

5. The name and address, whether the heir is an adult or a minor, and the relationship to Decedent of each heir is as follows:

Name	*Address*	*Adult/Minor*	*Relationship to Decedent*

State information for each heir.

> ¶6—Refer to 6.13 of MIL. Use the first alternative if 6.13B is applicable; use the second alternative if 6.13C is applicable; use the third alternative if 6.13D is applicable.

6. No child or children were born to or adopted by Decedent.

Or

6. The only child born to or adopted by Decedent was **3.37**, born **3.43** at **3.44**.

Or

6. The children born to or adopted by Decedent were:

Name	*Date of Birth*	*Place of Birth*

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State information for each child.

¶7—Refer to 6.14 of MIL. Use the first alternative if 6.14D is applicable; use the second alternative if 6.14E is applicable; use the third alternative if 6.14F is applicable. Repeat the second or third alternative if required for additional divorces.

7. Decedent was never divorced.

Or

7. Decedent was divorced from **3.21** and **3.25A**.

Or

7. Decedent was divorced from **3.21**, the date and place of which divorce are not known to Applicant.

8. A necessity exists for the administration of this estate.

9. Applicant requests that the Court appoint Applicant to serve without bond or other security as independent administrator. Applicant would not be disqualified by law from serving as such or from accepting letters of independent administration, and Applicant would be entitled to such letters.

Include the following paragraph if applicable.

The written waiver of the right of **2.43** to be appointed as administrator will be filed with the clerk of this Court.

10. All Decedent's distributees agree on the advisability of having an independent administration, collectively designate Applicant to serve as independent administrator, and request that no other action shall be had in this Court in relation to the settlement of Decedent's estate other than the return of an inventory, appraisement, and list of claims or affidavit in lieu of inventory.

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11. Applicant requests that the Court grant the independent administrator general authority to sell property without the further consent of Decedent's distributees. All Decedent's distributees agree to this request.

Include the following paragraph if applicable.

Applicant requests that the Court waive the requirement of bond. All Decedent's distributees agree to this request.

12. An application to declare heirship, motion to appoint attorney ad litem, and each distributee's consent will be filed with the clerk of this Court.

Applicant prays that citation issue as required by law to all persons interested in this estate; that Applicant be appointed independent administrator of this estate; that the independent administrator be granted general authority to sell property without the consent of Decedent's distributees; that letters of independent administration be issued to Applicant; that appraisers not be appointed; and that all other orders be signed as the Court may deem proper.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 109—ORDER AUTHORIZING LETTERS OF INDEPENDENT ADMINISTRATION (IBA)

Note: An increasing number of judges are requiring practitioners to include other or additional language in the orders for their courts. Determine local practice and comply with their idiosyncratic terminology.

Note: No appointment of appraisers is made in this order, and although this patronage system has been eliminated in almost all Texas counties you should check to see if it still exists in the county in which the proceedings have been filed.

[**Caption. See Special Instruction 87.**]

Order Authorizing Independent Administration and Letters of Independent Administration

On this day the Court heard the Application for Independent Administration of Intestate Estate by Agreement and Letters of Independent Administration under Texas Estates Code, Section 401.003, filed by **2.45** ("Applicant") in the Estate of **6.02**, Deceased ("Decedent").

The Court heard the evidence and reviewed the documents filed herein and finds that the allegations contained in the application are true; that notice and citation have been given in the manner and for the length of time required by law; that Decedent is dead and that four years have not elapsed since the date of Decedent's death on **1.07** [**include if applicable:** and before **6.23**, the date the application for letters of administration was filed]; that this Court has jurisdiction and venue of Decedent's estate; that Decedent died intestate; that all Decedent's distributees agree on the advisability of having an independent administration and collectively designate Applicant to serve as independent administrator, who is duly qualified and not disqualified by law to act as such and to receive letters of independent administration; [**include if applicable:** that all Decedent's distributees consent to the grant to the independent administra-

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tor of the general authority to sell property without the further consent of Decedent's distributees;] [**include if applicable:** that all Decedent's distributees consent to waiver of the requirement of bond;] that there is a necessity for the administration of this estate; that the Application for Independent Administration of Intestate Estate by Agreement and Letters of Independent Administration under Texas Estates Code, Section 401.003, should be granted; that Applicant is entitled by law to be appointed independent administrator of this estate and is not disqualified from acting as such independent administrator and is qualified to receive letters of independent administration; and that no interested person has applied for the appointment of appraisers and none are deemed necessary and appointment of appraisers is waived by the Court.

It is ORDERED that no bond or other security is required and that, upon the taking and filing of the oath required by law, letters of independent administration shall issue to Applicant, who is appointed as independent administrator of this estate, and no other action shall be had in this Court other than the return of an inventory, appraisement, and list of claims or an affidavit in lieu thereof. [**Include if applicable:** It is further ORDERED that the independent administrator shall have the general authority to sell real and personal property without order of this Court or the consent of Decedent's distributees.]

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 110—APPLICATION FOR PROBATE OF WILL AND INDEPENDENT ADMINISTRATION BY AGREEMENT (TBA)

This is a combination form that is not to be completely copied; rather, appropriate alternative paragraphs are to be selected. Each application *must* have paragraphs that are numbered 1 through 12 and 14, *but* only one of each numbered paragraph is to be used.

Leave blanks in the caption unless the docket number and court assignment appear on prior pleadings or orders of the court.

If the applicant is not named in the will as executor or alternate executor, the proceeding is an independent administration by agreement with will annexed. Select appropriate wording in the title of the application.

If the will cannot be produced in court, supplement this application as instructed in Special Instruction 85—Wills Not Produced.

[**Caption. See Special Instruction 87.**]

Application for Probate of [Will/Will and Codicil], Independent Administration by Agreement [with Will Annexed], and Issuance of Letters [Testamentary/of Independent Administration] under Texas Estates Code, Section 401.002

[**Name(s) of applicant(s); see 2.45(A), 2.45(B), 2.66(A)**] [("Applicant") furnishes/("Applicants") furnish] the following information to the Court for the probate of the [will/will and codicil] of **1.01** ("Decedent") and for issuance of letters [testamentary/of independent administration] to Applicant[s]:

¶1—Refer to 2.45 and 2.66(A) of MIL. If only one individual is named as executor or applicant, select the first alternative; if only a corporate fiduciary is named, select the second alternative; if two individuals are named, select the third alternative; if an individual and a corporate fiduciary are named, select the fourth alternative. For names, addresses, driver's license numbers, Social Security numbers, counties, and states of domicile, refer to 2.45–2.52 and 2.66(A) of MIL.

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1. Applicant is an individual interested in this estate, domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on Applicant. [The last three numbers of Applicant's driver's license number are [**numbers**]./Applicant has not been issued a driver's license.] [The last three numbers of Applicant's Social Security number are [**numbers**]./Applicant has not been issued a Social Security number.]

Or

1. Applicant is interested in this estate and is a [bank/trust company] domiciled in and situated at [**address**], [**county**] County, [**state**], the physical address at which service can be had on Applicant, and is acting herein by and through its duly authorized representative.

Or

1. [**Name**] is an individual interested in this estate, domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on [**name**]. [The last three numbers of [**name**]'s driver's license number are [**numbers**]./[**Name**] has not been issued a driver's license.] [The last three numbers of [**name**]'s Social Security number are [**numbers**]./[**Name**] has not been issued a Social Security number.] [**Name**] is an individual interested in this estate, domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on [**name**]. [The last three numbers of [**name**]'s driver's license number are [**numbers**]./[**Name**] has not been issued a driver's license.] [The last three numbers of [**name**]'s Social Security number are [**numbers**]./[**Name**] has not been issued a Social Security number.]

Or

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1. [**Name**] is an individual interested in this estate, domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on [**name**]. [The last three numbers of [**name**]'s driver's license number are [**numbers**]./[**Name**] has not been issued a driver's license.] [The last three numbers of [**name**]'s Social Security number are [**numbers**]./[**Name**] has not been issued a Social Security number.] [**Name**] is interested in this estate and is a [bank/trust company] domiciled in and situated at [**address**], [**county**] County, [**state**], the physical address at which service can be had on [**name**], and is acting herein by and through its duly authorized representative.

2. Decedent died on **1.07** in **1.09**, **1.09** County, **1.09**, at the age of **1.10** years. The last three numbers of Decedent's driver's license number are [**numbers**], and the last three numbers of Decedent's Social Security number are [**numbers**].

> Use the following as ¶3 if the answer to 6.08 of MIL is *yes*; if the answer is *no*, refer to Special Instruction 15 and substitute the appropriate paragraph.

3. This Court has jurisdiction and venue because Decedent was domiciled and had a fixed place of residence in this county on the date of death.

4. Decedent owned [personal/real and personal] property described generally as **6.09** [**e.g.**, home, cash, securities, automobiles, livestock, household goods, personal effects] of a probable value in excess of $**6.10**.

5. Decedent left a valid will ("Will") dated **2.02**, which was never revoked and [is filed herewith/was previously delivered to the clerk of this Court]. [**Include if applicable:** Decedent left a valid codicil ("Codicil") dated **2.17**, which was never revoked and [is filed herewith/was previously delivered to the clerk of this Court].]

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¶6—There are three separate paragraphs, but only the first two are numbered. Refer to 6.11 of MIL. Use the first alternative if only 6.11C is applicable; use the second alternative if 6.11B is applicable, and include the optional wording if 6.11C is applicable. Then refer to 6.12 of MIL and, if the answer is *yes*, add the unnumbered paragraph; if the answer is *no*, omit the unnumbered paragraph. If there is a codicil, information should be added here, but substituting "Codicil" for "Will"; witness names for codicil are listed at 2.21 of MIL.

6. The names of the subscribing witnesses to the Will are **2.11** [**list all such witnesses**].

Or

6. The Will was wholly in the handwriting of Decedent, and Decedent's signature is subscribed thereto. [**Include if applicable:** The names of the subscribing witnesses to the Will are **2.11** [**list all such witnesses**].]

Include the following paragraph if applicable.

The Will was made self-proved in the manner prescribed by law.

¶7—Refer to 6.13 of MIL. Use the first alternative if 6.13B is applicable; use the second alternative if 6.13E is applicable.

7. No child or children were born to or adopted by Decedent after the date of the Will.

Or

7. After the date of the Will **3.52**, who survived Decedent, [was/were] [born to/ adopted by] Decedent.

¶8—Refer to 6.14 of MIL. Use the first alternative if 6.14A is applicable or if 6.14B is applicable and the answer to 3.25B is *no*; use the second alternative if 6.14B is applicable and the answer to 3.25B is *yes*. Repeat the second alternative if required for additional dissolved marriages.

8. After the date of Decedent's Will, no marriage of Decedent was dissolved.

Or

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8. On or about **3.25A**, which date is after the date of Decedent's Will, Decedent's marriage to **3.21** was dissolved.

9. A necessity exists for the administration of this estate.

> ¶10—If the will does not provide for independent administration, use the first alternative to request letters testamentary for an independent executor. Estates Code, Section 401.002(a).
>
> If the will names no executor, use the second alternative to request letters of independent administration for an independent administrator. Estates Code, Section 401.002(b).
>
> If each named executor is deceased, disqualified, or unwilling or unable to serve, use the third alternative to request letters of independent administration for an independent administrator. Estates Code, Section 401.002(b). Add the optional sentence only if the reason given for an appointee includes inability or unwillingness to serve; in such a case, the executor's affidavit indicating inability or unwillingness must be filed with the application.
>
> If authority to designate an administrator was granted in the will (see 2.44B of MIL), see Special Instruction 95 for appropriate pleadings.

10. The [Will/Codicil] named Applicant[s] to serve as [executor/executrix/executors/co-executors/executor and executrix, respectively,/executrices] but did not provide for independent administration. [Applicant requests/Applicants request] that the Court appoint Applicant[s] to serve without bond or other security as independent executor[s]. Applicant[s] would not be disqualified by law from serving as such or from accepting letters testamentary, and Applicant[s] would be entitled to such letters.

Or

10. No executor is named in the [Will/Codicil], and no one was granted authority to designate an administrator of the estate. [Applicant requests/Applicants request] that the Court appoint Applicant[s] to serve without bond or other security as independent administrator[s]. Applicant[s] would not be disqualified by law from serv-

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ing as such or from accepting letters of independent administration, and Applicant[s] would be entitled to such letters.

Or

10. The [Will/Codicil] named [**name(s) of person(s) appointed in will or codicil; see 2.43, 2.45(A), 2.45(B), 2.66(A)**] to serve without bond or other security as [**state the appropriate designation(s) exactly as designated in the will or codicil, e.g.,** executor, executrix, independent executor], but [**state the reason that each person named will not or cannot serve, e.g., John Smith is deceased; Margaret Brown is disqualified to serve as such; Richard Jones is not willing to serve as such**]. [**Include if applicable:** The affidavit of **2.43** indicating [inability/unwillingness] to serve as [independent] executor is filed with this application.] Applicant[s] would not be disqualified by law from serving as such or from accepting letters of independent administration, and Applicant[s] would be entitled to such letters.

¶11—Refer to 3.53 of MIL. If the answer is *no*, use the first alternative; if the answer is *yes*, use the second alternative. Repeat the second alternative if required for multiple devisees.

11. The [Will/Will and Codicil] did not name either the State of Texas, a governmental agency of the State of Texas, or a charitable organization as a devisee.

Or

11. The [Will/Codicil] named **3.58**, **3.61C**, [the State of Texas/a governmental agency of the State of Texas/a charitable organization], as a devisee.

12. All Decedent's distributees agree on the advisability of having an independent administration, collectively designate Applicant[s] to serve as independent [executor/executors/administrator/administrators], and request that no other action shall be had in this Court in relation to the settlement of Decedent's estate other than the

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probating and recording of the Will and the return of an inventory, appraisement, and list of claims or affidavit in lieu of inventory.

Include ¶13. only if D's will does not provide power of sale. See Special Instruction 47 and Special Instruction 48.

13. Decedent's Will does not contain a power of sale or language sufficient to grant the independent [executor/executors/administrator/administrators] that authority. Applicant requests that the Court grant the independent [executor/executors/administrator/administrators] general authority to sell property without the further consent of Decedent's distributees. All Decedent's distributees agree to this request.

14. Each distributee's consent will be filed with the clerk of this Court.

[Applicant prays/Applicants pray] that citation issue as required by law to all persons interested in this estate; that the [Will/Will and Codicil] be admitted to probate; that independent administration be granted; [**include if applicable:** that the independent [executor/executors/administrator/administrators] be granted general authority to sell property without the consent of Decedent's distributees;] that letters [testamentary/of independent administration] be issued to Applicant[s]; and that all other orders be signed as the Court may deem proper.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant(s).

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FORM 111—ORDER ADMITTING WILL TO PROBATE (TBA)

Note: An increasing number of judges are requiring practitioners to include other or additional language in the orders for their courts. Determine local practice and comply with their idiosyncratic terminology.

Note: No appointment of appraisers is made in this order, and although this patronage system has been eliminated in almost all Texas counties you should check to see if it still exists in the county in which the proceedings have been filed.

If the applicant is not named in the will as executor or alternate executor, the proceeding is an independent administration by agreement with will annexed. Select appropriate wording in the title of the order and in the first and last paragraphs.

If the will could not be produced in court, supplement this order as instructed in Special Instruction 85—Wills Not Produced.

[**Caption. See Special Instruction 87.**]

Order Admitting [Will/Will and Codicil] to Probate and Authorizing Independent Administration [with Will Annexed] and Letters [Testamentary/of Independent Administration [with Will Annexed]]

On this day the Court heard the Application for Probate of [Will/Will and Codicil], Independent Administration by Agreement [with Will Annexed], and Issuance of Letters [Testamentary/of Independent Administration] under Texas Estates Code, Section 401.002, filed by [**name(s) of applicant(s); see 2.45(A), 2.45(B), 2.66(A)**] ("Applicant[s]") in the Estate of **6.02**, Deceased ("Decedent").

The Court heard the evidence and reviewed the will [**include if applicable:** , the codicil,] and the other documents filed herein and finds that the allegations contained in the application are true; that notice and citation have been given in the manner and for the length of time required by law; that Decedent is dead and that four years have not elapsed since the date of

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Decedent's death on **1.07** [**include if applicable:** and before **6.23**, the date the application for probate was filed]; that this Court has jurisdiction and venue of Decedent's estate; that Decedent left a will ("Will") dated **2.02**, [**include if applicable:** and a codicil ("Codicil") dated **2.17**, each] executed with the formalities and solemnities and under the circumstances required by law to make a valid [will/will and codicil]; that on **2.02** Decedent had attained the age of eighteen years and was of sound mind; that the [Will was/Will and Codicil were] not revoked by Decedent; that no objection to or contest of the probate of the [Will/Will or Codicil] has been filed; that all the necessary proof required for the probate of the [Will/Will and Codicil] has been made; that the [Will is/Will and Codicil are] entitled to probate; that all Decedent's distributees agree on the advisability of having an independent administration and collectively designate Applicant[s] to serve as independent [executor/executors/administrator/administrators], who [is/are] duly qualified and not disqualified by law to act as such and to receive letters [testamentary/of independent administration]; [**include if applicable:** that all Decedent's distributees consent to the grant to the independent [executor/executors/administrator/administrators] of the general authority to sell property without the further consent of Decedent's distributees;] that a necessity exists for the administration of this estate; and that no interested person has applied for the appointment of appraisers and none are deemed necessary and appointment of appraisers is waived by the Court.

It is ORDERED that the [Will is/Will and Codicil are] admitted to probate, and the clerk of this Court is ORDERED to record the [Will/Will and the Codicil], together with the application, in the judge's probate docket of this Court.

It is ORDERED that no bond or other security is required and that, upon the taking and filing of the oath required by law, letters [testamentary/of independent administration [with will annexed]] shall issue to Applicant[s], who [is/are] appointed as independent [executor/executors/administrator [with will annexed]/administrators [with will annexed]] of Decedent's will [**include if applicable:** , codicil,] and estate, and no other action shall be had in this Court

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other than the return of an inventory, appraisement, and list of claims or an affidavit in lieu thereof and compliance with Chapter 308 of the Texas Estates Code as required by law. [**Include if applicable:** It is further ORDERED that the independent [executor/executors/administrator/administrators] shall have the general authority to sell real and personal property without order of this Court or the consent of Decedent's distributees.]

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant(s).

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FORM 112—PROOF OF DEATH AND OTHER FACTS (TBA)

This is a combination form that is not to be completely copied; rather, appropriate alternative paragraphs are to be selected. Each Proof of Death and Other Facts *must* have paragraphs that are numbered 1 through 7, *but* only one of each numbered paragraph is to be used.

If the will cannot be produced in court, supplement this proof as instructed in Special Instruction 85—Wills Not Produced. Civil Practice & Remedies Code, Section 132.001.

[**Caption. See Special Instruction 87.**]

Proof of Death and Other Facts

On **6.25 3.83** ("Affiant") personally appeared in open court and, after being duly sworn, stated the following:

1. **6.02** ("Decedent") died on **1.07** in **1.09**, **1.09** County, **1.09**, at the age of **1.10** years, and four years have not elapsed since the date of Decedent's death.

Use the following as ¶2 if the answer to 6.08 of MIL is *yes*; if the answer is *no*, refer to Special Instruction 15 and substitute the appropriate paragraph.

2. Decedent was domiciled and had a fixed place of residence in this county at the date of death.

3. The document dated **2.02**, now shown to me and which purports to be Decedent's will ("Will"), was never revoked as far as I know. [**Include if D had a codicil:** The document dated **2.17**, now shown to me and which purports to be Decedent's codicil ("Codicil"), was never revoked as far as I know.]

4. A necessity exists for the administration of this estate.

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¶5—Refer to 6.13 of MIL. Use the first alternative if 6.13B is applicable; use the second alternative if 6.13E is applicable.

5. No child or children were born to or adopted by Decedent after the date of the Will.

Or

5. After the date of the Will **3.52**, who survived Decedent, [was/were] [born to/ adopted by] Decedent.

¶6—Refer to 6.14 of MIL. Use the first alternative if 6.14A is applicable or if 6.14B is applicable and the answer to 3.25B is *no*; use the second alternative if 6.14B is applicable and the answer to 3.25B is *yes*. Repeat the second alternative if required for additional dissolved marriages.

6. After the date of Decedent's Will, no marriage of Decedent was dissolved.

Or

6. On or about **3.25A**, which date is after the date of Decedent's Will, Decedent's marriage to **3.21** was dissolved.

¶7—If the will does not provide for *independent* administration, use the first alternative. If the will names no executor and no authority to designate an administrator was granted in the will, use the second alternative. If each named executor is deceased, is disqualified, or waives the right to serve, use the third alternative. If authority to designate an administrator was granted (see 2.44B of MIL), see Special Instruction 95 and adapt appropriate language.

7. The [executor/executrix/executors/executor and executrix/executrices] named in the [Will/Codicil] [is/are] not disqualified by law from accepting letters testamentary or from serving as independent executor[s] and [is/are] entitled to such letters.

Or

7. No one was named in the [Will/Will or Codicil] to be executor. **2.45**, Applicant[s] herein, [is/are] not disqualified by law from accepting letters of administration or

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from serving as independent administrator[s] of this estate and [is/are] entitled to such letters.

Or

7. The [**state the appropriate designation(s) exactly as designated in the will or codicil, e.g.,** executors, executrix, independent executor] named in the [Will/Codicil] [is/are] not available to serve because [**state the reason that each person named will not or cannot serve, e.g., John Smith is deceased; Margaret Brown is not qualified to serve as such; Richard Jones is not willing to serve as such and has waived the right to be so appointed**]. **2.45**, Applicant[s] herein, [is/are] not disqualified by law from accepting letters of administration or from serving as independent administrator[s] of this estate and [is/are] entitled to such letters.

SIGNED on _____.

_____
3.83, Affiant
3.85
3.86

SUBSCRIBED AND SWORN TO BEFORE ME by **3.83** on _____ _____.

Insert the following if the proof is to be sworn before the court clerk.

6.16
Clerk of the **6.03** Court of **6.04** County, Texas

By _____
Deputy

Insert the following if the proof is to be sworn before a notary.

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_____

Notary Public, State of Texas

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FORM 113—AFFIDAVIT OF SERVICE OF CITATION (FINAL ACCOUNT)

See 3.03, 3.37, 3.58, and 3.72 of MIL for information concerning distributees.

[**Caption. See Special Instruction 87.**]

Affidavit of Service of Citation

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day appeared **2.45 or 2.76**, **2.85**, who on oath deposed and stated that:

My name is **2.45 or 2.76**. I am **2.85** of the Estate of **6.02**, Deceased ("Decedent"). Regarding the proposed Account for Final Settlement, which was filed about **6.146**:

Include one or both of the following paragraphs.

As required by Section 362.005 of the Texas Estates Code, citation and notice on presentation of account was served on Decedent's following distributees: [**names of distributees so served**].

And/Or

Service of citation is not required on the following distributees, who have waived in writing the right to receive notice: [**names of distributees who waived in writing**].

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Continue with the following.

Each person entitled to citation was provided a copy of the account for final settlement.

Include one or both of the following paragraphs. Repeat the first paragraph if required for more than one delivery method.

A copy of the account for final settlement was provided by [[registered/certified] mail, return receipt requested,/delivery by [**specify approved private delivery service**]/hand delivery by courier] to Decedent's following distributees: [**names of distributees so served**].

And/Or

A copy of the account for final settlement was provided by electronic delivery to Decedent's following distributees: [**names of distributees so served**].

Continue with the following.

I hereby certify that each of the foregoing statements is true and within my personal knowledge.

DATED _____.

_____
2.45 or 2.76

SUBSCRIBED AND SWORN TO BEFORE ME by **2.45 or 2.76** on _____.

_____
Notary Public, State of Texas

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Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for 2.85.

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FORM 114—CERTIFICATE OF SERVICE OF CITATION (FINAL ACCOUNT)

See 3.03, 3.37, 3.58, and 3.72 of MIL for information concerning distributees.

[**Caption. See Special Instruction 87.**]

Certificate of Service of Citation

My name is **5.02**. I am the attorney for **2.45 or 2.76**, **2.85** of the Estate of **6.02**, Deceased ("Decedent"). Regarding the proposed Account for Final Settlement, which was filed about **6.146**:

Include one or both of the following paragraphs.

As required by Section 362.005 of the Texas Estates Code, citation and notice on presentation of account was served on Decedent's following distributees: [**names of distributees so served**].

And/Or

Service of citation is not required on the following distributees, who have waived in writing the right to receive notice: [**names of distributees who waived in writing**].

Continue with the following.

Each person entitled to citation was provided a copy of the account for final settlement.

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Include one or both of the following paragraphs. Repeat the first paragraph if required for more than one delivery method.

A copy of the account for final settlement was provided by [[registered/certified] mail, return receipt requested,/delivery by [**specify approved private delivery service**]/hand delivery by courier] to Decedent's following distributees: [**names of distributees so served**].

And/Or

A copy of the account for final settlement was provided by electronic delivery to Decedent's following distributees: [**names of distributees so served**].

Continue with the following.

I hereby certify that each of the foregoing statements is true and within my personal knowledge.

DATED _____.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for 2.85.

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FORM 115—APPLICATION AND ORDER TO DEPOSIT FUNDS INTO REGISTRY

[**Caption. See Special Instruction 87.**]

Application to Deposit Funds into Registry of Court

2.45 or 2.76, **2.85** of this estate, ("Applicant") furnishes the following information to the Court:

1. The Final Account was filed with the clerk of the Court on **6.146**, and it was approved by the Court on **6.149**.

2. By [[registered/certified] mail, return receipt requested,/delivery by [**specify approved private delivery service**]/hand delivery by courier] the attorney for Applicant notified all the heirs of Decedent individually of the approval of that account, provided them with information showing the amounts to be distributed to each heir, enclosed a check payable for the amount due to that heir, and requested a receipt and release.

3. The following letters were returned unclaimed by heirs. These persons and the amounts to which they are entitled are as follows:

List the persons and the amount to which each is entitled, and show the total amount of undistributed funds.

4. All other distributions have been received by all the other heirs.

5. Applicant proposes to deposit into the registry of the Court the undistributed funds described above.

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Applicant requests this Court to sign an order directing Applicant to pay those undistributed funds into the registry of the Court at this time.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order Granting Application to Deposit Funds into Registry of Court

On this day the Court considered the Application to Deposit Funds into Registry of Court. The Court finds that the application should be granted; that the Final Account of this estate was approved by the Court on **6.149**; that Applicant is in possession of unclaimed funds in the amount of $[**amount**]; and that such funds should be deposited into the registry of the Court. Accordingly, Applicant is ORDERED to deposit $[**amount**] into the registry of the Court within [**number**] days from the date of this order.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 116—APPLICATION AND ORDER TO WITHDRAW FUNDS AND PAY COMPTROLLER

[**Caption. See Special Instruction 87.**]

Application to Withdraw Funds from Registry of Court for Payment to Comptroller

2.45 or 2.76, **2.85** of this estate, ("Applicant") furnishes the following information to the Court:

1. On or about [**date**] the Court ordered Applicant to deposit $[**amount**] into the registry of the Court representing unclaimed funds, and the deposit was made on [**date**].

2. There remains in the registry of the Court the amount of $[**amount**].

3. It has now been at least six months since the settlement of the Final Account, and Applicant proposes to pay to the Comptroller of Public Accounts of the State of Texas as much of the remaining funds as shall be delivered to Applicant by the clerk of this Court.

Applicant requests this Court to sign an order directing the clerk of this Court to deliver the remaining funds to Applicant for subsequent delivery by Applicant to the Comptroller of Public Accounts of the State of Texas.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order Granting Application to Withdraw Funds from Registry of Court for Payment to Comptroller

On this day the Court considered the Application to Withdraw Funds from Registry of Court for Payment to Comptroller requesting to withdraw the balance of funds originally deposited by Applicant into the registry of the Court and to deliver the same to the Comptroller of Public Accounts of the State of Texas. The Court finds that the application is in good order and should be granted. Accordingly, the Clerk of this Court is ORDERED to deliver to Applicant the balance remaining of those funds originally deposited by Applicant into the registry of this Court. It is further ORDERED that, upon receipt of those funds from the clerk of this Court, Applicant shall promptly deliver those funds to the Comptroller of Public Accounts of the State of Texas.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 117—DISTRIBUTION DEED

Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.

Distribution Deed

Date: [**Today's date**]

Grantor:

2.45 or 2.76, **2.85** of the Estate of **1.01**, Deceased, appointed by the **6.26**, order of the court in No. **6.01**, *In the Estate of **1.01**, Deceased*, in the **6.03** Court of **6.04** County, Texas

Grantor's Mailing Address:

2.47 or 2.78
2.48 or 2.79

2.52 or 2.72 County

Grantee:

3.03 or 3.37 or 3.58
3.04 or 3.40 or 3.59
3.05 or 3.41 or 3.60

[**County where Grantee's address found**] County

Consideration:

For the purpose of making distributions out of the Estate of **1.01**, Deceased

Property:

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7.08 [**and when street address available**: , commonly known as **7.10**, **7.11**]

Reservations from Conveyance:

E.g., None **or** Grantor hereby reserves to the Estate of **1.01**, Deceased, its distributees, successors, and assigns forever, all the oil, gas, and other minerals in and under and that may be produced from the Property. If the mineral estate is subject to existing production or an existing lease, this reservation includes the production, the lease, and all benefits from it.

Exceptions to Conveyance and Warranty:

Select one of the following. Refer to Special Instruction 66—Distribution Deeds. Select the first paragraph (OPTION ONE) if title insurance is not found or desired; select the second two paragraphs (OPTION TWO) if grantor's warranties are required to maintain the warrantor's policy coverage under an existing policy of title insurance.

OPTION ONE

This conveyance is expressly made and accepted subject to all matters on the ground that a true and correct survey would reveal and all valid and subsisting easements, restrictions, reservations, covenants, conditions, and other matters relating to the Property to the extent that the same are valid and enforceable and affect the Property, as same are shown by instruments filed for record in the office of the County Clerk of **7.11** County, Texas.

Or
OPTION TWO

This conveyance is expressly made subject to the following matters (the "Exceptions"), but only to the extent the same are valid and enforceable and affect the Property:

(a) [**Complete with matters reflected in Schedule B of the Owner Policy**]

(b)

(c)

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The Exceptions listed above are solely for the purpose of qualifying the estate conveyed herein and Grantor's warranty of title, and no reference or recital herein shall create, enlarge, extend, ratify, confirm, or be the basis for any right, title, estate, claim, or demand in favor of any party other than Grantor and Grantee and their respective heirs, legal representatives, successors, and assigns.

Continue with the following.

Grantor, for the consideration set forth herein, has GRANTED and CONVEYED and does hereby GRANT and CONVEY to Grantee the Property, including the improvements located thereon and all right, title, and interest of Grantor in and to adjacent streets, alleys, rights-of-way, roadways, strips and gores, easements, and in-the-ground utilities, TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to Grantee and Grantee's heirs, executors, administrators, legal representatives, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, legal representatives, successors, and assigns to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, executors, administrators, legal representatives, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to any reservations from conveyance and exceptions to conveyance and warranty set forth above by, through, or under Grantor, but not otherwise.

Grantee assumes all ad valorem taxes due on the property for the current year.

_____
2.45 or 2.73, as **2.85** of the Estate of **1.01**,
Deceased, Grantor

STATE OF TEXAS)(
)(
COUNTY OF _____)(

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This instrument was acknowledged before me on _____ by **2.45 or 2.76** as **2.85** of the Estate of **1.01**, Deceased, Grantor.

_____
Notary Public, State of Texas

Add if Grantee's acceptance is desired.

_____
3.03 or 3.37 or 3.58, Grantee

STATE OF TEXAS)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on _____ by **3.03 or 3.37 or 3.58**, Grantee.

_____
Notary Public, State of Texas

Continue with the following.

AFTER RECORDING RETURN TO:

5.02
5.01
5.05
5.06

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FORM 118—APPLICATION FOR ANCILLARY PROBATE

This is a combination form that is not to be completely copied; rather, appropriate alternative paragraphs are to be selected. Each application *must* have paragraphs that are numbered 1 through 7, *but* only one of each numbered paragraph is to be used.

Leave blanks in the caption unless the docket number and court assignment appear on prior pleadings or orders of the court.

[**Caption. See Special Instruction 87.**]

Application for Ancillary Probate of Foreign Will and Issuance of Ancillary Letters Testamentary

[**Name(s) of applicant(s); see 2.45(A), 2.45(B), 2.66(A)**] ("Applicant") furnishes/("Applicants") furnish] the following information to the Court for the ancillary probate of the foreign will of **1.01** ("Decedent") and for issuance of ancillary letters testamentary to Applicant[s] pursuant to Section 501.002(a) of the Texas Estates Code:

¶1—Refer to 2.45 and 2.66(A) of MIL. If only one individual is named as executor, select the first alternative; if a corporate fiduciary is named as sole executor, select the second alternative; if two individuals are named as co-executors, select the third alternative; if an individual and a corporate fiduciary are named as co-executors, select the fourth alternative. For names, addresses, driver's license numbers, Social Security numbers, counties, and states of domicile, refer to 2.45–2.52 and 2.66(A) of MIL.

1. Applicant is an individual interested in this estate, domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on Applicant. [The last three numbers of Applicant's driver's license number are [**numbers**]./Applicant has not been issued a driver's license.] [The last three numbers of Applicant's Social Security number are [**numbers**]./Applicant has not been issued a Social Security number.]

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Or

1. Applicant is interested in this estate and is a [bank/trust company] domiciled in and situated at [**address**], [**county**] County, [**state**], the physical address at which service can be had on Applicant, and is acting herein by and through its duly authorized representative.

Or

1. [**Name**] is an individual interested in this estate, domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on [**name**]. [The last three numbers of [**name**]'s driver's license number are [**numbers**]./[**Name**] has not been issued a driver's license.] [The last three numbers of [**name**]'s Social Security number are [**numbers**]./[**Name**] has not been issued a Social Security number.] [**Name**] is an individual interested in this estate, domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on [**name**]. [The last three numbers of [**name**]'s driver's license number are [**numbers**]./[**Name**] has not been issued a driver's license.] [The last three numbers of [**name**]'s Social Security number are [**numbers**]./[**Name**] has not been issued a Social Security number.]

Or

1. [**Name**] is an individual interested in this estate, domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on [**name**]. [The last three numbers of [**name**]'s driver's license number are [**numbers**]./[**Name**] has not been issued a driver's license.] [The last three numbers of [**name**]'s Social Security number are [**numbers**]./[**Name**] has not been issued a Social Security number.] [**Name**] is interested in this estate and is a [bank/trust company] domiciled in and situated at [**address**], [**county**] County, [**state**], the physical address at which service can be had on [**name**], and is acting herein by and through its duly authorized representative.

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2. Decedent died on **1.07** in **1.09**, **1.09** County, **1.09**, at the age of **1.10** years. The last three numbers of Decedent's driver's license number are [**numbers**], and the last three numbers of Decedent's Social Security number are [**numbers**].

3. At the date of death, Decedent was domiciled in [**foreign domicile—see 1.11**], within [**foreign jurisdiction—see 2.02J**], and on **2.02C** Decedent's will ("Will") was admitted to probate there by order of the **2.02F**.

4. This Court has jurisdiction and venue pursuant to Section 501.001 of the Texas Estates Code because the Will affects property in Texas. Decedent owned [personal/real and personal] property in Texas described generally as [**e.g.,** home, automobiles, livestock, household goods, personal effects].

5. An authenticated copy of the Will and of the [judgment/order/decree] in which the Will was admitted to probate in **2.02J** [**include if applicable:** , together with a copy of letters testamentary issued in that proceeding,] are attached to this application as Exhibit A.

6. A necessity exists for the administration of this estate.

7. As shown on Exhibit A, [Applicant is/Applicants are] named as executor[s] in the Will and qualified on **2.02D** in **2.02J** to serve as such. [**Include if four years have elapsed since D's death:** [Applicant continues/Applicants continue] to serve as executor[s] in **2.02J**.] [Applicant is/Applicants are] not disqualified to serve as executor[s] under Texas law and request[s] the Court to issue ancillary letters testamentary.

> Include ¶8 if independent administration is requested. Unless obvious, explain why the administration in the foreign jurisdiction was to be free of court supervision.

8. [Applicant was/Applicants were] appointed as independent executor[s] [**include if applicable:** without bond] in **2.02J** and request[s] that the Court appoint Applicant[s] in that capacity.

Or

8. [Applicant was/Applicants were] appointed as executor[s], rather than independent executor[s], in **2.02J** but request[s] that the Court appoint Applicant[s] to serve without bond or other security as independent executor[s]. Consents by each beneficiary under the Will, pursuant to Chapter 401 of the Texas Estates Code, will be filed with the clerk of this Court. The beneficiaries request that the Court grant the independent executor[s] general authority to sell property without the further consent of the beneficiaries and that no other action be had in this Court in relation to the settlement of Decedent's estate other than the return of an inventory, appraisement, and list of claims or affidavit in lieu of inventory.

Continue with the following.

[Applicant prays/Applicants pray] that the Will be admitted to probate pursuant to Section 501.002(a) of the Texas Estates Code [**include if applicable:** , that ancillary letters testamentary be issued to Applicant[s],] and that all other orders be signed as the Court may deem proper.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant(s).

Include as Exhibit A copies of the foreign will and of the judgment, order, or decree admitting it to probate or otherwise establishing it in the foreign jurisdiction. If ancillary letters testamentary are sought, also include letters testamentary or other evidence that the executor has qualified to serve in the foreign jurisdiction. These items must be attested and certificated in accordance with the requirements of Estates Code, section 501.002(c).

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FORM 119—DISTRIBUTEE'S AGREEMENT TO ANCILLARY INDEPENDENT ADMINISTRATION

Review Estates Code, Chapter 51 (Notices and Process in Probate Proceedings in General) before requesting citation. It sets out procedures unique to probate.

Waivers of citation must be dated after the application is filed and may not be verified by an attorney in the case. Texas Rules of Civil Procedure, Rule 119.

Generally, only an attorney may waive both citation and notice of hearing on behalf of another.

Attorneys and authorized agents may waive citation for another. Texas Rules of Civil Procedure, Rule 119. Estates Code, Section 51.201, permits attorneys, trustees, and certain foreign consul (but not authorized agents) to waive notice of hearing.

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.

This form, limited to consent to power of sale, may be used if independent administration, but not power of sale, was granted in the foreign probate proceeding. If so used, the form should be entitled "Distributee's Agreement to Power of Sale."

[**Caption. See Special Instruction 87.**]

Distributee's Agreement to Ancillary Independent Administration [and Power of Sale], with Waiver of Citation and Notice

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day personally appeared [**name of affiant**], whose identity is known to me, and, after being duly sworn, stated that:

Select one of the following.

My name is [**name of distributee**] ("Distributee"). I am a distributee of the estate of **6.02**, Deceased.

Or

My name is [**name of distributee's guardian or parent**]. I am the [guardian/parent] of [**name of distributee**] ("Distributee"), who is a distributee of the estate of **6.02**, Deceased. I am authorized to consent to independent administration on behalf of Distributee by Section 401.004(c) of the Texas Estates Code.

Or

My name is [**name of distributee's attorney**]. I am the attorney of [**name of distributee**] ("Distributee"), who is a distributee of the estate of **6.02**, Deceased. I am authorized to consent to independent administration on behalf of Distributee.

Or

My name is [**name of trustee**]. I am trustee of a trust created in the will of **6.02**, Deceased. [**Name of distributee**] ("Distributee") is a trust beneficiary and is incapacitated. I am not the person proposed to serve as independent executor of Decedent's estate. I am authorized to consent to independent administration on behalf of Distributee by Section 401.004(d) of the Texas Estates Code.

Or

My name is [**name of executor or administrator**]. I am [executor/administrator] of the estate of [**name of distributee**], Deceased ("Distributee"), who is a distributee of the estate of **6.02**, Deceased. I am authorized to consent to independent administration on behalf of Distributee by Section 401.004(h) of the Texas Estates Code.

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Continue with the following.

Distributee has received a copy of the [**title of application**] and a copy of the will filed by [**name(s) of applicant(s)**] ("Applicant[s]") about **6.23**. Distributee waives the issuance of citation and service of process. Distributee waives notice of hearing and trials and the making of a record.

Distributee agrees on the advisability of having an ancillary independent administration. Distributee acknowledges that [Applicant was/Applicants were] appointed as executor[s] in **2.02J** and agrees that Applicant[s] may serve as independent executor[s] without bond or other security. Distributee requests that no other action be had in this Court in relation to the settlement of Decedent's ancillary estate other than the return of an inventory, appraisement, and list of claims or affidavit in lieu of inventory.

Include the following paragraph if D did not have a will that contains a power of sale.

Distributee consents to [Applicant's/Applicants'] request that the Court grant the executor[s] general authority to sell property without the further consent of Distributee.

_____
[**Name of affiant**]

SUBSCRIBED AND SWORN TO BEFORE ME by [**name of affiant**] on

_____.

_____
Notary Public, State of Texas

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FORM 120—PROOF OF DEATH AND OTHER FACTS (AP)

This is a combination form that is not to be completely copied; rather, appropriate alternative paragraphs are to be selected. Each Proof of Death and Other Facts *must* have paragraphs that are numbered 1 through 6, *but* only one of each numbered paragraph is to be used. Civil Practice & Remedies Code, Section 132.001.

[**Caption. See Special Instruction 87.**]

Proof of Death and Other Facts

On **6.25 3.83** ("Affiant") personally appeared in open court and, after being duly sworn, stated the following:

1. **6.02** ("Decedent") died on **1.07** in **1.09**, **1.09** County, **1.09**, at the age of **1.10** years.

2. At the date of death, Decedent was domiciled in [**foreign domicile—see 1.11**], within [**foreign jurisdiction—see 2.02J**].

3. An authenticated copy of Decedent's will ("Will") and of the **2.02C** [judgment/order/decree] of the **2.02F** admitting the Will to probate in [**foreign jurisdiction—see 2.02J**], together with a copy of letters testamentary issued in that proceeding [**include if four years have elapsed since D's death:** and a copy of current letters testamentary], are attached to the application as Exhibit A.

4. Decedent owned [personal/real and personal] property in Texas described generally as [**e.g.,** home, automobiles, livestock, household goods, personal effects] that would be affected by the Will.

5. A necessity exists for the administration of this estate.

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6. [Applicant was/Applicants were] named as executor[s] in the Will and qualified on **2.02D** in **2.02J** to serve as such. [**Include if four years have elapsed since D's death:** [Applicant continues/Applicants continue] to serve as executor[s] in **2.02J**.] [Applicant is/Applicants are] not disqualified from serving as [independent] executor[s] under Texas law and [is/are] entitled to ancillary letters testamentary.

SIGNED on _____.

_____
3.83, Affiant
3.85
3.86

SUBSCRIBED AND SWORN TO BEFORE ME by **3.83** on

_____.

Insert the following if the proof is to be sworn before the court clerk.

6.16
Clerk of the **6.03** Court of **6.04** County, Texas

By _____
Deputy

Insert the following if the proof is to be sworn before a notary.

_____
Notary Public, State of Texas

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FORM 121—ORDER ADMITTING WILL TO ANCILLARY PROBATE

Note: An increasing number of judges are requiring practitioners to include other or additional language in the orders for their courts. Determine local practice and comply with their idiosyncratic terminology.

[**Caption. See Special Instruction 87.**]

Order Admitting Foreign Will to Ancillary Probate [, Authorizing Independent Administration,] and Authorizing Ancillary Letters Testamentary

On this day the Court heard the Application for Ancillary Probate of Foreign Will and Issuance of Ancillary Letters Testamentary filed by [**name(s) of applicant(s); see 2.45(A), 2.45(B), 2.66(A)**] ("Applicant[s]") in the Estate of **6.02**, Deceased ("Decedent").

The Court heard the evidence and considered the application and the authenticated copies of Decedent's will ("Will") and of the [order/judgment/decree] by which the Will was admitted to probate in **2.02J**. The Court finds that these documents are in conformity with Section 501.002(a) of the Texas Estates Code; that no citation or notice is required by law; that this Court has jurisdiction and venue of Decedent's estate; that no objection to or contest of the probate of the Will has been filed; that all the necessary proof required for the probate of the Will has been made; that the Will is entitled to probate; that Applicant[s] [is/are] named as [independent] executor[s] [**include if applicable:** without bond] in the Will, [has/have] qualified in **2.02J** to serve as such, [**include if applicable:** continue[s] to serve as such in **2.02J**,] [is/are] not disqualified to act as executor[s] under Texas law, and [is/are] entitled to receive ancillary letters testamentary; [**include if applicable:** that all Decedent's distributees agree on the advisability of having an independent administration and collectively designate Applicant[s] to

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serve as independent executor[s] without bond;] [**include if applicable:** [that the Will gives the executor[s] the power to sell estate property/that all Decedent's distributees request that the executor[s] be granted general authority to sell property without the further consent of the distributees];] and that a necessity exists for the administration of this estate.

It is ORDERED that the Will is admitted to probate, and the clerk of this Court is ORDERED to record the Will, together with the application, in the judge's probate docket of this Court.

It is ORDERED that [**include if applicable:** no bond or other security is required and that], upon the taking and filing of the oath required by law, ancillary letters testamentary shall issue to Applicant[s], who [is/are] appointed as [independent] executor[s] of Decedent's will and estate [**include if applicable:** , and no other action shall be had in this Court other than the return of an inventory, appraisement, and list of claims or an affidavit in lieu thereof and compliance with Chapter 308 of the Texas Estates Code as required by law]. [**Include if applicable:** It is further ORDERED that the independent executor[s] shall have the general authority to sell real and personal property without order of this Court or the consent of Decedent's distributees.]

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant(s).

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FORM 122—BENEFICIARY'S WAIVER OF RIGHT TO RECEIVE INVENTORY

[**Caption. See Special Instruction 87.**]

Waiver of Right to Receive Inventory and Appraisement

Regarding the Estate of **6.02**, Deceased, I waive the right to receive a verified, full, and detailed inventory and appraisement.

DATED _____.

_____
3.03 or 3.37 or 3.58

STATE OF TEXAS)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on _____ by **3.03 or 3.37 or 3.58**.

_____
Notary Public, State of Texas

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FORM 123—ALLOWANCE OF CLAIM

This form is for use as an action on or response to the claim in a dependent administration and potentially in an independent administration if a claim is filed or presented in response to a permissive notice. It should be signed by the personal representative and not just counsel for the personal representative.

If the claim was filed, the allowance should also be filed with the court as an attachment to the memorandum of allowance signed by the attorney. In an independent administration, the personal representative may communicate the allowance and approval without a court filing.

If the claim was presented to the personal representative without a court filing, it is recommended to respond to the claimant by mailing a copy of the allowance to the claimant. Because filing a claim is not necessarily a court appearance, the personal representative might respond to a claim filing by filing the allowance without a certificate of service on the claimant or further communication from the personal representative. It is theoretically the duty of the claimant to monitor court filings. Check local rules regarding court preferences.

[**Caption. See Special Instruction 87.**]

Allowance of Claim

The attached claim of [**name of creditor—see 21.06–21.14**] was [deposited/filed] with the clerk of the Court/presented to me as **2.85** of the Estate of **6.02**, Deceased,] on [**date**].

I hereby ALLOW the claim in the amount of $[**amount**] on [**date**].

_____

2.45 or 2.76, 2.85

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FORM 124—MEMORANDUM OF ALLOWANCE OF CLAIM

A memorandum of allowance is signed and filed by the attorney for the personal representative in a supervised administration. In an independent administration, the court will generally forward notices of any claims filed to the personal representative for further handling and will not participate in the process of approving or classifying claims.

Attach a copy of the allowance signed by the personal representative, a copy of the claim itself, and a proposed order for the court to approve and classify the claim.

A certificate of service is potentially optional: filing a claim does not constitute entering an appearance, and the personal representative may not have a duty to forward filings to creditors.

[**Caption. See Special Instruction 87.**]

Memorandum of Allowance of Claim

Include the following if the claim was presented to the personal representative.

The attached claim of [**name of creditor—see 21.06–21.14**] was presented to **2.45 or 2.76** ("[Administrator/Executor]"), as **2.85** of the Estate of **6.02**, Deceased, on [**date**].

The claim in the amount of $[**amount**] was ALLOWED by [Administrator/Executor] on [**date**]. A copy of the claim allowance is attached to this memorandum.

Or

Include the following if the claim was deposited or filed with the court clerk.

The attached claim of [**name of creditor—see 21.06–21.14**] was [deposited/filed] with the clerk of the Court on [**date**].

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The claim in the amount of $[**amount**] was ALLOWED by **2.45 or 2.76**, as **2.85** of the Estate of **6.02**, Deceased, on [**date**]. A copy of the claim allowance is attached to this memorandum.

Continue with the following.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for 2.85.

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order Approving and Classifying Claim

On this day the Court heard the Authenticated [Secured/Unsecured] Claim of [**name of creditor—see 21.06–21.14**].

Include the following if the claim was presented to the personal representative.

The Court finds that the claim has been presented to the **2.85** of the Estate of **6.02**, Deceased, ("[Administrator/Executor]") on [**date**].

The Court further finds that [Administrator/Executor] allowed the claim by written memorandum dated [**date**], which was filed in the records of the Probate Court and recorded by the Probate Clerk on the Claims docket more than ten days before the date of this order.

Or

Include the following if the claim was deposited or filed with the court clerk.

The Court finds that the claim has been filed in this cause on [**date**].

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The Court further finds that the **2.85** of the Estate of **6.02**, Deceased, allowed the claim by written memorandum dated [**date**], which was filed in the records of the Probate Court and recorded by the Probate Clerk on the Claims docket more than ten days before the date of this order.

Continue with the following.

The claim is hereby APPROVED by this Court in the amount of $[**amount**] [as a preferred debt and lien against the specific property securing the indebtedness/as a matured secured claim and should be classified as a Class [**specify 1–8**] claim against the estate, to be paid upon the satisfaction of all claims of preceding classes/as an unsecured claim and should be classified as a Class [**specify 1–8**] claim].

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for 2.85.

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FORM 125—REJECTION OR PARTIAL REJECTION OF CLAIM

This form is for use as an action on or response to the claim in a dependent administration and potentially in an independent administration if a claim is filed or presented in response to a permissive notice. It should be signed by the personal representative and not just counsel for the personal representative.

If the claim was filed, the rejection should also be filed with the court as an attachment to the memorandum of rejection signed by the attorney. In an independent administration, the personal representative may communicate the rejection without a court filing.

The personal representative may choose to explain the basis of the rejection or not to do so.

If the claim was presented to the personal representative without a court filing, it is recommended to respond to the claimant by mailing a copy of the rejection to the claimant. Because filing a claim is not necessarily a court appearance, the personal representative might respond to a claim filing by filing the rejection without a certificate of service on the claimant or further communication from the personal representative. It is theoretically the duty of the claimant to monitor court filings. Check local rules regarding court preferences.

[**Caption. See Special Instruction 87.**]

[Rejection/Partial Rejection] of Claim

The attached claim of [**name of creditor—see 21.06–21.14**] was [[deposited/filed] with the clerk of the Court/presented to me as **2.85** of the Estate of **6.02**, Deceased,] on [**date**].

Select one of the following.

I hereby REJECT the entire claim in the amount of $[**amount**] on [**date**].

Or

I hereby REJECT the claim in the amount of $[**amount**] and ALLOW the claim in the amount of $[**amount**] on [**date**].

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Continue with the following.

_____

2.45 or 2.76, 2.85

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FORM 126—MEMORANDUM OF REJECTION OR PARTIAL REJECTION OF CLAIM

A memorandum of rejection or partial rejection is signed and filed by the attorney for the personal representative in a supervised administration. In an independent administration, the court will generally forward notices of any claims filed to the personal representative for further handling and will not participate in the process of approving, rejecting, or classifying claims.

Attach a copy of the rejection or partial rejection to the claim signed by the personal representative and a copy of the claim itself. The claimant will have 90 days to file suit on the rejected claim.

A certificate of service is potentially optional: filing a claim does not constitute entering an appearance, and the personal representative may not have a duty to forward filings to creditors.

[**Caption. See Special Instruction 87.**]

Memorandum of [Rejection/Partial Rejection] of Claim

Include the following if the claim was presented to the personal representative.

The attached claim of [**name of claimant—see 21.06–21.14**] ("Claimant") was presented to **2.45 or 2.76** ("[Administrator/Executor]"), as **2.85** of the Estate of **6.02**, Deceased, on [**date**].

Pursuant to the Texas Estates Code, [Administrator/Executor] [REJECTED the entire claim in the amount of $[**amount**]/REJECTED the claim in the amount of $[**amount**] and ALLOWED the claim in the amount of $[**amount**]] on [**date**].

Or

Include the following if the claim was deposited or filed with the court clerk.

The attached claim of [**name of creditor—see 21.06–21.14**] ("Claimant") was [deposited/filed] with the clerk of the Court] on [**date**].

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Pursuant to the Texas Estates Code, **2.45 or 2.76** ("[Administrator/Executor]"), as **2.85** of the Estate of **6.02**, Deceased, [REJECTED the entire claim in the amount of $[**amount**]/ REJECTED the claim in the amount of $[**amount**] and ALLOWED the claim in the amount of $[**amount**]] on [**date**].

Continue with the following.

[Administrator/Executor] rejected the claim in the amount of $[**amount**] for the following reason: the claim is [barred by the general statute of limitations/barred under Estates Code, Section 403.055, because Claimant received permissive notice pursuant to Estates Code, Section 403.051/barred under Estates Code, Section 355.060, because Claimant received permissive notice pursuant to Estates Code, Section 308.054/fraudulent/not related to the decedent or the decedent's estate].

[Administrator's/Executor's] [rejection/partial rejection] of the claim is attached to this memorandum.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for 2.85.

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FORM 127—OBJECTION TO CLAIM

This form is for use as an action on or response to the claim in a dependent administration and potentially in an independent administration if a claim is filed or presented in response to a permissive notice. It should be signed by the personal representative and not just counsel for the personal representative.

If the claim was filed, the objection should also be filed with the court as an attachment to the memorandum of objection signed by the attorney. In an independent administration, the personal representative may communicate the objection without a court filing.

The personal representative may choose to explain the basis of the objection to the claimant or not to do so. The personal representative's attorney should explain the basis of the objection to the court in a memorandum if a filing is in order.

If the claim was presented to the personal representative without a court filing, it is recommended to respond to the claimant by mailing a copy of the objection to the claimant. Because filing a claim is not necessarily a court appearance, the personal representative might respond to a claim filing by filing the objection without a certificate of service on the claimant or further communication from the personal representative. It is theoretically the duty of the claimant to monitor court filings. Check local rules regarding court preferences.

[**Caption. See Special Instruction 87.**]

Objection to Claim

The attached claim of [**name of creditor—see 21.06–21.14**] was [[deposited/filed] with the clerk of the Court/presented to me as **2.85** of the Estate of **6.02**, Deceased,] on [**date**].

I hereby OBJECT to the form of the claim on [**date**].

_____

2.45 or 2.76, 2.85

FORM 128—MEMORANDUM OF OBJECTION TO CLAIM

A memorandum of objection is signed and filed by the attorney for the personal representative in a supervised administration. In an independent administration, the court will generally forward notices of any claims filed to the personal representative for further handling and will not participate in the process of approving or classifying claims.

Attach a copy of the objection to the claim signed by the personal representative and a copy of the claim itself.

A certificate of service is potentially optional: filing a claim does not constitute entering an appearance, and the personal representative may not have a duty to forward filings to creditors.

[**Caption. See Special Instruction 87.**]

Memorandum of Objection to Claim

Include the following if the claim was presented to the personal representative.

The attached claim of [**name of claimant—see 21.06–21.14**] ("Claimant") was presented to **2.45 or 2.76** ("[Administrator/Executor]"), as **2.85** of the Estate of **6.02**, Deceased, on [**date**].

Pursuant to Section 355.007 of the Texas Estates Code, [Administrator/Executor] OBJECTED to the form of the claim on [**date**] for the following reason[s]: [insufficiency of exhibits or vouchers presented/claim not properly authenticated/insufficiency of exhibits or vouchers presented and claim not properly authenticated].

Or

Include the following if the claim was deposited or filed with the court clerk.

The attached claim of [**name of claimant—see 21.06–21.14**] ("Claimant") was [deposited/filed] with the clerk of the Court on [**date**].

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Pursuant to Section 355.007 of the Texas Estates Code, **2.45 or 2.76** ("[Administrator/Executor]"), as **2.85** of the Estate of **6.02**, Deceased, OBJECTED to the form of the claim on [**date**] for the following reason[s]: [insufficiency of exhibits or vouchers presented/claim not properly authenticated/insufficiency of exhibits or vouchers presented and claim not properly authenticated].

Continue with the following.

The claim does not comply with the form required by the Texas Estates Code. The objection to the claim is attached to this memorandum. Because Claimant failed to properly present the claim, [Administrator/Executor] neither allows nor rejects nor shall be deemed to reject the claim.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for 2.85.

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FORM 129—STATEMENT REGARDING DECEDENT'S TRUST AND ESCROW ACCOUNTS

Statement Pursuant to Chapter 456 of the Texas Estates Code

6.02, Deceased ("Decedent") was a lawyer who established one or more trust or escrow accounts for client funds or the funds of third parties in connection with legal representation by Decedent. Decedent's estate is being administered by **2.45 or 2.76** ("Personal Representative") under Docket Number **6.01** in the **6.03** Court of **6.04** County, Texas.

Personal Representative is a lawyer authorized to practice law in Texas and is authorized under Chapter 456 of the Texas Estates Code to do the following:

(1) be the authorized signer on the trust or escrow account;

(2) determine who is entitled to receive the funds in the account;

(3) disburse the funds to the appropriate persons or to Decedent's estate; and

(4) close the account.

DATED _____.

_____
2.45 or 2.76, Personal Representative
State Bar card number:

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FORM 130—AGREEMENT REGARDING DECEDENT'S TRUST AND ESCROW ACCOUNTS

Agreement Pursuant to Chapter 456 of the Texas Estates Code

6.02, Deceased ("Decedent") was a lawyer who established one or more trust or escrow accounts for client funds or the funds of third parties in connection with legal representation by Decedent. Decedent's estate is being administered by **2.45 or 2.76** ("Personal Representative") under Docket Number **6.01** in the **6.03** Court of **6.04** County, Texas.

Personal Representative hereby engages **2.141** ("Designee"), a lawyer authorized to practice law in Texas, to do the following pursuant to Chapter 456 of the Texas Estates Code:

(1) be the authorized signer on the trust or escrow account;

(2) determine who is entitled to receive the funds in the account;

(3) disburse the funds to the appropriate persons or to Decedent's estate; and

(4) close the account.

DATED _____.

_____
2.45 or 2.76, Personal Representative

ACCEPTED

_____
2.141, Designee
State Bar card number: **2.147**

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FORM 131—TEXAS ESTATES CODE, CHAPTER 456

Texas Estates Code, Chapter 456

Disbursement and Closing of Lawyer Trust or Escrow Accounts

§ 456.001 Definition

In this chapter, "eligible institution" means a financial institution or investment company in which a lawyer has established an escrow or trust account for purposes of holding client funds or the funds of third persons that are in the lawyer's possession in connection with representation as required by the Texas Disciplinary Rules of Professional Conduct.

§ 456.002 Authority to Designate Lawyer on Certain Trust or Escrow Accounts

(a) When administering the estate of a deceased lawyer who established one or more trust or escrow accounts for client funds or the funds of third persons that are in the lawyer's possession in connection with representation as required by the Texas Disciplinary Rules of Professional Conduct, the personal representative may hire through written agreement a lawyer authorized to practice in this state to:

(1) be the authorized signer on the trust or escrow account;

(2) determine who is entitled to receive the funds in the account;

(3) disburse the funds to the appropriate persons or to the decedent's estate; and

(4) close the account.

(b) If the personal representative is a lawyer authorized to practice in this state, the personal representative may state that fact and disburse the trust or escrow accounts funds of a deceased lawyer in accordance with Subsection (a).

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(c) An agreement under Subsection (a) or a statement under Subsection (b) must be made in writing, and a copy of the agreement or statement must be delivered to each eligible institution in which the trust or escrow accounts were established.

§ 456.003 Duty of Eligible Institutions

Not later than the seventh business day after the date an eligible institution receives a copy of a written agreement under Section 456.002(a) or a statement from a personal representative under Section 456.002(b) and instructions from the lawyer identified in the agreement or statement, as applicable, regarding how to disburse the funds or close a trust or escrow account, the eligible institution shall disburse the funds and close the account in compliance with the instructions.

§ 456.004 Liability of Eligible Institutions

An eligible institution is not liable for any act respecting an account taken in compliance with this chapter.

§ 456.0045 Private Cause of Action

(a) If an eligible institution violates Section 456.003, a person aggrieved by the violation may bring an action against the eligible institution to:

(1) obtain declaratory or injunctive relief to enforce the section; and

(2) recover damages to the same extent the person would be entitled to damages had the eligible institution acted in the same manner with respect to the deceased lawyer before the lawyer's death.

(b) A person who prevails in an action under this section may recover court costs and reasonable attorney's fees.

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§ 456.005 Rules

The supreme court may adopt rules regarding the administration of funds in a trust or escrow account subject to this chapter.

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FORM 132—WAIVER OF NOTICE UNDER TEXAS ESTATES CODE, SECTION 258.051

Waiver of Notice under Texas Estates Code, Section 258.051

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day personally appeared [**name of heir**] and, after being duly sworn, stated that:

My name is [**name of heir**] ("Heir"). I am an heir of **6.02**, Deceased ("Testator").

Heir has received a copy of the [**title of application**] and a copy of the purported will filed by [**name(s) of applicant(s)**] ("Applicant[s]") about **6.23**.

Heir acknowledges that:

(A) Testator's property will pass to Testator's heirs if the will is not admitted to probate; and

(B) the person offering Testator's will for probate may not be in default for failing to present the will for probate during the four-year period immediately following Testator's death.

Heir does not object to the offer of Testator's will for probate.

Heir waives notice of hearing and trial and the making of a record.

_____
[**Name of heir**]

© STATE BAR OF TEXAS

SUBSCRIBED AND SWORN TO BEFORE ME by [**name of heir**] on

_____.

_____
Notary Public, State of Texas

© STATE BAR OF TEXAS

FORM 133—PROOF OF DECEDENT'S SIGNATURE

[**Caption. See Special Instruction 87.**]

Proof of Decedent's Signature

On **6.25 2.05 T/C** ("Affiant") personally appeared in open court and, after being duly sworn, stated the following:

> I was personally acquainted with **6.02** ("Decedent") and was well acquainted with the signature of Decedent. The document dated **2.02**, now shown to me and which purports to be Decedent's [will/codicil], has Decedent's signature subscribed thereto. On that date, Decedent was of sound mind and had attained the age of eighteen years.

SIGNED on _____.

_____
2.05 T/C, Affiant
2.06 T/C
2.07 T/C

SUBSCRIBED AND SWORN TO BEFORE ME by **2.05 T/C** on _____.

Insert the following if the proof is to be sworn before the court clerk.

6.16
Clerk of the **6.03** Court of **6.04** County, Texas

By _____
Deputy

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Insert the following if the proof is to be sworn before a notary.

_____
Notary Public, State of Texas

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FORM 134—PROOF OF SIGNATURE OF SUBSCRIBING WITNESS

[**Caption. See Special Instruction 87.**]

Proof of Subscribing Witness's Signature

On **6.25 2.160 T/C or 2.170 T/C** ("Affiant") personally appeared in open court and, after being duly sworn, stated the following:

I was personally acquainted with **2.11 or 2.21** and was well acquainted with the signature of **2.11 or 2.21**, a subscribing witness to Decedent's [will/codicil]. The document dated **2.02**, now shown to me and which purports to be Decedent's [will/codicil], has **2.11 or 2.21**'s signature subscribed thereto. On that date **2.11 or 2.21** had attained the age of fourteen years.

SIGNED on _____.

_____
2.160 T/C or 2.170 T/C, Affiant
2.162 T/C or 2.172 T/C
2.163 T/C or 2.173 T/C

SUBSCRIBED AND SWORN TO BEFORE ME by **2.160 T/C or 2.170 T/C** on _____.

Insert the following if the proof is to be sworn before the court clerk.

6.16
Clerk of the **6.03** Court of **6.04** County, Texas

By _____
Deputy

© STATE BAR OF TEXAS

Insert the following if the proof is to be sworn before a notary.

_____
Notary Public, State of Texas

© STATE BAR OF TEXAS

FORM 135—ATTORNEY'S FEE AFFIDAVIT

[**Caption. See Special Instruction 87.**]

Attorney's Fee Affidavit

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day appeared Affiant, **5.02**, who on oath deposed and stated that:

My name is **5.02**. I have performed the legal services that are described in detail on the attachment to the Application to Pay Attorney's Fees filed herein. These services were properly and timely performed on behalf of the Estate of **6.02**, Deceased.

5.01 or 5.02 is [a firm of duly licensed and practicing attorneys/a duly licensed and practicing attorney] with offices in **5.06**, Texas.

All of the legal fees and services in the attached statement were necessary and reasonable and are comparable to those fees customarily charged for similar services in **6.04** County.

I hereby certify that each of the foregoing statements is true and within my personal knowledge.

_____
5.02, Affiant

© STATE BAR OF TEXAS

SUBSCRIBED AND SWORN TO BEFORE ME by **5.02**, Affiant, on

_____.

_____
Notary Public, State of Texas

© STATE BAR OF TEXAS

FORM 136—APPLICATION AND ORDER FOR AUTHORITY TO ENGAGE OR EMPLOY

[**Caption. See Special Instruction 87.**]

Application for Authority to [Engage/Employ]

2.45 or 2.76 ("Applicant"), **2.85** of this estate, furnishes the following information to the Court:

Applicant requests authority to [engage/employ] [**name of person or company**], located in [**city**], Texas, to [**description of tasks to be handled by party**]. The proposed [engagement/employment] agreement is attached hereto as Exhibit A.

The [engagement/employment] of [**name of person or company**] is necessary and reasonable and is in the best interest of the estate. All fees and expenses of [**name of person or company**] will be subject to approval by this Court.

Applicant requests this Court to sign an order authorizing Applicant to [engage/employ] [**name of person or company**].

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

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Order Granting Application for Authority to [Engage/Employ]

On this day the Court heard and considered the Application for Authority to [Engage/Employ] filed on [**date**], and the Court finds that Applicant should be authorized to [engage/employ] [**name of person or company**] for the purpose of [**state the reason for engaging or employing**] and that the application should be granted.

It is ORDERED that Applicant is hereby authorized to [engage/employ] [**name of person or company**] and to execute the [engagement/employment] agreement attached as Exhibit A.

It is further ORDERED that all fees and expenses of [**name of person or company**] shall be subject to approval by this Court.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 137—APPLICATION AND ORDER TO MAKE PARTIAL DISTRIBUTION OF ESTATE ASSETS

[**Caption. See Special Instruction 87.**]

Application to Make Partial Distribution of Estate Assets

2.45 or 2.76 ("Applicant"), **2.85** of this estate, furnishes the following information to the Court:

1. The only known debts to the estate at this time are [**state all known debts, including expenses of administration**].

2. The estate is solvent, and the following is a full and complete list of all property owned by the estate still remaining on hand and liable for payment of the above charges and claims:

Description of Property	*Value of Property*
For each item, specify the description and value.	
Total Value of Property Remaining on Hand	$[**amount**]

3. Applicant seeks to make a partial distribution in the [amount of $[**amount**]/form of [**specify, e.g.,** an undivided one-fifth interest in [**describe real estate**]]] from the estate to the [beneficiaries under the terms of Decedent's will/distributees according to the laws of intestacy].

4. The names, residences, relationships to Decedent, and share of above distribution of all persons entitled to receive a portion of the partial distribution are as follows:

Name and Address	*Relationship to Decedent*	*Share of Partial Distribution*

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Clearly state the amount each beneficiary or distributee will receive in dollar form or, if distribution is not monetary, in percentage.

Total Partial Distribution from the Estate $[**amount**]

5. Following the partial distribution, there will be sufficient funds remaining in the estate to pay any known estate liability and any potential unknown liabilities that may arise before the closing of the estate.

6. It is in the best interest of the estate to make a partial distribution.

Applicant requests the Court to enter an order authorizing the **2.85** to make a partial distribution in the [amount of $[**amount**]/form of [**specify, e.g.,** an undivided one-fifth interest in [**describe real estate**]]] to Decedent's heirs.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

Insert the following affidavit for an individual.

Affidavit of 2.85

STATE OF TEXAS)(
)(
COUNTY OF)(

I, **2.45 or 2.76**, having been duly sworn, hereby state on my oath that the foregoing Application to Make Partial Distribution of Estate Assets and all statements of debts, assets, and proposed distributions therein are true, correct, and complete in every respect.

_____
2.45 or 2.76, 2.85

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SUBSCRIBED AND SWORN TO BEFORE ME by **2.45 or 2.76** on

_____.

_____
Notary Public, State of Texas

Insert the following affidavit for a corporate fiduciary.

Affidavit of 2.85

STATE OF TEXAS)(
)(
COUNTY OF)(

I, **2.61**, having been duly sworn, hereby state on oath that I am a **2.63** of **2.45**, **2.85** of the Estate of **6.02**, Deceased; that I have been fully authorized to act herein for and on behalf of said corporate fiduciary; and that the foregoing Application to Make Partial Distribution of Estate Assets and all statements of debts, assets, and proposed distributions therein are true, correct, and complete in every respect.

2.45, **2.85**

By _____
2.61, **2.63**

SUBSCRIBED AND SWORN TO BEFORE ME by **2.61** on

_____.

_____
Notary Public, State of Texas

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

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Order Granting Application to Make Partial Distribution of Estate Assets

On this day the Court heard and considered the Application to Make Partial Distribution of Estate Assets filed on [**date**], and the Court finds that there are adequate assets in the estate to allow the partial distribution and that the application should be granted.

It is ORDERED that **2.85** of this estate is hereby authorized to make partial distributions as follows:

Name *Share of Partial Distribution*

> Clearly state the amount each beneficiary or distributee will receive in dollar form or, if distribution is not monetary, in percentage.

Total Partial Distribution from the Estate $[**amount**]

> If distribution is made to one or more heirs and devisees but not all of them, the court must require a refunding bond unless a waiver is filed by all interested parties. Estates Code, Section 360.002(d).

SIGNED on _____.

_____
Judge Presiding

> Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 138—APPLICATION AND ORDER TO RATIFY EXPENDITURE

[**Caption. See Special Instruction 87.**]

Note: This form should be used only in emergency situations where waiting for court approval to expend estate funds might damage an asset of the estate.

Application to Ratify Expenditure

2.45 or 2.76 ("Applicant"), **2.85** of this estate, furnishes the following information to the Court:

1. The following expense was necessary because [**state the reason for using estate funds**]. Applicant paid for the expense out of the funds of the estate.

2. [**Include detailed description and amount of expenditure.**] The [invoice/receipt] is attached as Exhibit A.

3. This expense is just, and all legal offsets, payments, and credits known to Applicant have been allowed.

Applicant requests the Court to sign an order ratifying the expenditure.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

Insert the following affidavit for an individual.

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Affidavit of 2.85

STATE OF TEXAS)(
)(
COUNTY OF)(

I, **2.45 or 2.76**, having been duly sworn, hereby state on my oath that the foregoing Application to Ratify Expenditure and the exhibit attached thereto are true and correct in every respect.

_____
2.45 or 2.76, **2.85**

SUBSCRIBED AND SWORN TO BEFORE ME by **2.45 or 2.76** on

_____.

_____
Notary Public, State of Texas

Insert the following affidavit for a corporate fiduciary.

Affidavit of 2.85

STATE OF TEXAS)(
)(
COUNTY OF)(

I, **2.61**, having been duly sworn, hereby state on oath that I am a **2.63** of **2.45**, **2.85** of the Estate of **6.02**, Deceased; that I have been fully authorized to act herein for and on behalf of said corporate fiduciary; that I have made diligent inquiry and examination; and that I believe that the expense in the foregoing Application for Authority to Expend Funds is just and that all legal offsets, payments, and credits made known to me have been allowed.

2.45, **2.85**

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By _____
2.61, **2.63**

SUBSCRIBED AND SWORN TO BEFORE ME by **2.61** on

_____.

_____
Notary Public, State of Texas

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order Ratifying Expenditure

On this day the Court heard and considered the Application to Ratify Expenditure filed on [**date**], and the Court finds that the expenditure was reasonable and necessary and should be ratified.

It is ORDERED that Applicant's expenditure for [**description**] in the amount of $[**amount**] out of estate funds is ratified.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 139—INTERROGATORIES TO WITNESS TO SIGNATURE

[**Caption. See Special Instruction 87.**]

Direct Interrogatories to Be Propounded to Witness [name of witness]

Interrogatory No. 1	State your name and address.
Interrogatory No. 2	Were you acquainted with **6.02** **or** **2.11** **or** **2.21**, who will be referred to as [Decedent/Subscribing Witness]?
Interrogatory No. 3	How well do you know the signature of [Decedent/Subscribing Witness]?
Interrogatory No. 4	How did you become familiar with the signature of [Decedent/Subscribing Witness]?
Interrogatory No. 5	How long were you acquainted with [Decedent/Subscribing Witness]?
Interrogatory No. 6	During that time, how often had you seen [Decedent/Subscribing Witness] sign [his/her] name?
Interrogatory No. 7	Attached hereto is a certified copy of a document dated **2.02** and filed in the **6.03** Court of **6.04** County, Texas, on **6.23**, purporting to be and offered for probate as Decedent's [will/codicil]. Please examine this copy and state whether or not you recognize the signature of [Decedent/Subscribing Witness].
Interrogatory No. 8	On **2.02**, was [Decedent at least eighteen years old/Subscribing Witness at least fourteen years old]?

Include interrogatory no. 9 if witness is testifying to D's signature.

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Interrogatory No. 9 As far as you know, was Decedent of sound mind on **2.02**?

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 140—INTERROGATORIES AND ANSWERS TO INTERROGATORIES BY WITNESS TO SIGNATURE

[**Caption. See Special Instruction 87.**]

Interrogatories and Answers of Witness [name of witness] to Interrogatories

On _____, **2.05 T/D or 2.160 T/D or 2.170 T/D** ("Witness") personally appeared before me, the undersigned officer, and, after being duly sworn, gave the following answers on oath to the interrogatories of **2.29 or 2.45 or 2.101** ("Applicant"):

Interrogatory No. 1	State your name and address.
Answer to Interrogatory No. 1	**2.05 T/D or 2.160 T/D or 2.170 T/D**, **2.06 T/D or 2.162 T/D or 2.172 T/D**, **2.07 T/D or 2.163 T/D or 2.173 T/D**
Interrogatory No. 2	Were you acquainted with **6.02 or 2.11 or 2.21**, who will be referred to as [Decedent/Subscribing Witness]?
Answer to Interrogatory No. 2	
Interrogatory No. 3	How well do you know the signature of [Decedent/Subscribing Witness]?
Answer to Interrogatory No. 3	
Interrogatory No. 4	How did you become familiar with the signature of [Decedent/Subscribing Witness]?
Answer to Interrogatory No. 4	
Interrogatory No. 5	How long were you acquainted with [Decedent/Subscribing Witness]?
Answer to Interrogatory No. 5	
Interrogatory No. 6	During that time, how often had you seen [Decedent/Subscribing Witness] sign [his/her] name?

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Answer to Interrogatory No. 6

Interrogatory No. 7 Attached hereto is a certified copy of a document dated **2.02** and filed in the **6.03** Court of **6.04** County, Texas, on **6.23**, purporting to be and offered for probate as Decedent's [will/codicil]. Please examine this copy and state whether or not you recognize the signature of [Decedent/Subscribing Witness].

Answer to Interrogatory No. 7

Interrogatory No. 8 On **2.02**, was [Decedent at least eighteen years old/Subscribing Witness at least fourteen years old]?

Answer to Interrogatory No. 8

Include interrogatory no. 9 if witness is testifying to D's signature.

Interrogatory No. 9 As far as you know, was Decedent of sound mind on **2.02**?

Answer to Interrogatory No. 9

Continue with the following.

_____

2.05 T/D or 2.160 T/D or 2.170 T/D

Upon the appearance of the Witness, I proceeded to take the above answers of the Witness to the interrogatories, reduced such answers to writing, and caused the same to be signed and sworn to by the Witness, and such answers were signed and sworn to by the Witness before me, to certify which witness my hand and seal of office, on the date above specified.

_____

Notary Public, State of Texas

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FORM 141—INTERROGATORIES TO WITNESS TO DECEDENT'S HANDWRITING AND SIGNATURE FOR HOLOGRAPHIC WILL

[**Caption. See Special Instruction 87.**]

Direct Interrogatories to Be Propounded to Witness [name of witness]

Interrogatory No. 1	State your name and address.
Interrogatory No. 2	Were you acquainted with **6.02**, who will be referred to as Decedent?
Interrogatory No. 3	How well do you know the handwriting and signature of Decedent?
Interrogatory No. 4	How did you become familiar with Decedent's handwriting and signature?
Interrogatory No. 5	Attached hereto is a certified copy of a document dated **2.02** and filed in the **6.03** Court of **6.04** County, Texas, on **6.23**, purporting to be and offered for probate as Decedent's [will/codicil]. Please examine this copy and state whether or not you recognize the handwriting and signature of Decedent.
Interrogatory No. 6	On **2.02**, was Decedent at least eighteen years old?
Interrogatory No. 7	As far as you know, was Decedent of sound mind on **2.02**?

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 142—INTERROGATORIES AND ANSWERS TO INTERROGATORIES BY WITNESS TO DECEDENT'S HANDWRITING AND SIGNATURE FOR HOLOGRAPHIC WILL

[**Caption. See Special Instruction 87.**]

Interrogatories and Answers of Witness [name of witness] to Interrogatories

On _____, **2.05 T/D** ("Witness") personally appeared before me, the undersigned officer, and, after being duly sworn, gave the following answers on oath to the interrogatories of **2.29 or 2.45 or 2.101** ("Applicant"):

Interrogatory No. 1	State your name and address.
Answer to Interrogatory No. 1	**2.05 T/D**, **2.06 T/D**, **2.07 T/D**
Interrogatory No. 2	Were you acquainted with **6.02**, who will be referred to as Decedent?
Answer to Interrogatory No. 2	
Interrogatory No. 3	How well do you know the handwriting and signature of Decedent?
Answer to Interrogatory No. 3	
Interrogatory No. 4	How did you become familiar with Decedent's handwriting and signature?
Answer to Interrogatory No. 4	

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Interrogatory No. 5	Attached hereto is a certified copy of a document dated **2.02** and filed in the **6.03** Court of **6.04** County, Texas, on **6.23**, purporting to be and offered for probate as Decedent's [will/codicil]. Please examine this copy and state whether or not you recognize the handwriting and signature of Decedent.
Answer to Interrogatory No. 5	
Interrogatory No. 6	On **2.02**, was Decedent at least eighteen years old?
Answer to Interrogatory No. 6	
Interrogatory No. 7	As far as you know, was Decedent of sound mind on **2.02**?
Answer to Interrogatory No. 7	

_____

2.05 T/D

Upon the appearance of the Witness, I proceeded to take the above answers of the Witness to the interrogatories, reduced such answers to writing, and caused the same to be signed and sworn to by the Witness, and such answers were signed and sworn to by the Witness before me, to certify which witness my hand and seal of office, on the date above specified.

_____

Notary Public, State of Texas

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FORM 143—AFFIDAVIT OF INABILITY OR UNWILLINGNESS TO SERVE AS EXECUTOR

[**Caption. See Special Instruction 87.**]

Affidavit of [Inability/Unwillingness] to Serve as Executor

I, **2.43**, named to serve as [executor/independent executor] in the [will/codicil] of **6.02** ("Decedent"), hereby declare my [inability/unwillingness] to serve as [executor/independent executor] of Decedent's estate.

_____
2.43

STATE OF TEXAS)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on _____ by **2.43**.

_____
Notary Public, State of Texas

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FORM 144—DESIGNATION OF ADMINISTRATOR

[**Caption. See Special Instruction 87.**]

Designation of Administrator

Pursuant to the provisions of Section 254.006 of the Texas Estates Code, the undersigned was granted authority in the [will/codicil] of **6.02** ("Decedent") to designate an administrator for Decedent's estate. The undersigned hereby designates **2.44N** to serve as administrator.

SIGNED on _____.

_____
2.44C

STATE OF TEXAS)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on _____ by **2.44C**.

_____
Notary Public, State of Texas

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FORM 145—AFFIDAVIT OF REFUSAL TO SERVE AS ADMINISTRATOR

[**Caption. See Special Instruction 87.**]

Affidavit of Refusal to Serve as Administrator

I, **2.44N**, designated pursuant to the [will/codicil] of **6.02** ("Decedent") to serve as administrator under Section 254.006 of the Texas Estates Code, hereby declare my refusal to serve as administrator of Decedent's estate.

_____
2.44N

STATE OF TEXAS)(
)(
COUNTY OF _____)(

This instrument was acknowledged before me on _____ by **2.44N**.

_____
Notary Public, State of Texas

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FORM 146—AFFIDAVIT OF HEIRSHIP

Affidavit of Heirship

Use of the affidavit for heirship is a nonjudicial procedure in lieu of administration. See Special Instruction 29.

BEFORE ME, the undersigned authority, on this day personally appeared **2.126** ("Affiant"), who, being duly sworn, stated that:

1. My name is **2.126** and I live at **2.126B**, **2.126C**. My relationship with **1.02** ("Decedent") was **2.126H**. I have never been convicted of a felony or a crime of moral turpitude. I am personally familiar with the family and marital history of Decedent, and I have personal knowledge of the facts stated in this affidavit.

2. I knew Decedent for **2.126I** years. Decedent died on **1.07** at **1.09**, **1.09** County, **1.09**. At the time of Decedent's death, Decedent's residence was **1.11**.

¶3—Refer to 3.01A of MIL. Use the first alternative if D was never married; use the second alternative if D had been married.

3. Decedent was never married.

Or

3. Decedent was married **3.01A** times. Decedent's marital history was as follows:

Name of Spouse (if Surviving Spouse, Include Current Address)	*Date of Marriage*	*Date Marriage Ended*	*Reason for End of Marriage*	*County of Spouse's Death*

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Set forth a complete listing of D's marriages, including, for each marriage, the date of the marriage, the date the marriage ended, and the reason for the end of the marriage (death, divorce, etc.). See 3.03, 3.21, and 3.30 of MIL. If D was married on the date of death, state the service address of the surviving spouse.

¶4—Refer to 3.35 of MIL. Use the first alternative if 3.35 is answered *no*; use the second alternative if 3.35 is answered *yes*.

4. No children were born to or adopted by Decedent.

Or

4. The following **3.36** [child was/children were] born to or adopted by Decedent:

Name of Child	*Date of Birth*	*Name of Child's Other Parent*	*Date of Child's Death or Current Address*

Set forth a complete listing of the children, including, for each child, the date of birth, the name of the child's other parent, and the date of the child's death or service address, as applicable. See 3.37 of MIL.

If any of the children listed above are deceased, include one of the following paragraphs. See 3.36 of MIL.

Decedent was not survived by any descendants of any deceased children.

Or

Decedent was survived by the following descendant[s] of [the] deceased child[ren]:

Name of Child and Current Address	*Date of Birth*	*Name of Child's Mother*	*Name of Child's Father*

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Set forth a complete listing of the children born to or adopted by D's deceased child(ren), including, for each, the service address, the date of birth, and the parents' names.

5. Decedent did not have or adopt any [other] children and did not take any [other] children into Decedent's home or raise any [other] children.

Or

5. Decedent did not have or adopt any [other] children and did not take any [other] children into Decedent's home or raise any [other] children except the following:

Name of Child and Current Address	*Date of Birth*	*Name of Child's Mother*	*Name of Child's Father*

Set forth a complete listing of other children not listed above that D brought into D's home or raised, including, for each, the service address, the date of birth, and the parents' names.

Include ¶6 *only* if D was not survived by descendants.

6. Decedent had the following parents:

Parent's Name	*Date of Birth*	*Date of Death or Current Address*

Set forth a complete listing of D's parents, including, for each parent, the date of birth and the date of death or service address, as applicable.

Include ¶7 *only* if D was not survived by descendants or both parents.

7. Decedent had no siblings.

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Or

7. Decedent had the following sibling[s]:

Name of Sibling	*Names of Parents*	*Date of Birth*	*Date of Death or Current Address*

Set forth a complete listing of D's siblings, including, for each sibling, the names of both parents, the date of birth, and the date of death or service address, as applicable.

Include ¶8 *only* if D was not survived by descendants or by both parents and was predeceased by one or more siblings.

8. Decedent had no nieces or nephews born to the deceased sibling[s] in paragraph 7 above.

Or

8. Decedent had the following [niece[s]/nephew[s]/niece[s] and nephew[s]] born to the deceased sibling[s] in paragraph 7 above:

Name of Niece/Nephew and Current Address	*Date of Birth*	*Name of Niece's/Nephew's Deceased Parent*

Set forth a complete listing of the children of D's deceased siblings, including, for each niece and nephew, the service address, the date of birth, and the name of the niece's/nephew's deceased parent related to D.

If D was predeceased by all heirs in the previous categories, adapt this form according to Estates Code, Chapter 201.

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9. [Decedent died without leaving a will./Decedent left a will dated **2.02**, a copy of which is attached to this affidavit.]

10. There has been no administration of Decedent's estate [**include if applicable:** and none is anticipated].

11. Decedent left no unpaid debts, including unpaid estate or inheritance taxes.

12. Decedent's estate is not in excess of the federal estate tax exemption in existence at the time of Decedent's death.

13. To the best of my knowledge, Decedent owned an interest in the following real property:

Include legal description. See 7.08 of MIL.

Title to the property was acquired by [**name**] on [**date**] as evidenced by the deed recorded under Clerk's File No. [**number**] in [**county**] County, Texas [, and further by probate under Cause No. [**number**] in [**county**] County, Texas].

Include title acquisition information, if available.

The above statements are true in substance and are correct.

I am aware of the penalties for perjury under federal law, which include a fine, imprisonment for not more than five years, or both for execution of a false affidavit, pursuant to section 1621 of title 18 of the United States Code. I am also aware that perjury in the execution of a false affidavit is a criminal act pursuant to section 37.02 of the Texas Penal Code. Finally, I am also aware that a person commits a criminal offense under section 32.46 of the Texas Penal Code if, with intent to defraud or harm any person, he, by deception, causes another to sign or execute any document affecting property or service or the pecuniary interest of any person.

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_____
2.126, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME by **2.126** on _____.

_____
Notary Public, State of Texas

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Affidavit of Corroboration

Two disinterested witnesses should corroborate the facts detailed in the affidavit of heirship. See Special Instruction 29. It is preferable to have one witness who knew D for at least fifteen years and another witness who knew D for at least twenty-five years. Repeat the following affidavit for each witness.

STATE OF TEXAS)(
)(
COUNTY OF)(

BEFORE ME, the undersigned authority, on this day personally appeared **2.180**, the undersigned, who being duly sworn, stated that:

I, **2.180**, am over the age of eighteen years and reside at **2.182**, **2.183**.

I have read the Affidavit of Heirship appended to this affidavit and have personal knowledge of the family history and facts of heirship of **1.02** ("Decedent") as stated therein.

My relationship with Decedent was **2.187**. I knew Decedent for **2.188** years.

I corroborate the statement of **2.126** containing the family history and facts of heirship of **1.02**, Deceased.

I do not have a financial or beneficial interest in this estate and have no claims due or owing to me by Decedent or Decedent's estate.

_____
2.180

SUBSCRIBED AND SWORN TO BEFORE ME by **2.180** on _____.

_____
Notary Public, State of Texas

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FORM 147—OBTAINING ORIGINAL WILL OR ESTATE PAPERS

[**Caption. See Special Instruction 87.**]

Application for Order to Show Cause Why [name] Should Not Deliver [Will/ Papers/Will and Papers]

[**2.45 or 2.76**, **2.85** of this estate,/[**Name of interested person**]] ("Applicant") furnishes the following information to the Court in support of this application for an order to show cause why [**name**] should not deliver the [will/papers/will and papers] of **6.02**, Deceased ("Decedent"):

1. Decedent died on **1.07** in **1.09** County, Texas.

2. This Court has jurisdiction and venue of the estate of Decedent.

Select one of the following.

3. Applicant is the **2.85** named in the will of Decedent, as reflected by a true and correct copy of the will attached as Exhibit A.

Or

3. Applicant is [**describe the applicant's interest in and relation to the estate**].

Select one of the following.

4. Applicant is an individual domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on Applicant. [The last three numbers of Applicant's driver's license number are [**numbers**]./ Applicant has not been issued a driver's license.] [The last three numbers of Applicant's Social

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Security number are [**numbers**]./Applicant has not been issued a Social Security number.]

Or

4. Applicant is a [bank/trust company] domiciled in and situated at [**address**], [**county**] County, [**state**], the physical address at which service can be had on Applicant, and is acting herein by and through its duly authorized representative.

Continue with the following.

5. Applicant has reason to believe that [**name of the person or entity in possession of the will, papers, or both**] ("Respondent") may be in possession of [the original will of Decedent] [and] [papers belonging to the estate].

Select one of the following.

6. Respondent is an individual domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on Respondent.

Or

6. Respondent is [a/an] [**describe entity**] domiciled in and residing at [**address**], [**county**] County, [**state**], the physical address at which service can be had on Respondent.

Continue with the following.

7. Applicant requests the Court to issue citation as provided by Section 252.202 of the Texas Estates Code to Respondent to show cause why Respondent should not deliver [the will to the Court for probate] [and] [the papers to **2.45 or 2.76**]. Applicant requests that the citation be issued (a) by certified mail, return receipt requested, or another qualified delivery method to Respondent's last known address

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[**include if applicable:** and to the last known address of Respondent's attorney] and (b) by personal service to Respondent.

8. Applicant further requests that, if Respondent does not show good cause, the Court order Respondent to deliver [the will to the Court for probate] [and] [the papers to **2.45 or 2.76**].

9. Applicant further requests that if Respondent does not show good cause and does not comply with the Court's order to deliver the [will/papers/will and papers] the Court order Respondent arrested and confined until Respondent complies with the Court's order.

Applicant prays that Respondent be cited to appear and show cause why Respondent should not deliver [the will to the Court for probate] [and] [the papers to **2.45 or 2.76**]; that Respondent be ordered to deliver the [will/papers/will and papers] if good cause is not shown; that, if Respondent does not show good cause and does not deliver the [will/papers/will and papers] as ordered, Respondent be arrested and confined until Respondent complies with the Court's order; and for such other and further relief the Court deems appropriate.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

Insert the following for each individual.

STATE OF TEXAS)(
)(
COUNTY OF)(

BEFORE ME, the undersigned authority, on this day personally appeared [**2.45 or 2.76**, known to me to be the **2.85** of the Estate of **6.02**, Deceased,/[**name**]] and after being duly sworn by me, stated that the facts contained in the foregoing application are true and correct.

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_____
[**2.45 or 2.76**, **2.85**/[**name**]]

SUBSCRIBED AND SWORN TO BEFORE ME by [**2.45 or 2.76**/[**name**]] on _____.

_____
Notary Public, State of Texas

Insert the following for a corporate fiduciary.

STATE OF TEXAS)(
)(
COUNTY OF)(

BEFORE ME, the undersigned authority, on this day personally appeared **2.61**, **2.63** of **2.45 or 2.76**, **2.85** of the Estate of **6.02**, Deceased, and after being duly sworn by me, stated that the facts contained in the foregoing application are true and correct.

2.45 or 2.76, **2.85**

By _____
2.61, **2.63**

SUBSCRIBED AND SWORN TO BEFORE ME by **2.61** on _____ _____.

_____
Notary Public, State of Texas

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

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Order to Show Cause

On this day the Court heard the Application for Order to Show Cause Why [**name**] Should Not Deliver [Will/Papers/Will and Papers], and the Court, having heard the evidence, finds that Applicant has stated sufficient grounds for the show-cause order.

IT IS THEREFORE ORDERED that [**name**], Respondent, appear before this Court at [**time**] on [**date**] to show cause why Respondent should not be ordered to deliver [the will to the Court for probate] [and] [the papers to **2.45 or 2.76**].

Select one of the following.

Respondent, [**name**], is ORDERED to appear on the date and at the time set for the hearing physically in the courtroom of this Court at [**address, city**], Texas. Respondent may appear before the Court by other means only if permitted by court order. The Court's designated contact information [is [**court's designated contact information**]/can be found at [**specify where the court publishes this information**]].

Or

Respondent, [**name**], is ORDERED to appear on the date and at the time set for the hearing by [**state method, e.g.,** [Zoom/telephone]] using the following information: [**information for accessing the meeting, e.g., the Zoom meeting ID and passcode or the conference call number**]. Respondent may appear before the Court by other means only if permitted by court order. The Court's designated contact information [is [**court's designated contact information**]/can be found at [**specify where the court publishes this information**]]. If Respondent cannot participate by the electronic means set forth in this notice, has a technological issue preventing effective electronic participation, or needs assistance joining the hearing, Respondent is ORDERED to contact the Court as soon as the issue is discovered.

Or

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Respondent, [**name**], is ORDERED to appear on the date and at the time set for the hearing either physically in the courtroom of this Court at [**address, city**], Texas, or by [**state method, e.g.,** [Zoom/telephone]] using the following information: [**information for accessing the meeting, e.g., the Zoom meeting ID and passcode or the conference call number**]. Respondent may appear before the Court by other means only if permitted by court order. The Court's designated contact information [is [**court's designated contact information**]/can be found at [**specify where the court publishes this information**]]. If Respondent cannot appear physically in the courtroom and cannot participate by the electronic means set forth in this notice, has a technological issue preventing effective electronic participation, or needs assistance joining the hearing, Respondent is ORDERED to contact the Court as soon as the issue is discovered.

Continue with the following.

Instructions for submitting evidence: [See the Court's instructions attached to this order./ See the Court's instructions available at [**specify where the court publishes this information**].]

Additional instructions for participating in the hearing: [None./See the Court's instructions attached to this order./See the Court's instructions available at [**specify where the court publishes this information**].]

IT IS FURTHER ORDERED that the clerk of this Court shall issue citation for personal service on [**name**], Respondent, at Respondent's last known address, [**address**].

IT IS FURTHER ORDERED that the clerk issue citation and serve Respondent by certified mail, return receipt requested, at Respondent's last known address, [**address**].

Include the following if applicable.

IT IS FURTHER ORDERED that the clerk issue citation and serve Respondent's attorney of record, [**name**], by certified mail, return receipt requested, at [**name**]'s last known address, [**address**].

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Continue with the following.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order to Deliver [Will/Papers/Will and Papers]

On this day a hearing was held on the Order to Show Cause Why [**name**] Should Not Deliver [Will/Papers/Will and Papers]. The Court, having heard the evidence, finds that Respondent had the [will/papers/will and papers] when the Application for Order to Show Cause Why [**name**] Should Not Deliver [Will/Papers/Will and Papers] was filed; that Respondent has failed to show cause, as ordered, why Respondent should not deliver [the will to the Court for probate] [and] [the papers to **2.45 or 2.76**]; and that Respondent has not so delivered the [will/papers/will and papers].

Select as applicable.

IT IS ORDERED that [**name**], Respondent, shall deliver the will to the clerk of this Court at [**address**] between the hours of [**time**] and [**time**] on [**date**].

And/Or

IT IS ORDERED that [**name**], Respondent, shall deliver the papers belonging to the estate [**describe papers**] to **2.45 or 2.76** between the hours of [**time**] and [**time**] on [**date**] at [**address**].

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Continue with the following.

IT IS ORDERED that if [**name**], Respondent, fails to deliver the [will/papers/will and papers] as ordered, Respondent may be arrested and confined until Respondent complies with the Court's order.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Applicant.

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FORM 148—OBTAINING PERSONAL PROPERTY OF ESTATE

This form may be adapted to seek delivery of the estate's record books, title papers, and other business papers, as provided in Estates Code, Section 351.102. However, if papers belonging to the estate are sought, it may be preferable to use the show-cause procedure available under Estates Code, Section 252.202. See Form 147.

[**Caption. See Special Instruction 87.**]

Motion for Order to Deliver Personal Property of Estate

2.45 or 2.76, **2.85** of this estate, ("Movant") furnishes the following information to the Court in support of this motion for delivery of personal property of the estate of **6.02**, Deceased ("Decedent"):

1. Decedent died on **1.07** in **1.09** County, Texas.

2. This Court has jurisdiction and venue of the estate of Decedent.

3. Movant is the **2.85** of Decedent's estate. As such, Movant has the right of possession of the personal property described below pursuant to Section 101.003 of the Texas Estates Code and the duty to take possession of the property under Section 351.102 of the Texas Estates Code.

4. [**Name of person in possession of property**] ("Respondent") is in possession of the following personal property belonging to the estate: [**describe property**].

5. Movant requests that the Court order Respondent to deliver the property to Movant.

6. Respondent may be served at [**address, city, state, zip**].

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Movant prays that Respondent be ordered to deliver the property to **2.45 or 2.76** and for such other and further relief the Court deems appropriate.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Movant.

File the following order as a separate document.

[**Caption. See Special Instruction 87.**]

Order to Deliver Personal Property of Estate

On this day the Court heard the Motion for Order to Deliver Personal Property of Estate, and the Court, having heard the evidence, finds that the allegations contained in the motion are true and that it should be granted.

IT IS ORDERED that [**name**], Respondent, shall deliver to **2.45 or 2.76** not later than [**date**] the following personal property belonging to the estate: [**describe property**].

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Movant.

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FORM 149—RECEIPT AND REFUNDING AGREEMENT

[**Caption. See Special Instruction 87.**]

Receipt and Refunding Agreement

The will of **6.02**, Deceased, ("Decedent"), dated **2.02**, was admitted to probate in Cause No. **6.01** in the **6.03** of **6.04** County, Texas, on **6.26**. Letters testamentary were issued to **2.45**, as independent executor of the estate of **6.02**, Deceased, on **6.40**.

Decedent's will provides that after the distribution of specific gifts and payment of debts, expenses, and taxes, **3.48** is to be distributed to **3.37** ("Distributee").

The period has not yet expired within which the United States can collect income taxes or estate taxes against Decedent or the estate, and other liabilities could be asserted against the estate during the period of administration.

Distributee desires to obtain an immediate distribution of a portion of Distributee's share of the estate in accordance with the terms of Decedent's will.

The independent executor is willing to make a partial distribution at this time as provided in this Receipt and Refunding Agreement.

Distributee hereby acknowledges receipt of a partial distribution in the [amount of $[**amount**]/form of [**specify, e.g.,** an undivided one-fifth interest in [describe real estate]]]. In consideration of the immediate distribution of that partial distribution without waiting for the expiration of the period allowed by law for the collection of the aforementioned federal income or estate taxes and liabilities, Distributee agrees to refund amounts as may be necessary to satisfy any claims of the United States for additional taxes, penalties, and interest of any kind and the claims of any other person for any liability or asserted liability against Decedent or the

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estate; but the liability of Distributee by virtue of this agreement shall be limited to the amount being distributed to Distributee.

Distributee hereby stipulates, represents, and warrants that **5.02**, and the law firm of **5.01**, solely represent the independent executor of the estate, do not and have never represented Distributee, and have not provided Distributee legal advice or services or made any representations to Distributee. Further, Distributee hereby represents that Distributee is adequately represented by competent counsel of Distributee's choosing in connection with the execution and delivery of this agreement and in all matters relating to it or, if Distributee is not represented by counsel, that Distributee has been given the opportunity to retain counsel and has declined to do so.

Distributee further hereby stipulates, represents, and warrants that in executing this agreement, Distributee has relied on Distributee's own judgment or the advice of Distributee's own attorneys and, further, that Distributee has not been induced to sign or execute this document by promises, agreements, or representations not expressly stated in this agreement and that Distributee has freely and willingly executed this document and expressly disclaims reliance on any facts, promises, undertakings, or representations made by the independent executor or by the independent executor's attorneys or other affiliates.

SIGNED on _____.

_____
3.37, Distributee

STATE OF TEXAS)(
)(
COUNTY OF)(

BEFORE ME, the undersigned authority, on this day personally appeared **3.37**, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that [he/she] executed the same for the purposes and consideration therein expressed.

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GIVEN UNDER MY HAND AND SEAL OF OFFICE on _____

_____.

_____
Notary Public, State of Texas

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FORM 150—NOTICE OF COURT PROCEEDING

Special Instruction 16—Citation and Notice addresses the requirements for compliance with Texas Rules of Civil Procedure, Rule 21d.

[**Caption. See Special Instruction 87.**]

Notice of Court Proceeding

Notice is hereby given that **2.29 or 2.45 or 2.101**'s [**title of application or proceeding**] is set for hearing **6.24** at [**time**] in **6.03**, **6.05**.

Include the following if the court proceeding will be held in person.

This hearing will be held in person.

Include the following if the court proceeding will be held by remote videoconferencing technology, teleconference, or other electronic means.

This hearing will be held by [remote videoconferencing technology/teleconference/ [**specify other electronic means**]]. Participants are hereby notified to join the proceeding electronically in the following manner:

Provide the local instructions for joining electronically.

Continue with the following.

Evidence may be submitted in the following manner:

Provide the local instructions for submitting evidence.

The court's designated contact is:

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Provide the court's designated contact information. Courts are required to publish the designated contact information under Texas Rules of Civil Procedure, Rule 21(b).

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for 2.29, 2.45, or 2.101.

Add certificate of service.

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FORM 151—MOTION FOR REMOTE PROCEEDING

Review Special Instruction 16—Citation and Notice.

Modify this motion if remote appearance is requested for only certain participants, e.g., a distant heirship witness.

Local rules may require a certificate of conference. Even if they do not, counsel should attempt to confer with other counsel before requesting a remote proceeding. A certificate of conference is beyond the scope of this System.

[**Caption. See Special Instruction 87.**]

Motion for Remote Proceeding

2.29 or 2.45 or 2.101 ("Movant") furnishes the following information to the Court in support of Movant's request for remote proceeding:

1. Movant filed [**title of application or proceeding**] on **6.23**.

Include ¶2 if the parties have agreed that the court proceeding be held via remote means. Modify this paragraph to indicate agreement to remote appearance for only named participants.

2. In accordance with Rule 21d(b)(2) of the Texas Rules of Civil Procedure, the parties, by their signatures below, agree that the Court allow the participants to appear through remote technology designated by the Court.

Include ¶3 and ¶4 if the parties have not agreed to hold the proceeding remotely.

3. On [**date**], the undersigned counsel conferred with **6.151**, attorney for **6.150**, and has made reasonable effort to request agreement to hold the hearing through remote technology designated by the Court.

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Or

3. The undersigned counsel did not confer with **6.151**, attorney for **6.150**, to obtain agreement to hold the hearing through remote technology designated by the Court because [**specify**].

4. As required by Rule 21d(e) of the Texas Rules of Civil Procedure, good cause exists to conduct the hearing on [**title of application or proceeding**] remotely.

Discuss the good cause factors enumerated in Texas Rules of Civil Procedure, Rule 21d(e).

Continue with the following.

5. Movant will provide appropriate notice of the remote proceeding to all parties as required by Rule 21(b) of the Texas Rules of Civil Procedure.

Movant prays that the Court permit participants in the hearing on [**title of application or proceeding**] to appear remotely and designate the remote technology by which participants shall appear.

Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Movant.

If agreement has been reached, include the following, followed by a signature block for the other party's attorney at left margin. See Special Instruction 86—Signature Blocks.

AGREED AS TO FORM AND SUBSTANCE:

Add certificate of conference if required by local court rules.

Add certificate of service.

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File the following order as a separate document.

Modify this order to reflect the prayer made in the motion for remote proceeding.

[**Caption. See Special Instruction 87.**]

Order on Motion for Remote Proceeding

On this day the Court heard the Motion for Remote Proceeding filed on [**date**], and the Court, having considered the evidence, orders that participants in the proceeding appear [remotely/in person].

Include the following if participants are ordered to appear remotely.

Instructions for joining this proceeding remotely are as follows: _____

_____

_____

Continue with the following.

SIGNED on _____.

_____
Judge Presiding

Add signature block at left margin. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for Movant.

If agreement has been reached, include the following, followed by a signature block for the other party's attorney at left margin. See Special Instruction 86—Signature Blocks.

APPROVED AND ENTRY REQUESTED:

Add certificate of service.

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FORM 152—CERTIFICATE OF SERVICE

Texas Rules of Civil Procedure, Rule 21a, addresses methods of service and the requirement of proof of service.

Where required, add a certificate of service at the end of the pleading.

[**Caption. See Special Instruction 87.**]

Certificate of Service

Insert the following if service is accomplished through the electronic filing manager.

I certify that on [**date**] I served a copy of this document on the following by electronic service and that the electronic transmission was reported as complete:

List names and addresses of persons served. If a person served is an attorney, list also the party whom the served attorney represents.

Insert the following if service is accomplished through other means.

I certify that on [**date**] I served a copy of this document on the following [in person/by mail/by commercial delivery service/by fax/by email/[**other manner of service directed by the court**]]:

List names; addresses; and, as appropriate, fax numbers or email addresses of persons served. If a person served is an attorney, list also the party whom the served attorney represents.

Add signature block. See Special Instruction 86—Signature Blocks.

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FORM 153—CERTIFICATE OF DELIVERY OF NOTICE

The 2023 amendments to the Estates Code added private delivery service as an acceptable method of delivery of notice to a dozen or more Estates Code sections that were previously limited to registered or certified mail. The amendments are effective for actions filed or proceedings commenced on or after September 1, 2023. When notice is mandatory, Estates Code, Section 51.052, requires that proof of service be filed of record. See Special Instruction 16—Citation and Notice for requirements common to those sections that mandate notice by a qualified delivery method.

[**Caption. See Special Instruction 87.**]

Certificate of Delivery of Notice

My name is **5.02**. I am the attorney for **2.45**, who is the **2.85** of the estate of **6.02**, Deceased ("Decedent"), whose [will was/will and codicil were] admitted to probate by an order dated **6.26** ("the Order").

Attached to this certificate [are copies of all notices/is a copy of the notice] sent [in accordance with Section 308.002 of the Texas Estates Code to each beneficiary for whom notice is required/in compliance with Section 308.051 of the Texas Estates Code to the Comptroller of Public Accounts/in compliance with section 308.053 of the Texas Estates Code to creditors whose claims are secured by real or personal property of the estate].

[These notices were/this notice was] [mailed on [**date**] by [registered/certified] mail, return receipt requested,/deposited on [**date**] with [**specify approved private delivery service**]/ hand delivered on [**date**] by courier]. The [return receipt[s]/proof of delivery receipt[s]] [is/are] attached to this certificate.

DATED _____.

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Respectfully submitted,

Add signature block. See Special Instruction 86—Signature Blocks. On this form you are attorney(s) for 2.85.

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FORM 154—AFFIDAVIT OF SUCCESSOR PERSONAL REPRESENTATIVE

[**Caption. See Special Instruction 87.**]

Affidavit of [name of applicant]

STATE OF TEXAS)(
)(
COUNTY OF _____)(

BEFORE ME, the undersigned authority, on this day personally appeared [**name of applicant**], Affiant, who, being duly sworn by me, deposed on oath and stated:

My name is [**name of applicant**]. I am over the age of 18, of sound mind, and competent to make this affidavit. The facts set forth herein are true and correct and are within my personal knowledge.

Select one of the following.

The previous [independent] [executor/administrator/administrator with will annexed] of the Estate of **6.02** appointed by the Court on **6.26** failed to qualify.

Or

The previous [independent] [executor/administrator/administrator with will annexed] of the Estate of **6.02** appointed by the Court on **6.26 2.86** on **2.87**.

Continue with the following.

There is a continued necessity for the administration of the Estate of **6.02** and an immediate need for an appointment of successor [independent] [executor/administrator/administrator with will annexed].

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I am qualified to serve as successor [independent] [executor/administrator/ administrator with will annexed], am not disqualified by law from accepting letters [testamentary/of administration], and am entitled to such letters.

I am willing to serve as successor [independent] [executor/administrator/ administrator with will annexed] if the Court approves this Application.

_____
[**Name of applicant**]

SUBSCRIBED AND SWORN TO BEFORE ME by [**name of applicant**] on _____.

_____
Notary Public, State of Texas

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[Letters 70 through 72 are reserved for expansion.]

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19 Forward copy of application and advise of hearing
20 Forward oath to be signed before a notary
24 Forward document for signature
35 Forward copy of disclaimer
42 Forward documents required for transfer of securities
48 Forward document for signature before a notary
59 Confirm representation and fee and outline anticipated services (ADE, AWA)
73 Advise of nature and extent of duties of office (ADE, AWA)
83 Confirm representation and fee and outline anticipated services (RDA)
93 Forward copy of account for final settlement
94 Advise of nature and extent of duties of office (RDA)
100 Advise not to pay claim
106 Confirm representation and fee and outline anticipated services (TBA)
107 Confirm representation and fee and outline anticipated services (IBA)
108 Advise of nature and extent of duties of office (TBA)
109 Advise of nature and extent of duties of office (IBA)
118 Confirm representation and fee and outline anticipated services (RW)
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123 Advise of portability election (*not* surviving spouse)
132 Explain credit report request
134 Closing letter (IA, AWA, ADE, RDA, TBA, IBA, AP)

APPLICANT

19 Forward copy of application and advise of hearing

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57 Forward documents and advise of time and date of hearing

BANK OR OTHER CORPORATE FIDUCIARY

28 Inquire about account of married D
29 Inquire about account of unmarried D
30 Determine if an account or safe deposit box exists
76 Verify balance in account for annual/final accounting
77 Confirm safekeeping of funds, securities, and other items

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24 Forward document for signature
48 Forward document for signature before a notary
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63 Return all items
64 Confirm representation and fee and outline anticipated services (MT)
66 Explain muniment of title procedure and actions to follow
74 Confirm representation and fee and outline anticipated services (TDA)

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83 Confirm representation and fee and outline anticipated services (RDA)
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87 Confirm representation and fee and outline anticipated services (SE)
93 Forward copy of account for final settlement
106 Confirm representation and fee and outline anticipated services (TBA)
107 Confirm representation and fee and outline anticipated services (IBA)
114 Confirm representation and fee and outline anticipated services (AP—independent)
115 Confirm representation and fee and outline anticipated services (AP—dependent)
118 Confirm representation and fee and outline anticipated services (RW)
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135 Closing letter (MT, PDH)
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30 Determine if an account or safe deposit box exists
76 Verify balance in account for annual/final accounting
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EXECUTOR

3 Confirm representation and fee and outline anticipated services (IA)
18 Forward appointment of registered agent to nonresident executor or administrator
19 Forward copy of application and advise of hearing
20 Forward oath to be signed before a notary
23 Advise of nature and extent of duties of office (IA)
24 Forward document for signature

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35 Forward copy of disclaimer
42 Forward documents required for transfer of securities
48 Forward document for signature before a notary
59 Confirm representation and fee and outline anticipated services (ADE, AWA)
73 Advise of nature and extent of duties of office (ADE, AWA)
93 Forward copy of account for final settlement
100 Advise not to pay claim
106 Confirm representation and fee and outline anticipated services (TBA)
108 Advise of nature and extent of duties of office (TBA)
114 Confirm representation and fee and outline anticipated services (AP—independent)
115 Confirm representation and fee and outline anticipated services (AP—dependent)
116 Advise of nature and extent of duties of office (AP—independent)
117 Advise of nature and extent of duties of office (AP—dependent)
118 Confirm representation and fee and outline anticipated services (RW)
122 Advise of portability election (surviving spouse)
123 Advise of portability election (*not* surviving spouse)
132 Explain credit report request
134 Closing letter (IA, AWA, ADE, RDA, TBA, IBA, AP)
139 Request trust asset information for IRS Form 706 preparation

HEIR

34 Forward disclaimer for signature
42 Forward documents required for transfer of securities
48 Forward document for signature before a notary
92 Forward small estate affidavit for signature before a notary
93 Forward copy of account for final settlement
98 Notice of appointment of temporary administrator (TDA)
120 Forward MERP form for signature

HOLDER OF WILL

138 Demand will, papers, or estate property

INSURANCE AGENT

130 Request information on decedent's coverage

INSURANCE COMPANY

4 Request IRS Form 712 for policy already sent for collection
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7 Collect benefits
9 Request information when seeking to exclude insurance policy from D's gross estate
45 Request IRS Form 712 for policy on life of another

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25 Request employer identification number
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97 Forward power of attorney

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27 Cancel credit card or charge account

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32 Forward notice to creditors
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POSSESSOR OF WILL

138 Demand will, papers, or estate property

PROBATE CLERK

2 Order letters testamentary or letters of administration
21 Forward document to be filed
47 Forward document to be signed by judge
60 Order certified copies (IA, ADE, AWA, TBA)
69 Order certified copies (MT)
86 Order certified copies (PDH)
89 Order certified copies (SE)
91 Order certified copies (RDA)
105 Order certified copies (IBA)
124 Order certified copies (AP)
127 File will without application
128 File will following application

PROBATE CLERK OF FOREIGN COURT

112 Order copies of will

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SAVINGS ASSOCIATION

28 Inquire about account of married D
29 Inquire about account of unmarried D
30 Determine if an account or safe deposit box exists
76 Verify balance in account for annual/final accounting
77 Confirm safekeeping of funds, securities, and other items

SOCIAL SECURITY ADMINISTRATION

10 Return check

STOCKBROKER

38 Terminate brokerage accounts
39 Obtain valuation of securities

SURETY

78 Forward copy of annual account or account for final settlement
79 Advise of discharge from bond

TAX ASSESSOR

37 Change address

TENANT

36 Notify of place and method of making payment

TRANSFER AGENT

40 Change address for payment of dividends or interest
43 Forward securities for transfer (IA, ADE, AWA, RDA, PDH, TBA, IBA)
68 Forward securities for transfer (MT)
88 Forward securities for transfer (SE)

TRUSTEE

139 Executor request trust asset information for IRS Form 706 preparation

VETERANS ADMINISTRATION

11 Return check

WITNESS

13 Forward copy of testimony and advise of hearing
14 Forward copy of D's will to witness who will testify in court
15 Forward copy of D's will and interrogatories to witness who will not testify in court (initial letter)
16 Forward interrogatories to witness who will not testify in court (follow-up letter)
17 Forward copy of D's will to subscribing witness who will testify as to D's handwriting and signature
22 Thank for appearing in court
92 Forward small estate affidavit for signature before a notary

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LETTER 1—PROBATE INFORMATION LIST TO CLIENT

The attorney is to furnish the information necessary to complete this letter. Enclose a copy of the Probate Information List (Form 1).

[**Today's date**]

[**Addressee name and address**]

Dear [**name**]:

Thank you for calling. I am sorry to learn of the death of your [**relationship, name**].

You have no doubt heard that probate is a very complicated, time-consuming, and expensive proposition. To some extent it can be all these things, but with proper handling these drawbacks can be minimized.

Getting all the facts is the number one problem faced by the survivors and by their attorney. Without all appropriate information, nothing can be done. The family will not know the extent of the estate, the lawyer cannot prepare the necessary documents, and the assets cannot be distributed to the proper persons.

It is rare that all the required information can be obtained at one time or at the outset of the proceedings. In fact, different people rarely have the same assets or liabilities and definitely do not have the same personal and family histories.

To assist you and me in gathering and acting on the proper information, I am enclosing a list of items and information for you to locate. There is no estate to which all items will apply, but you should begin now to obtain as many of the items and as much of the information as possible. Do not be discouraged by the length of the list or your inability to locate some items.

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You cannot be expected to be a probate expert. Please begin gathering as much of the information and as many of the documents as you can and have it with you at our meeting on [**date**].

Please inform each insurance agent of Decedent's date of death and ask for a list of the insurance policies in place on the date of death, the steps and deadlines to keep each policy in force, and whether to add or change insurance coverage.

Until an asset is distributed, it is customary to leave the decedent's name on homeowner's and automobile policies and to add the executor or administrator as an additional named insured.

Include the following paragraphs if no administration is desired.

Ask Decedent's insurance agent whether the estate's insurance needs can be managed without appointment of an executor or administrator and without issuance of letters to a personal representative. If insurance has lapsed or is inadequate, who can request coverage?

Ask for the declarations page of each policy in which Decedent has an interest, the tasks and deadlines to keep each policy in force, and a list of any coverage changes needed immediately. Ask whether an heir or another person can be added as a named insured to Decedent's homeowner's and other insurance policies. Do not remove Decedent's name from any policy. On request, we can contact each agent for you.

Continue with the following.

If you anticipate estate employees, please ask your agent about workers' compensation and similar insurance.

Please let us collect all life insurance benefits, since it is mandatory for us to obtain certain information directly from the companies. Also, please provide us with photocopies of any checks that were undeposited on the date of death, and do not deposit those or any other checks without consulting us first.

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Thank you for letting me have this opportunity to help. I look forward to working closely with you. Kindest regards.

Yours very truly,

[**Attorney's name**]

Enclosure
Probate Information List

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LETTER 2—ORDER LETTERS TESTAMENTARY OR LETTERS OF ADMINISTRATION

Determine the appropriate number of letters testamentary or letters of administration and enclose a check for the proper charge. Send a copy of this letter, but not of the enclosure, to each client.

[**Today's date**]

6.16
6.17
6.18

Re: No. **6.01**, Estate of **6.02**, Deceased
6.03 Court of **6.04** County, Texas

Please furnish me [**number**] [copy/copies] of current Letters [Testamentary/of Administration] for the above estate. Payment is enclosed. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosure
Check

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LETTER 3—CONFIRM REPRESENTATION AND FEE AND OUTLINE ANTICIPATED SERVICES (IA)

Address this letter jointly to all probable independent executors or administrators and send two copies, together with a copy of the Texas Lawyer's Creed, to each.

[**Today's date**]

2.45
2.47
2.48

If to a corporate fiduciary, add "Attention: 2.61, 2.63" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased

Dear **2.46**:

Thank you very much for employing this firm to represent you in the probate of this estate.

Receipt is hereby acknowledged of a cash payment of $**25.02D**, which will be applied to the payment of expenses incurred or for legal fees due with respect to such representation. As we agreed, the fee will be [$**25.02A**/**25.02B** percent of the gross estate as determined for federal estate tax purposes/based on time spent on your behalf, with hourly rates of $**25.02C** for attorney's time and $**25.02C** for staff time]. In addition to fees for services, you are to pay or reimburse expenses incurred on your behalf. These expenses include [**specify expenses you expect client to pay, e.g.,** filing fees; recording charges; publication of notices; appraisal fees; long-distance, facsimile, and delivery charges; photocopies; and postage].

The above fee is for the following services:

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1. Preparing the application for probate of the [will/will and codicil]
2. Arranging for the proof necessary to have the [will/will and codicil] admitted to probate
3. Appearing in court to have the [will/will and codicil] so admitted
4. Preparing the order to be signed by the judge to admit the [will/will and codicil] to probate
5. Preparing and filing the oath of the [executor/administrator]
6. Preparing and arranging for the publication of notice to creditors
7. Preparing and serving notices to secured creditors
8. Preparing and sending required notices to beneficiaries
9. Preparing and filing the certificate or affidavit of notice to beneficiaries
10. Determining the nature, extent, and valuation of the estate
11. Preparing and filing the statutory inventory, appraisement, and list of claims or affidavit in lieu thereof and obtaining the judge's approval of the same
12. Determining the nature and amount of the liabilities of the estate
13. Assisting in the transfer of title to all of the decedent's assets
14. Investigating, determining, calculating, allocating, or dealing with asset valuations and tax basis information

With your prior approval, we may perform other services on your behalf and for additional agreed-upon fees, such as preparing and filing the United States Estate (and Generation-Skipping Transfer) Tax Return.

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On appointment, the [executor's/administrator's] duty of care will require you to insure the estate, typically with property and liability insurance on real property, automobiles, and personal property of significant value. Decedent's contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

We are not insurance experts, and you cannot rely on our insurance advice. These suggestions may not be appropriate or adequate in your situation, and we offer them only to help you start a conversation with your insurance agent.

Unless you describe the necessary insurance with great specificity, an insurance agent is not liable for inadequate coverage. It may be wise to have an expert investigate the estate's insurance situation and analyze coverage, cost, insurable risks, and exposures to loss. Before you sign, we can review any insurance analysis contract.

You will be responsible for calendaring and for preparing all of Decedent's and the estate's gift and income tax returns. Most clients use a certified public accountant to keep the estate's fiduciary accounts, prepare tax returns, and complete Schedule K-1 (Form 1041) (to report each beneficiary's share of income, deductions, and credits).

With Decedent's death, the beneficiaries receive many assets having a new income tax basis. Generally speaking, the income tax basis for most assets will be adjusted to the values shown on the federal estate tax return or, if no such return, then as shown on the statutory inventory that will be prepared. Most retirement benefits do not receive an adjusted basis. Death benefits from those plans and life insurance are not controlled by a will but are controlled by beneficiary designations. These assets are usually referred to as "nonprobate assets." Taxation of retirement benefits is a matter for you to discuss with the person who prepares income tax returns for the estate.

Before we begin, we must deal with an important ethical matter to avoid questions of conflicts of interest. As independent [executor/administrator], only you will be a client of this

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firm for matters related to the estate. While this may appear obvious, there are many instances in which family members and other beneficiaries believe that a lawyer represents "the estate" directly and thus represents them indirectly. This is not the case. To avoid these conflicts, it is the policy of this firm to recommend that they obtain the advice and services of independent attorneys of their own choosing.

As we go along, you will receive copies and information regarding the estate. Please provide affected family members and beneficiaries with updates on a regular basis. In doing so, please make it clear that this firm represents only you.

We are not now aware of any conflicts that exist or any facts that would create a conflict, although that possibility always exists. If you become aware of any conflict relating to this estate, your service as a fiduciary, or anything affecting our representation, you must call it to our attention.

Include the following paragraph if there will be independent co-executors or co-administrators.

As independent [co-executors/co-administrators], you have joint responsibility for the proper administration of this estate. For this firm to undertake this joint representation, we must insist on full and free disclosure of all information between each of you. Although there is no reason to anticipate disagreement, you may develop differences of opinion over the course of the administration. If actual conflict occurs so that we cannot represent both of you jointly, we are required to withdraw from further joint representation, and each of you then will need to obtain separate legal counsel. Should this occur, payment will be due for all unbilled services and expenses.

Continue with the following.

Please understand that to protect your interests in the event of my death, disability, or retirement, it may be necessary or appropriate for another lawyer or a staff member of this firm,

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a personal representative (including someone acting under a power of attorney), or another lawyer who is retained by any such person to have access to your file and records in order to contact you to determine appropriate handling of your matters and of your files and to make an appropriate referral (subject to your approval) to other attorneys for future handling. In that regard, you grant permission and waive all privileges solely to the extent necessary or appropriate for those purposes.

Furthermore, in the event of my death, disability, or retirement, if further services are required in connection with this representation and you engage another lawyer to perform those services, you expressly authorize the division of fees based on the proportion of the work done or responsibilities assumed by this firm and by your new attorney. Such division specifically authorizes the payment of fees and expenses to my estate, personal representatives, and heirs.

With respect to documents provided by you as well as original documents generated in connection with this representation, those that are not filed with the court will be returned to you. This firm is entitled to retain copies of all such documents as well as all other materials used in connection with the representation. All other documents, including notes and the remaining contents of your file, are attorney work product and are owned by the firm. Of course, during our representation of you and for as long thereafter as we retain any of such items, we will make your files available to you for inspection and copying.

Please note that we may destroy any of your files at any time with your written consent and, in any event, after one year following written notice to you sent by regular mail to your last known address as reflected in our records. No further notice to you will be required before such destruction.

Enclosed is a copy of the Texas Lawyer's Creed. This mandate for professionalism was promulgated by the Supreme Court of Texas and the Texas Court of Criminal Appeals in 1989. All lawyers and members of our staff do our best to adhere to the high standards it sets for the

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lawyers of Texas. We invite your questions and comments regarding that creed and your perception of our adherence to its objectives.

We all take seriously our obligation to maintain the highest standards of ethical conduct toward our clients and others. To enforce ethical conduct, the State Bar of Texas investigates and prosecutes complaints of professional misconduct. If you have questions about this process or how to file a complaint, you should contact the office of the State Bar of Texas at 1-800-932-1900 toll-free for more information.

If the foregoing letter correctly reflects your understanding of our agreement, please sign both copies of this letter, retain one for your files, and return one copy in the enclosed envelope. If you have any questions about the proposed engagement, please contact me as soon as possible. Certainly, you should feel free to consult with another lawyer about the effect of signing this letter.

Thank you again for the confidence that you have expressed in me and this firm at this very difficult time. Please call me if you have any questions. Kindest regards.

Yours very truly,

[**Attorney's name**]

Enclosures
Texas Lawyer's Creed
Return envelope

The foregoing letter correctly reflects my understanding of our agreement. Dated _____.

_____

2.45

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LETTER 4—INSURANCE POLICY ALREADY SENT FOR COLLECTION

Send a copy of this letter to each client.

[**Today's date**]

13.10
13.11
13.12

Re: Your policy number **13.14**
Insured: **1.02**
Date of death: **1.07**

Greetings:

It is my understanding that proof of death has been filed with you and that you have already made settlement of the benefits under the above policy. Please furnish me with three properly completed copies of IRS Form 712 for mandatory use in the preparation of the federal estate tax return. Thank you very much.

Yours very truly,

[**Attorney's name**]

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LETTER 5—INSURANCE COMPANY CLAIM FORMS

Send a copy of this letter to each client.

[**Today's date**]

13.10
13.11
13.12

Re: Your policy number **13.14**
Insured: **1.02**
Date of death: **1.07**

Greetings:

This letter is to advise you of the fact and date of death of the above-named insured. Please advise me of your requirements to effect payment of the policy benefits and send any required forms. Thank you very much.

Yours very truly,

[**Attorney's name**]

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LETTER 6—ORDER DEATH CERTIFICATES

Determine the appropriate number of certificates and enclose a check for the proper charge. Send a copy of this letter, but not of the enclosure, to each client.

Concerning D's name, see Special Instruction 8—Death, Birth, Marriage, and Divorce Records regarding diacritical marks (including accents, tildes, graves, umlauts, and cedillas—for example, á, ñ, è, ü, and ç).

[**Today's date**]

Department of State Health Services
Central Vital Statistics Office
1100 West 49th Street
Austin, Texas 78756-3951

Re: Estate of **6.02**, Deceased
Date of death: **1.07**
Place of death: **1.09** County, Texas

Greetings:

Please send me [**number**] death [certificate/certificates] for the above-named decedent.

Payment is enclosed. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosure
Check

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LETTER 7—COLLECT INSURANCE BENEFITS

Send a copy of this letter, but not of the enclosures, to each client.

[**Today's date**]

CERTIFIED MAIL NO. [**number**]
RETURN RECEIPT REQUESTED

13.10
13.11
13.12

Re: Your policy number **13.14**
Insured: **1.02**
Date of death: **1.07**

Greetings:

In accordance with your instructions you will find the following items enclosed with this letter:

1. Certified copy of death certificate

2. Original insurance policy

3. Proof-of-loss forms

List any additional items required by the insurance company.

You should make payment to the beneficiary in care of this office. Please furnish this office with three properly completed copies of IRS Form 712 for mandatory use in the preparation of the federal estate tax return. Thank you very much.

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Yours very truly,

[**Attorney's name**]

Enclosures
- Death certificate
- Policy
- Proof of loss
- [**List additional items**]

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LETTER 8—LIFE INSURANCE PROCEEDS TO BENEFICIARY

Send a copy of this letter, but not of the enclosures, to each client who is not the beneficiary.

[**Today's date**]

CERTIFIED MAIL NO. [**number**]
RETURN RECEIPT REQUESTED

13.25
13.27
13.28

Re: Estate of **6.02**, Deceased
13.10, policy number **13.14**

Dear **13.26**:

Enclosed with this letter you will find a check payable to your order in the amount of $[**amount**] as a beneficiary of an insurance policy on the life of the decedent.

Please sign the enclosed copy of this letter and return it to me in the enclosed self-addressed, stamped envelope.

Please do not hesitate to call if you have any questions.

Yours very truly,

[**Attorney's name**]

Enclosures
Check
Copy of this letter
Return envelope

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Receipt of the original copy of this letter and of the enclosures therein described is acknowledged on _____.

_____

13.25

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LETTER 9—LIFE INSURANCE POLICY *EXCLUDED* FROM DECEDENT'S GROSS ESTATE

Send a copy of this letter to each client.

[**Today's date**]

13.10
13.11
13.12

Re: Estate of **6.02**, Deceased
Your policy number **13.14**

Greetings:

It is my understanding that for tax purposes the decedent did not possess incidents of ownership in the policy referred to above, but I would appreciate your confirmation of this fact. Since I have been employed to prepare the federal estate tax return, I will need duplicate copies of the policy and three properly completed copies of IRS Form 712. If there is a charge for the copies, I will pay you on receipt of your statement and the copies. Thank you very much.

Yours very truly,

[**Attorney's name**]

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LETTER 10—RETURN CHECK TO SOCIAL SECURITY ADMINISTRATION

From the check, determine the address of the Social Security office, the check number and amount, and the month for which benefits were paid. Send a copy of this letter, but not of the enclosure, to each client.

[**Today's date**]

Social Security Administration
[**Address**]

Re: Estate of **6.02**, Deceased ("Decedent")
Social Security number **1.19**
Check number [**number**]

Greetings:

The above-named decedent died in **1.09** on **1.07**. After that date, the above-referenced check, made payable to Decedent's order in the amount of $[**amount**] and representing Social Security benefits for the month of [**month**], was received. It is my understanding that Decedent's estate is not entitled to retain these funds, and, accordingly, the above-numbered check is being returned to you with this letter. If my understanding is not correct, please return the check and we will deposit it to the estate account.

Yours very truly,

[**Attorney's name**]

Enclosure
Check

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LETTER 11—RETURN CHECK TO VETERANS AFFAIRS

From the check, determine the address of the Veterans Affairs office, the check number and amount, and the month for which benefits were paid. Send a copy of this letter, but not of the enclosure, to each client.

[**Today's date**]

Department of Veterans Affairs
[**Address**]

Re: Estate of **6.02**, Deceased ("Decedent")
VA number **1.24**
Check number [**number**]

Greetings:

The above-named decedent died in **1.09** on **1.07**. After that date, the above-referenced check, made payable to Decedent's order in the amount of $[**amount**] and representing benefits for the month of [**month**], was received. It is my understanding that Decedent's estate is not entitled to retain these funds, and, accordingly, the above-numbered check is being returned to you with this letter. If my understanding is not correct, please return the check and we will deposit it to the estate account.

Yours very truly,

[**Attorney's name**]

Enclosure
Check

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LETTER 12—EMPLOYEE DEATH BENEFITS

Enclose a copy of Authorization (Form 2). Send a copy of this letter, but not of the enclosure, to each client.

[**Today's date**]

Select one of the following.

CERTIFIED MAIL NO. [**number**]
RETURN RECEIPT REQUESTED

Or

[FEDEX/UPS/DHL] TRACKING NO. [**number**]
PROOF OF DELIVERY REQUESTED

Or

SUBMITTED VIA SECURE PORTAL ON [**date**]
CONFIRMATION NO. [**number**]

Or

EMAILED TO [**email address**]
DELIVERY/READ RECEIPT REQUESTED

Continue with the following.

1.33 or 1.34

Re: Estate of **6.02**, Deceased ("Decedent")
Date of death: **1.07**
[Surviving spouse: **3.03**]
Employee ID/SSN (last four): [**numbers**]
Requester: [**client's name**], as [personal representative/surviving spouse/trustee]

Greetings:

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Include the following paragraph for a personal representative.

This office represents [**client's name**], duly appointed personal representative of the above-referenced estate, appointed in Cause No. **6.01**, In the Estate of **6.02**, Deceased, in the **6.03** Court of **6.04** County, Texas, on [**date**]. A copy of the letters [testamentary/of administration] and death certificate are enclosed. We understand that Decedent was employed by you at some time. The undersigned has authority to identify all assets within Decedent's gross estate for state or federal income, gift, estate, or generation-skipping transfer tax purposes.

Include the following paragraph for a surviving spouse (preappointment).

This office represents [**client's name**], the surviving spouse of the above-referenced Decedent. The surviving spouse has statutory authority to manage, control, and dispose of community property after the death of the other spouse. Texas Estates Code, Chapter 453. We understand that Decedent was employed by you at some time. Because all marital property is presumed community under Texas law, [**client's name**] is entitled to information regarding Decedent's employment benefits, including all assets within Decedent's gross estate for state or federal income, gift, estate, or generation-skipping transfer tax purposes. Texas Family Code, Section 3.003. A copy of the death certificate and proof of marriage are enclosed.

Include the following paragraph for a trustee.

This office represents [**client's name**], acting trustee of the [**name of trust**] dated [**date**] (the "Trust"). Under the Trust instrument and Texas Property Code, Sections 113.051 and 117.001 through 117.012, the trustee has fiduciary duties to identify, collect, and administer trust assets. We understand that Decedent was employed by you and may have designated the Trust as beneficiary of employment benefits. A copy of the death certificate and certification of trust are enclosed. Texas Property Code, Section 114.086.

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Include the following paragraph for a revocable trust.

Because the Trust was revocable during Decedent's lifetime, its assets are includible in Decedent's gross estate for federal estate tax purposes under Internal Revenue Code, Section 2038. The trustee has potential liability exposure as a person in possession of estate property under Internal Revenue Code, Sections 2002, 2203, and 6324, and must identify all assets within Decedent's gross estate for state or federal income, gift, estate, or generation-skipping transfer tax purposes.

Information Requested

Please provide us with information concerning the following where applicable. Written authorization is enclosed.

1. Group Life Insurance

    a. Name and address of insurance company

    b. Policy number

    c. Amount of death benefit

    d. How payable (lump sum, installments)

    e. To whom payable (beneficiary designation)

    f. If sending policy for payment, please obtain and furnish us three copies of IRS Form 712 for each policy.

2. Compensation

    a. Amount of unpaid compensation and other benefits accrued to date of death

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b. If there was a plan for salary continuation, lump-sum death benefit, or deferred compensation, please furnish details.

3. Retirement Benefits

a. If there was a pension, profit-sharing, 401(k), 403(b), or similar plan that covered Decedent, please furnish a detailed statement of Decedent's account and all information necessary to make proper elections.

b. Beneficiary designation(s) and date(s) of designation(s)

c. Vesting status and vested balance

d. RMD status and year-of-death distribution requirements

e. Any outstanding plan loans

4. Health and Welfare Benefits

a. Medical insurance—details and right of family members to continue coverage (COBRA)

b. Life insurance (individual and AD&D)

c. Disability coverage status at death

5. Savings and Investment Plans

a. Credit union account or savings plan details, including accrued interest and outstanding loans

b. Stock or bond purchase plan participation

c. Stock option plan participation (vested and unvested options, exercise prices, expiration dates)

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d. ESOP participation

e. Any other benefits available

6. Trust Instruments and Marital Agreements

Please furnish copies of (a) any trust instruments on file naming Decedent or Decedent's spouse, if any, including surviving, predeceased, or former spouse, as settlor, trustee, or beneficiary of any employment benefits; (b) any marital property agreements, partition agreements, or premarital agreements on file signed by Decedent or Decedent's spouse, if any, including surviving, predeceased, or former spouse; and (c) all beneficiary designation forms.

7. See-Through Trust Documentation (if Trust Is Named Beneficiary)

If a trust is named as beneficiary of any retirement plan, please provide trustee certification that (a) the trust is irrevocable (or became irrevocable upon Decedent's death), (b) all trust beneficiaries are identifiable individuals, and (c) the trust documentation has been provided to the plan administrator. This information is necessary for determining required minimum distribution periods.

8. Surviving Spouse Employment

Was Decedent's spouse, if any, including surviving, predeceased, or former spouse, also employed by you at any time? If so, please identify any joint or survivor benefits, spousal coverage, or benefits payable by reason of Decedent's death.

9. Qualified Domestic Relations Order (QDRO)

Is any portion of Decedent's retirement benefits subject to a qualified domestic relations order (QDRO) or similar court order? If so, please provide a copy.

10. Cross-Referral

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To the extent known from your records, identify other employers, benefit plan administrators, or financial institutions where Decedent or Decedent's spouse, if any, including surviving, predeceased, or former spouse, may have had accounts, benefits, or retirement funds.

Please send us Decedent's final W-2 form. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosure[s]
[Death certificate]
[Letters [testamentary/of administration]]
[**Specify proof of marriage**]
[Certification of trust]
[Authorization]

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LETTER 13—TESTIFYING WITNESS AS TO DEATH AND OTHER FACTS

Enclose a copy of the appropriate form—Proof of Death and Other Facts (Form 7 for independent administration, Form 31 for muniment of title proceeding, Form 29 for administration with dependent executor, Form 71 for administration with will annexed, Form 75 for regular dependent administration) or Statement of Facts (Form 80 for regular dependent administration or proceedings to declare heirship). Send a copy of this letter and of the enclosure to each client.

[**Today's date**]

2.36 or 3.83
2.38 or 3.85
2.39 or 3.86

Re: Estate of **6.02**, Deceased

Dear **2.37 or 3.84**:

This letter will confirm your willingness to appear as a witness and to testify concerning the death of and other facts relating to the above-named decedent.

Enclosed with this letter is a copy of your proposed testimony. Please review it to be sure that you can make the statements contemplated therein.

Obtain the time and date of hearing for the following paragraph from Significant Date List (SDL) or from 6.24 or 6.124A of MIL.

I have arranged for a hearing at [**time**] on [**day of week**], [**date**]. The proceedings will not take long, and your testimony will be limited to the matters contained in the enclosed document.

Select one of the following.

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The hearing will be held in the courtroom of the **6.03** Court of **6.04** County, Texas. This courtroom is located on the **6.05** floor of the [**name of building, e.g.,** County Courthouse]. [**Include if applicable:** You are scheduled to appear by [**specify electronic means, including all relevant access information**].]

Or

The hearing will be held by [**specify electronic means, including all relevant access information**].

Continue with the following.

A member of my staff will call you the day before the hearing to remind you of it. Please do not hesitate to call if you have any questions. Thank you very much for your help.

Yours very truly,

[**Attorney's name**]

Enclosure
Copy of [Proof of Death and Other Facts/Statement of Facts]

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LETTER 14—TESTIFYING WITNESS

Enclose a copy of the will or codicil *and* a copy of proof (Form 8, Form 133, or Form 134) that was prepared for this witness. Send a copy of this letter, the will or codicil, and the proof to each client.

[**Today's date**]

2.05 T/C or 2.11 T/C or 2.21 T/C or 2.160 T/C or 2.170 T/C
2.06 T/C or 2.13 T/C or 2.23 T/C or 2.162 T/C or 2.172 T/C
2.07 T/C or 2.14 T/C or 2.24 T/C or 2.163 T/C or 2.173 T/C

Re: Estate of **6.02**, Deceased ("Decedent")

Dear **2.05A T/C or 2.12 T/C or 2.22 T/C or 2.161 T/C or 2.171 T/C**:

This letter will confirm your willingness to appear as a witness and to testify concerning the proper execution of the [will/codicil] by the above-named decedent.

Enclosed with this letter is a copy of the document that has been filed for probate as Decedent's [will/codicil] and a copy of your proposed testimony. Please examine the copy of the [will/codicil] [**include for subscribing witness:** to be sure that you can identify it], and be sure that you can make the statements contemplated in the [Proof by Subscribing Witness/Proof of Decedent's Signature/Proof of Subscribing Witness's Signature].

Obtain the time and date of hearing for the following paragraph from Significant Date List (SDL) or from 6.24 of MIL.

I have arranged for a hearing at [**time**] on [**day of week**], [**date**]. The proceedings will not take long, and your testimony will be limited to the matters contained in the enclosed document.

Select one of the following.

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The hearing will be held in the courtroom of the **6.03** Court of **6.04** County, Texas. This courtroom is located on the **6.05** floor of the [**name of building, e.g.,** County Courthouse]. [**Include if applicable:** You are scheduled to appear by [**specify electronic means, including all relevant access information**].]

Or

The hearing will be held by [**specify electronic means, including all relevant access information**].

Continue with the following.

A member of my staff will call you the day before the hearing to remind you of it. Please do not hesitate to call if you have any questions. Thank you very much for your help.

Yours very truly,

[**Attorney's name**]

Enclosures
Copy of [will/codicil]
Copy of [Proof by Subscribing Witness/Proof of Decedent's Signature/Proof of Subscribing Witness's Signature]

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LETTER 15—WITNESS WHO WILL NOT TESTIFY IN COURT (INITIAL LETTER)

Enclose copies (but not the originals) of the will or codicil and Interrogatories and Answers of Witness to Interrogatories (Form 10, Form 140, or Form 142). Send a copy of this letter and of the enclosures to each client.

[**Today's date**]

2.05 T/D or 2.11 T/D or 2.21 T/D or 2.160 T/D or 2.170 T/D
2.06 T/D or 2.13 T/D or 2.23 T/D or 2.162 T/D or 2.172 T/D
2.07 T/D or 2.14 T/D or 2.24 T/D or 2.163 T/D or 2.173 T/D

Re: Estate of **6.02**, Deceased ("Decedent")

Dear **2.05A T/D or 2.12 T/D or 2.22 T/D or 2.161 T/D or 2.171 T/D**:

This letter will confirm your willingness to be a witness concerning the proper execution of the [will/codicil] by the above-named decedent.

Enclosed with this letter is a copy of the document that has been filed for probate as Decedent's [will/codicil] and copies of questions I will ask you (interrogatories) and blank spaces for you to answer each question. Please examine the copy of the [will/codicil] to be sure that you can identify [it/Decedent's handwriting and signature/Decedent's signature/the witness's signature], and then truthfully answer the questions as to how you are able to identify the [document/handwriting and signature/signature].

Please contact our office by mail, email, or phone to discuss your answers to each of the questions. If you are returning your sample answers by mail, please take care to write each answer legibly.

Please do not hesitate to call if you have any questions. Thank you very much for your help.

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Yours very truly,

[**Attorney's name**]

Enclosures
Copy of [will/codicil]
Copy of interrogatories and answers
Return envelope

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LETTER 16—INTERROGATORIES TO WITNESS

Enclose the original copy of the will or codicil, Interrogatories and Answers of Witness to Interrogatories (Form 10, Form 140, or Form 142), deposition envelope, and deposition envelope instructions. Send a copy of this letter and of the enclosures to each client.

[**Today's date**]

[REGISTERED/CERTIFIED] MAIL NO. [**number**]
RETURN RECEIPT REQUESTED

2.05 T/D or 2.11 T/D or 2.21 T/D or 2.160 T/D or 2.170 T/D
2.06 T/D or 2.13 T/D or 2.23 T/D or 2.162 T/D or 2.172 T/D
2.07 T/D or 2.14 T/D or 2.24 T/D or 2.163 T/D or 2.173 T/D

Re: Estate of **6.02**, Deceased ("Decedent")

Dear **2.05A T/D or 2.12 T/D or 2.22 T/D or 2.161 T/D or 2.171 T/D**:

To have the [will/codicil] of the above-named decedent admitted to probate, we need to take your written deposition. Enclosed with this letter are the following:

1. Certified copy of the document purporting to be Decedent's [will/codicil].

2. Original copy of "Interrogatories and Answers of Witness to Interrogatories."

3. A large envelope for transmittal of the interrogatories and [will/codicil] on completion of the testimony and certificate by the notary.

4. Instruction copy of the outside of the envelope.

You are requested to take these enclosures and appear before a notary or one of the other authorities named in the commission and complete the answers to interrogatories. **Please take care to write each answer legibly.** You should sign the original copy of the answers to the interrogatories and have your notary (or other authority) sign at the bottom and make an

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impression of the notarial seal. PLEASE USE BLUE INK and be sure the notary's name is signed and printed.

Once this has been completed, the first two enclosures referred to above should then be inserted in the large envelope by the notary (or other authority), who then must seal the envelope, noting particularly those items circled in red on the enclosed instruction copy of the envelope. The notary should then sign across the flap in *both of the spaces* allotted for the notary's signature. The envelope should then be mailed as addressed.

I would appreciate your courtesy in advising me of the fact that your interrogatories have been completed and have been forwarded to the clerk. Please contact me if you have any questions concerning any of our procedures. Thank you very much for your assistance.

Yours very truly,

[**Attorney's name**]

Enclosures
Certified copy of [will/codicil]
Interrogatories and answers to interrogatories
Deposition envelope
Deposition envelope instructions

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LETTER 17—WITNESS TO DECEDENT'S HANDWRITING AND SIGNATURE

Enclose a copy of the will or codicil *and* a copy of Proof of Decedent's Handwriting and Signature (Form 14) that was prepared for the particular witness. Send a copy of this letter and of the proof to each client.

[**Today's date**]

2.05 T/C
2.06 T/C
2.07 T/C

Re: Estate of **6.02**, Deceased ("Decedent")

Dear **2.05A T/C**:

This letter will confirm your willingness to appear as a witness and to testify concerning the handwriting and signature of the above-named decedent.

Enclosed with this letter is a copy of the document that we believe is Decedent's [will/codicil] and a copy of your proposed testimony. Please examine the copy of the will to be sure you can identify it, and then be sure that you can make the statements contemplated in the Proof of Decedent's Handwriting and Signature.

Obtain the time and date of hearing for the following paragraph from Significant Date List (SDL) or from 6.24 of MIL.

I have arranged for a hearing at [**time**] on [**day of week**], [**date**]. The proceedings will not take long, and your testimony will be limited to the matters contained in the enclosed document.

Select one of the following.

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The hearing will be held in the courtroom of the **6.03** Court of **6.04** County, Texas. This courtroom is located on the **6.05** floor of the [**name of building, e.g.,** County Courthouse]. [**Include if applicable:** You are scheduled to appear by [**specify electronic means, including all relevant access information**].]

Or

The hearing will be held by [**specify electronic means, including all relevant access information**].

Continue with the following.

A member of my staff will call you the day before the hearing to remind you of it. Please do not hesitate to call if you have any questions. Thank you very much for your help.

Yours very truly,

[**Attorney's name**]

Enclosures
Copy of [will/codicil]
Copy of Proof of Decedent's Handwriting and Signature

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LETTER 18—APPOINTMENT OF RESIDENT AGENT

Enclose the original and a copy of Appointment of Resident Agent (either Form 15 or 16) that was prepared for this particular executor or administrator and a return envelope. Send a copy of this letter and of the appointment to each client.

[**Today's date**]

2.45
2.47
2.48

If to a corporate fiduciary, add "Attention: 2.61, 2.63" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased

Dear **2.46**:

Enclosed with this letter are two copies of an Appointment of Resident Agent, which are to be signed by you before a notary, following which you should return the original copy to me in the enclosed stamped, self-addressed envelope. PLEASE USE BLUE INK and be sure the notary's name is signed and printed.

Please give this matter your prompt attention, because you cannot be appointed as executor until the appointment has been approved by the judge. If you have any questions, please let me know. Kindest regards.

Yours very truly,

[**Attorney's name**]

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Enclosures
Appointment of Resident Agent—2 copies
Return envelope

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LETTER 19—ADVISE APPLICANT, EXECUTOR, OR ADMINISTRATOR OF HEARING

Send a copy of this letter and of the enclosure to each client.

[**Today's date**]

2.29 or 2.45 or 2.76
2.31 or 2.47 or 2.78
2.32 or 2.48 or 2.79

If to a corporate fiduciary, add "Attention: 2.61, 2.63" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased

Dear **2.30 or 2.46 or 2.77**:

Enclosed with this letter you will find a copy of the [**name or description or document**] filed in the above estate.

Obtain the time and date of hearing for the following paragraph from Significant Date List (SDL) or from 6.24 of MIL.

I have arranged for a hearing at [**time**] on [**day of week**], [**date**].

Select one of the following.

The hearing will be held in the courtroom of the **6.03** Court of **6.04** County, Texas. This courtroom is located on the **6.05** floor of the [**name of building, e.g.,** County Courthouse]. [**Include if applicable:** You are scheduled to appear by [**specify electronic means, including all relevant access information**].]

Or

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The hearing will be held by [**specify electronic means, including all relevant access information**].

Continue with the following.

A member of my staff will call you the day before the hearing to remind you of it. Please do not hesitate to call if you have any questions. Thank you very much for your help.

Yours very truly,

[**Attorney's name**]

Enclosure
[**Name or description of document**]

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LETTER 20—OATH TO EXECUTOR OR ADMINISTRATOR

Enclose the original and a copy of Oath (either Form 18 or 19) that was prepared for this particular executor or administrator and a return envelope. Send a copy of this letter and of the oath to each client.

[**Today's date**]

2.45 or 2.76
2.47 or 2.78
2.48 or 2.79

If to a corporate fiduciary, add "Attention: 2.61, 2.63" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased

Dear **2.46 or 2.77**:

The [will/will and codicil] of the above-named decedent [has/have] been admitted to probate, and, although you have been appointed to serve as [executor/administrator] of this estate, you may not so act until you have taken the oath prescribed by law.

Enclosed with this letter are two copies of the appropriate oath, which are to be signed by you before a notary, following which you should return the original copy to me in the enclosed self-addressed envelope for filing with the clerk of the court. PLEASE USE BLUE INK and be sure the notary's name is signed and printed. Please give this matter your prompt attention, because the failure to file this oath within twenty days after the date that the order was signed is a ground for your removal.

Yours very truly,

[**Attorney's name**]

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Enclosures
Oath—2 copies
Return envelope

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LETTER 21—FILING DOCUMENTS WITH PROBATE CLERK

Determine whether there is a filing fee; if so, determine the proper charge and enclose a check for that amount. Send a copy of this letter and of the enclosed document to each client.

[**Today's date**]

6.16
6.17
6.18

Re: **6.01**, Estate of **6.02**, Deceased
6.03 Court of **6.04** County, Texas

Greetings:

Enclosed with this letter you will find the [**name or description of document**] to be filed among the papers for the above estate. [**Include if filing fee is required:** Payment of your fee is enclosed.]

Yours very truly,

[**Attorney's name**]

Enclosure[s]
[**Name or description of document**]
[**Include if applicable:** Check]

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LETTER 22—THANK WITNESS FOR APPEARING IN COURT

Send a copy of this letter to each client.

[**Today's date**]

2.05 T/C or 2.11 T/C or 2.21 T/C or 2.160 T/C or 2.170 T/C or 2.36 or 3.83
2.06 T/C or 2.13 T/C or 2.23 T/C or 2.162 T/C or 2.172 T/C or 2.38 or 3.85
2.07 T/C or 2.14 T/C or 2.24 T/C or 2.163 T/C or 2.173 T/C or 2.39 or 3.86

Re: Estate of **6.02**, Deceased

Dear **2.05A T/C or 2.12 T/C or 2.22 T/C or 2.161 T/C or 2.171 T/C or 2.37 or 3.84**:

Thank you very much for rearranging your schedule and for appearing in court. Without your help, it would not have been possible for us to prove the facts necessary for the court to take its action. Your assistance is appreciated.

Yours very truly,

[**Attorney's name**]

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LETTER 23—ADVISE OF DUTIES AND ACTIONS TO FOLLOW (IA)

Enclose the indicated items.

[**Today's date**]

2.45
2.47
2.48

If to a corporate executor, add "Attention: 2.61, 2.63" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased ("Decedent")

Dear **2.46**:

As you know, the order admitting Decedent's [will/will and codicil] to probate for this estate was signed by the judge on **6.26**. You have qualified as independent executor of this estate by the filing of your oath. This also entitles you to receive letters testamentary.

These letters represent evidence of your appointment as independent executor and give you the full authority to act for and on behalf of the estate. Original letters are enclosed for your use. All letters show the date on which they were issued and are valid for only sixty days from that date. Do not worry if they expire before they are used since, for a modest charge, we can obtain additional letters at any time during the administration. As you need additional letters, please contact our office.

The information contained in this letter is designed to enable you to more fully appreciate the office you now hold and to provide you with guidance to assist you in carrying out your responsibilities.

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First of all, you should be aware of the meaning of the terms "executor" and "executrix." An "executor" is the person appointed in the will of the decedent to carry out the desires of the decedent as expressed in that will and to administer the estate of the decedent. "Executrix" is the feminine gender of that word. The term "executor" is used throughout the remainder of this letter, but you should realize that the word "executrix" can be freely interchanged.

The word "independent" means that the executor may act independently of control by the court except for the filing of the required inventory, appraisement, and list of claims or an affidavit in lieu of inventory. Without having been categorized as "independent," virtually all your duties and actions would be subject to prior approval by the court, since a mere executor is required to obtain advance approval for virtually every action. This is obviously a cumbersome and expensive process, and since you are an *independent* executor, we will not need to seek court approval for your actions.

In your capacity as independent executor, you are Decedent's representative for the purposes of terminating Decedent's affairs. This is called "administration" and requires you to locate, identify, collect, and assist in the valuation of Decedent's assets; to prepare an inventory listing those assets; to locate and identify creditors and pay debts, expenses of administration, and taxes; and to distribute the remaining assets to the beneficiaries named in Decedent's [will/will and codicil]. In discharging your duties, keep in mind that you are a fiduciary and that you have a duty to deal fairly with the creditors, heirs, and beneficiaries of this estate and to carefully manage the estate for their benefit. Do not commingle Decedent's assets with your own without my knowledge and direction. Your first duty should be to take possession of Decedent's assets, valuable papers, and records and safeguard Decedent's property.

The executor's duty of care requires you to insure the estate promptly, typically with property and liability insurance on real property, automobiles, and personal property of significant value. Decedent's contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

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If you have not already, please inform each insurance agent of Decedent's date of death and your appointment as executor and ask for the declarations page of each policy in which Decedent has an interest, the tasks and deadlines to keep each policy in force, and a list of any coverage changes needed immediately. Please ask to be added as a named insured to Decedent's homeowner's and other insurance policies. Do not remove Decedent's name from any policy. On request, we can contact each agent for you.

If you open bank accounts and certificates of deposit for this estate, you will need an employer identification number. Please let us know if you wish for us to assist you in getting it. Also, be sure that the total estate funds at any one institution do not exceed the amount insured by the FDIC.

To avoid personal liability on agreements you sign for the estate, you should sign documents as "**2.45**, Independent Executor of the Estate of **6.02**, Deceased."

Several deadlines must be observed.

Within sixty days following the order of the court that admitted Decedent's will to probate, **6.69**, you must send notice to each beneficiary named in Decedent's will and provide them with copies of the will and order. We will prepare these notices for your signature and will send them to each of those beneficiaries. Within ninety days following that order of the court, **6.69A**, we must file a certificate regarding the notice given to the beneficiaries.

Within one month from the date the clerk first issued letters, **21.23**, notice to the general creditors of the estate must be published. We will prepare that notice and have it published in an appropriate newspaper.

Within two months from the date the clerk first issued letters, **7.35**, you must send notice to any creditors whose notes are secured by liens on real estate or on automobiles or other personal property. If you will provide names and addresses, we will prepare these notices for your

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signature and will send them to each of those creditors. We must file your affidavit regarding notices to secured creditors, and we will prepare that for your signature.

Within ninety days after you qualified as independent executor, **6.85**, we must file an inventory, appraisement, and list of claims, including proper and complete descriptions of the various assets with accurate evaluations. It is possible to obtain an extension of time for filing this inventory. If it is necessary to file so-called death tax returns, we will want to coordinate this inventory with the United States Estate (and Generation-Skipping Transfer) Tax Return, and we will request this extension. Although the inventory must always be prepared, it need not always be filed. Sometimes it is possible to file an affidavit in lieu of the inventory.

If the value of Decedent's gross estate (all of Decedent's separate property [**include if D was married:** plus half the community property] plus the value of certain lifetime transfers) exceeds $**26.21** on the date of death, a federal estate tax return must be filed and estate taxes paid within nine months after the date of death, **26.28**. [**Include if D was married:** In smaller estates, the surviving spouse may wish to file an estate tax return to elect portability of the deceased spouse's unused exclusion ("DSUE") amount.] For purposes of that return, Decedent's assets are valued as of the date of death. The preparation of that return is not a part of our regular service and is subject to a separate agreement for payment of additional fees and expenses.

Include the following paragraph if disclaimers appear necessary for postmortem tax or other planning.

Nine months after the date of death, **26.28**, is also the deadline to file a qualified disclaimer. The goal of a disclaimer is to pass assets from the named beneficiary into the hands of an alternate beneficiary—for example, the Family Trust—in order to minimize tax or other adverse consequences of the asset's passing to the "wrong" beneficiary. For the disclaimer to qualify, the original beneficiary must not have assumed any aspect of ownership of the disclaimed assets. For example, if the surviving spouse files a claim with the insurance company,

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receives a check for the insurance proceeds, and places that check in that spouse's personal account, the surviving spouse has accepted that gift and the surviving spouse's disclaimer option is lost. Likewise, if a child is named as the primary beneficiary of a retirement plan or an IRA and, following the parent owner's death, does an "IRA rollover" of the deceased parent's funds into a new IRA in the child's name, the child has effectively accepted that gift and the disclaimer option is again precluded. As these examples illustrate, before you or any other beneficiary collects an asset, changes title on an account, applies for insurance benefits, or makes an IRA rollover, you should contact a qualified advisor to discuss the tax and other issues involved in these decisions.

Include the following paragraph if D was not married.

Decedent's final federal income tax return (Form 1040), covering the period beginning on January 1 and ending on the date of Decedent's death, must be prepared and filed if Decedent had a certain minimum amount of gross income. If one is due, it must be filed and the taxes must be paid on or before April 15 of the year following Decedent's death.

Include the following paragraph if income tax return is to be filed for D's estate.

A fiduciary income tax return for income of Decedent's estate (Form 1041) will be required in all years in which the income of Decedent's estate exceeds $600. The beginning date of the first year is the date of Decedent's death, and it may end on December 31 or at the end of any other month, provided that it does not extend beyond one year from the date of Decedent's death.

Continue with the following.

You will be responsible for calendaring and for preparing all of Decedent's and the estate's gift and income tax returns. Most clients use a certified public accountant to keep the

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estate's fiduciary accounts, prepare tax returns, and complete Schedule K-1 (Form 1041) (to report each beneficiary's share of income, deductions, and credits).

With Decedent's death, the beneficiaries receive many assets having a new income tax basis. Generally speaking, the income tax basis for most assets will be adjusted to the values shown on the federal estate tax return or, if no such return, then as shown on the statutory inventory that will be prepared. Most retirement benefits do not receive an adjusted basis. Death benefits from those plans and life insurance are not controlled by a will but are controlled by beneficiary designations. These assets are usually referred to as "nonprobate assets." Taxation of retirement benefits is a matter for you to discuss with the person who prepares income tax returns for the estate.

If this estate will exceed $**26.21**, PLEASE do not transfer *any* assets to anyone without consulting with us.

After all known debts and taxes of Decedent and of Decedent's estate have been paid, you may then distribute the remaining assets to the appropriate beneficiaries. It is normal for you to feel a great deal of moral pressure to pay all debts as soon as possible. It will be very helpful to us if you will resist this urge until we have a complete list of those debts and a clear financial picture of the estate. PLEASE cooperate with us about these debts.

By way of a partial summary, the administration of this estate is an essential and very important process. It clears title to real estate. It settles legitimate debts (and wipes out others). It establishes a new income tax basis for Decedent's property [**include if D was married:** as well as for the community property interest of the surviving spouse]. It permits clear title distribution of property to the persons entitled to receive it under the terms of the will.

To the extent that you elect to handle matters directly, it is very important for you to keep us advised and to furnish copies of all outgoing and incoming correspondence and other documents, especially matters dealing with the Internal Revenue Service.

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To assist you in properly performing your duties, we will need to obtain a great deal of additional information, and we will need to work together very closely in the coming months. For your records, copies of all documents and correspondence to date are enclosed, and we will send future correspondence and other documents as they are prepared. Please contact me if you have any questions concerning this letter, your duties, or the future procedures.

We look forward to working closely with you. Kindest regards.

Yours very truly,

[**Attorney's name**]

Enclosures
Letters testamentary
[**List copies of other documents and correspondence, e.g., application, proof, order, oath**]

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LETTER 24—DOCUMENT TO BE SIGNED BY EXECUTOR, CLIENT, OR ADMINISTRATOR

Enclose the original and one copy of the document and a return envelope. Send a copy of this letter and of the document to each client.

[**Today's date**]

2.45 or 2.29 or 2.76 or 2.101 or 2.116
2.47 or 2.31 or 2.78 or 2.103 or 2.118
2.48 or 2.32 or 2.79 or 2.104 or 2.119

If to a corporate fiduciary, add "Attention: 2.61, 2.63" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased

Dear **2.46 or 2.30 or 2.77 or 2.102 or 2.117**:

Enclosed with this letter you will find [**name or description of document**] to be signed by you for use in the administration of this estate. Please sign all copies at the space indicated and return them to me in the enclosed self-addressed envelope. One copy is for your file.

Yours very truly,

[**Attorney's name**]

Enclosures
[**Name or description of document**]
Return envelope

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LETTER 25—REQUEST EMPLOYER IDENTIFICATION NUMBER

Enclose IRS Form SS-4, Application for Employer Identification Number (FF 6). Send a copy of this letter and of the completed Form SS-4 to each client.

Consult the current IRS instructions for this form to determine the mailing address. Complete this letter with the full address. See Special Instruction 77—Filing IRS Forms.

[**Today's date**]

Internal Revenue Service Center
[**Address**]

Re: Estate of **6.02**, Deceased

Greetings:

Enclosed with this letter is the properly completed IRS Form SS-4 requesting an employer identification number for the above-named estate. Please process this application and advise me of that number. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosure
IRS Form SS-4

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LETTER 26—NOTIFY IRS OF FIDUCIARY RELATIONSHIP

Enclose IRS Form 56, Notice Concerning Fiduciary Relationship (FF 7), and a copy of letters testamentary or letters of administration. Send a copy of this letter *and* of IRS Form 56 (but not of letters testamentary or letters of administration) to each client.

Consult the current IRS instructions for this form to determine the mailing address. Complete this letter with the full address. See Special Instruction 77—Filing IRS Forms.

[**Today's date**]

Internal Revenue Service Center
[**Address**]

Re: Estate of **6.02**, Deceased

Greetings:

Enclosed with this letter you will find IRS Form 56 together with a copy of the letters [testamentary/of administration] issued to the personal representative by the court having jurisdiction.

Include the following paragraph if the number is not included in IRS Form 56.

An employer identification number has been requested but has not yet been furnished.

Continue with the following.

Yours very truly,

[**Attorney's name**]

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Enclosures
IRS Form 56
Letters [testamentary/of administration]

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LETTER 27—CANCEL CREDIT CARD OR CHARGE ACCOUNT

Obtain the account number from D's records or from 21.06–21.14 of MIL. Send a copy of this letter to each client.

[**Today's date**]

21.06–21.14

Re: Estate of **6.02**, Deceased
Date of death: **1.07**
Account number [**number**]

Greetings:

Please be advised that your customer named above died on the above date, that you should immediately cancel the decedent's account, and that you should not honor further charges made to that account. Credit cards relating to this account, if located, have been mutilated.

Yours very truly,

[**Attorney's name**]

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LETTER 28—INQUIRIES AS TO ACCOUNTS OF MARRIED DECEDENT

Enclose a signed copy of Authorization (Form 2), death certificate, letters testamentary or letters of administration, and return envelope. Send a copy of this letter, but not of the enclosures, to each client.

[**Today's date**]

11.20
11.22
11.23

Attention: **11.21**

Re: Estate of **6.02**, Deceased ("Decedent")
Your account number **11.25**
Decedent's spouse: **3.03**
Date of death: **1.07**

Greetings:

We represent the above-named estate and request information from you concerning any transactions Decedent or Decedent's surviving spouse may have had pending with your bank on the date of Decedent's death. A copy of our authorization is enclosed. Your complete response is required with respect to not only probate assets solely in Decedent's name but also multiparty accounts, nonprobate assets, and insurance contracts in which Decedent had an interest. Texas Estates Code, Section 111.102.

Specifically, we need the following information, as of the date of death:

1. The balance on deposit in the above account or any other account owned by Decedent or Decedent's surviving spouse, or in any account in which either of them had an interest, including joint accounts and any trust accounts of which either of them

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may have been trustee or beneficiary. This also includes personal or commercial checking or savings accounts and certificates of deposit. For each account, please include the account number, whether checking or savings account, the exact name(s) included in the account, the balances as of the date of death, and *a photocopy of all agreements between your bank and Decedent and Decedent's spouse, whether contained in signature cards or in other documents.*

	Account Number	*Type of Account*	*Style of Account*	*Date-of-Death Balance*
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____
c.	_____	_____	_____	_____

2. Whether any unusually large withdrawals were made from any of the accounts within six months before the date of death. If there were, please give the dates and the amounts of any such withdrawals.

	Dates	*Amounts*	*Payee*
a.	_____	_____	_____
b.	_____	_____	_____
c.	_____	_____	_____

3. Whether any unusually large deposits have been credited to any of these accounts since the date of death. If so, please give the dates and amounts of any such deposits.

	Dates	*Amounts*
a.	_____	_____
b.	_____	_____

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c. _____ _____

4. Whether Decedent or Decedent's surviving spouse was indebted to you. If so, please give the balance (principal and interest) due you *as of the date of death*, **1.07**. Please describe the nature of the debt and the collateral, if any, held by you.

	Unpaid Principal	*Accrued Interest*	*Collateral*
a.	_____	_____	_____
b.	_____	_____	_____
c.	_____	_____	_____

5. Whether Decedent or Decedent's surviving spouse had a safe deposit box with you or a power of attorney with respect to any safe deposit box with you. If so, please give safe deposit box number here _____ and furnish *a copy of the rental agreement and signature card*.

6. Whether Decedent or Decedent's surviving spouse was the owner of any promissory note or similar obligation that was being collected by you. If so, please send me copies of those notes and payment records.

7. Whether you are holding securities or other items for safekeeping for Decedent or Decedent's surviving spouse. If so, please provide details.

8. Your requirements for the transfer of such accounts, certificates, or other items.

Please furnish me *copies of any financial statements* filed with you by Decedent or Decedent's surviving spouse during the past three years. If you were a trustee of a trust for the benefit of or created by Decedent, please furnish me with a copy of the trust agreement and all amendments. I will pay your charges for all the requested copies on receipt of those copies and your statement.

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Your cooperation in furnishing us with this information at your earliest convenience will be greatly appreciated. The spaces in the body of this letter have been provided to make it easier for you to complete the necessary information and return it to me in the enclosed self-addressed envelope. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosures
Authorization
Death certificate
Letters [testamentary/of administration]
Return envelope

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LETTER 29—INQUIRIES AS TO ACCOUNTS OF UNMARRIED DECEDENT

Enclose a signed copy of Authorization (Form 2), death certificate, letters testamentary or letters of administration, and return envelope. Send a copy of this letter, but not of the enclosures, to each client.

[**Today's date**]

11.20
11.22
11.23

Attention: **11.21**

Re: Estate of **6.02**, Deceased ("Decedent")
Your account number **11.25**
Date of death: **1.07**

Greetings:

We represent the above-named estate and request information from you concerning any transactions Decedent may have had pending with your bank on the date of Decedent's death. A copy of our authorization is enclosed. Your complete response is required with respect to not only probate assets solely in Decedent's name but also multiparty accounts, nonprobate assets, and insurance contracts in which Decedent had an interest. Texas Estates Code, Section 111.102.

Specifically, we need the following information, as of the date of death:

1. The balance on deposit in the above account or any other account owned by Decedent or in any account in which Decedent had an interest, including joint accounts and any trust accounts of which Decedent may have been trustee or beneficiary. This also includes personal or commercial checking or savings accounts and certif-

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icates of deposit. For each account, please include the account number, whether checking or savings account, the exact name(s) included in the account, the balances as of the date of death, and *a photocopy of all agreements between Decedent and your bank, whether contained in signature cards or other documents*.

	Account Number	*Type of Account*	*Style of Account*	*Date-of-Death Balance*
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____
c.	_____	_____	_____	_____

2. Whether any unusually large withdrawals were made from any of the accounts within six months before the date of death. If there were, please give the dates and the amounts of any such withdrawals.

	Dates	*Amounts*	*Payee*
a.	_____	_____	_____
b.	_____	_____	_____
c.	_____	_____	_____

3. Whether any unusually large deposits have been credited to any of these accounts since the date of death. If so, please give the dates and amounts of any such deposits.

	Dates	*Amounts*
a.	_____	_____
b.	_____	_____
c.	_____	_____

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4. Whether Decedent was indebted to you. If so, please give the balance (principal and interest) due you *as of the date of death*, **1.07**. Please describe the nature of the debt and the collateral, if any, held by you.

	Unpaid Principal	*Accrued Interest*	*Collateral*
a.	_____	_____	_____
b.	_____	_____	_____
c.	_____	_____	_____

5. Whether Decedent had a safe deposit box with you, or a power of attorney with respect to any safe deposit box with you. If so, please give safe deposit box number here _____ and furnish *a copy of the rental agreement and the signature card*.

6. Whether Decedent was the owner of any promissory note or similar obligation that was being collected by you. If so, please send me copies of those notes and payment records.

7. Whether you are holding securities or other items for safekeeping for Decedent. If so, please provide details.

8. Your requirements for the transfer of such accounts, certificates, or other items.

Please furnish me *copies of any financial statements* filed with you by Decedent during the past three years. If you were a trustee of a trust for the benefit of or created by Decedent, please furnish me with a copy of the trust agreement and all amendments. I will pay your charges for all the requested copies on receipt of those copies and your statement.

Your cooperation in furnishing us with this information at your earliest convenience will be greatly appreciated. The spaces in the body of this letter have been provided to make it easier

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for you to complete the necessary information and return it to me in the enclosed self-addressed envelope. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosures
Authorization
Death certificate
Letters [testamentary/of administration]
Return envelope

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LETTER 30—ACCOUNT OR SAFE DEPOSIT BOX INQUIRY

Obtain the names of the banks or associations from the attorney. Send a copy of this letter, but not of the enclosure, to each client.

[**Today's date**]

[**Name and address of institution**]

Re: Estate of **6.02**, Deceased
Date of death: **1.07**

Greetings:

Please review your records and advise me if you had either a checking or savings account or a certificate of deposit or a safe deposit box or were holding securities for the benefit of the above decedent on the date of death. If so, please advise me of the style and number of the account or certificate, the balance on that date, the number of the safe deposit box, and a description of assets being held by you for safekeeping. A copy of our authorization is enclosed. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosure
Authorization

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LETTER 31—CHANGE OF ADDRESS TO IRS

Enclose IRS Form 8822 (FF 13). Send a copy of this letter and of the completed Form 8822 to each client.

Consult the current IRS instructions for this form to determine the mailing address. Complete this letter with the full address. See Special Instruction 77—Filing IRS Forms.

[**Today's date**]

Internal Revenue Service
[**Address**]

Re: Estate of **6.02**, Deceased

Greetings:

Enclosed with this letter is the properly completed IRS Form 8822, Change of Address, providing you notice of a change of address for the above-named taxpayer, who is now deceased.

Yours very truly,

[**Attorney's name**]

Enclosure
IRS Form 8822

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LETTER 32—NEWSPAPER NOTICE TO CREDITORS

Enclose the original and one copy of Notice to Creditors (Form 20), a check for the proper charge, and a return envelope. Send a copy of this letter and of the notice to each client.

[**Today's date**]

21.19
21.20
21.21

Re: Estate of **6.02**, Deceased

Greetings:

Enclosed with this letter are two copies of a document entitled "Notice to Creditors." Please publish it in one issue of your newspaper, following which the Publisher's Affidavit should be properly signed and a copy of the published notice should be attached to each. When completed, both copies should be returned to me in the enclosed self-addressed envelope.

A check for $**25.07** is enclosed in payment for this publication. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosures
Notice to Creditors—2 copies
Check
Return envelope

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LETTER 33—NOTICE TO *SECURED* CREDITOR

Send a copy of this letter to each client, and make an extra copy to attach as an exhibit to Proof of Service of Notice on Secured Claimants (Form 21).

[**Today's date**]

RESTRICTED DELIVERY—SIGNATURE REQUIRED

Select one of the following.

[REGISTERED/CERTIFIED] MAIL NO. [**number**]
RETURN RECEIPT REQUESTED

Or

[**Name of delivery service**] TRACKING NO. [**number**]
PROOF OF DELIVERY REQUESTED

Continue with the following.

7.25
7.26
7.27

Re: Estate of **6.02**, Deceased, No. **6.01**,
6.03 Court of **6.04** County, Texas
Your loan number **7.28**

Greetings:

Our records tentatively indicate that you have a claim for money against this estate that is secured by real or personal property belonging to the estate.

Since our records indicate that you have such a claim, notice is hereby given to you that, if you wish to file a claim, you must comply with applicable law, and you are required to present a proper claim to the undersigned at the address shown below in the manner and within the

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time limits prescribed by applicable law. If you have any questions, you should contact your attorney.

Original letters [testamentary/of administration] were issued on **6.39** in the above-numbered and -entitled estate. Your claim should be directed as follows:

Representative,
Estate of **6.02**, Deceased
c/o **5.02**
5.05
5.06

Yours very truly,

2.45 or 2.76, 2.85

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LETTER 34—DISCLAIMER TO HEIR OR BENEFICIARY

Enclose the original and two copies of Disclaimer (Form 23) and a return envelope. Send a copy of this letter and of the disclaimer to each client.

To avoid establishing an attorney-client relationship, address this letter c/o the attorney for the heir or beneficiary.

[**Today's date**]

6.71
6.73
6.74

Re: Estate of **6.02**, Deceased
Date of death: **1.07**

Dear **6.72**:

This letter will confirm our prior discussions concerning the disclaimer of your interest in the above estate.

You will recall that we discussed the estate and gift tax consequences of such a disclaimer and the statutory requirements for disclaiming your interest. It is important for you to realize that you will be giving up a valuable right to property that cannot be retrieved. Since the disclaimer cannot be revoked, I urge you to seek the advice of independent counsel before finalizing this disclaimer and will assume that you have done so unless I am notified in writing to the contrary.

In accordance with our discussions and your decision to disclaim, I have prepared and am enclosing a form that carries out your wishes. If you still desire to disclaim your interest, please sign all copies, have your signature acknowledged before a notary public, and return the original and all but one copy to me in the enclosed self-addressed envelope. Please send the

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documents by certified mail, return receipt requested. Obtain a mailing receipt stamped at the post office and retain it as proof of delivery.

The disclaimer must be delivered to the **2.85** of the estate on or before nine months from the date of death. Please give this your prompt attention. There is no grace period if the date falls on a weekend or legal holiday. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosures
Disclaimer—original and 2 copies
Return envelope

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LETTER 35—COPY OF DISCLAIMER TO EXECUTOR OR ADMINISTRATOR

Enclose a signed copy of Disclaimer (Form 23). Send a copy of this letter and of the disclaimer to each client.

[**Today's date**]

2.45 or 2.76
2.47 or 2.78
2.48 or 2.79

If to a corporate fiduciary, add "Attention: 2.61, 2.63" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased
Disclaimer by **6.71**

Dear **2.46 or 2.77**:

Enclosed with this letter you will find the disclaimer of interest signed by **6.71**.

Yours very truly,

[**Attorney's name**]

Enclosure
Copy of disclaimer

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LETTER 36—NOTIFY TENANT FOR FUTURE PAYMENTS

Send a copy of this letter to each client.

[**Today's date**]

7.91
7.92
7.93

Re: Estate of **6.02**, Deceased

Dear [**name**]:

Obtain the payee name and mailing information from the attorney.

Our records tentatively indicate that you have leased property from the above-named decedent. Notice is hereby given to you that future rental payments are to be made payable to [**payee name**] and are to be mailed as follows: [**mailing information**].

Should you have any questions concerning this matter, please contact me.

Yours very truly,

[**Attorney's name**]

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LETTER 37—CHANGE RECORDS AT CENTRAL APPRAISAL DISTRICT

Send a copy of this letter to each client.

[**Today's date**]

7.65
7.67
7.68

Re: Estate of **6.02**, Deceased
Your account number **7.69**

Greetings:

This letter is to advise you of the death of the above-named decedent, who owned the real estate covered by the above account number.

Please change your records so that assessments and statements will be made and sent as follows:

Specify the name and address obtained from the attorney.

Thank you very much.

Yours very truly,

[**Attorney's name**]

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LETTER 38—TERMINATE BROKERAGE ACCOUNTS

Enclose a signed copy of Authorization (Form 2). Send a copy of this letter, but not of the enclosure, to each client.

[**Today's date**]

9.03
9.04
9.05
9.06

Re: Estate of **6.02**, Deceased ("Decedent")
Date of death: **1.07**
Your account number **9.08**

Greetings:

We have reason to believe that at the time of Decedent's death or immediately prior thereto, Decedent was a customer of your firm. Kindly review your records and advise me if this is the case, and at the same time advise me whether or not you are holding securities or funds for Decedent's account.

If you are, please furnish copies of your statements for the month before, the month of, and the month following Decedent's death, and send copies for the current month and all future months until the account is closed or transferred. A copy of our authorization is enclosed. Your complete response is required with respect to not only probate assets solely in Decedent's name but also multiparty accounts, nonprobate assets, and insurance contracts in which Decedent had an interest. Texas Estates Code, Section 111.102.

With respect to any annuity, please provide the name and address of the grantor, specify whether the annuity is under an approved plan, and state the ratio of Decedent's contribution or amount paid that was not allowable as an income tax deduction under Section 219 of the

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Internal Revenue Code (other than a rollover contribution) to the total purchase price of the annuity.

You should also regard this letter as cancellation of all outstanding orders placed by Decedent.

Should you have any questions, please contact me at your earliest convenience. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosure
Authorization

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LETTER 39—VALUATION OF SECURITIES

Send a copy of this letter to each client.

[**Today's date**]

9.03
9.04
9.05
9.06

Re: Estate of **6.02**, Deceased
Date for valuation: **1.07 or 26.22**

Dear [**name**]:

Please furnish CUSIP numbers and the high and low quotations on the above date for the following securities:

See Section 9.0 of MIL for description of securities. The MIL numbers below represent examples of securities and related information that might be listed. Be sure to leave blanks so that the broker can insert the CUSIP numbers and values. It is not necessary to state the number of shares.

Description of Securities	*CUSIP Number*	*Low*	*High*
1. **9.21**, **9.22**, **9.23**	_____	_____	_____
2. **9.71**, **9.72**, **9.73**	_____	_____	_____
3. **9.111**	_____	_____	_____
4. **9.151**, **9.158**	_____	_____	_____
5. **9.196**, **9.201**	_____	_____	_____
6. **9.236**, **9.238**, **9.239**	_____	_____	_____

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If the securities were not traded on the above date, please furnish the high and low for the trading dates immediately preceding and following that date and identify those particular trading dates.

In the case of stocks, please advise if the stock was "ex-dividend" or if there was a dividend declared but unpaid on that date and the amount per share. In the case of bonds, please advise of the interest rate and payment dates.

Thank you very much for your assistance.

Yours very truly,

[**Attorney's name**]

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LETTER 40—CHANGE OF ADDRESS FOR SECURITIES

Enclose a copy of letters testamentary or of administration.

[**Today's date**]

9.31 or 9.53 or 9.83 or 9.126 or 9.162
9.32 or 9.53 or 9.84 or 9.127 or 9.163
9.33 or 9.53 or 9.85 or 9.128 or 9.164

Re: Estate of **6.02**, Deceased

Greetings:

With respect to the following securities:

The MIL numbers below represent examples. Select items as applicable.

Description	*Name of Company*	*Registered in Name of*
9.26, **9.22**, **9.23**	**9.21**	**9.28**
9.73, **9.72**	**9.71**	**9.80**
9.117	**9.111**	**9.118**, **9.123**
9.158	**9.151**	**9.159**

Please change the address on your records for dividends, interest, and correspondence to: [**address obtained from attorney**].

Yours very truly,

[**Client's name**]

Enclosure
Letters [testamentary/of administration]

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LETTER 42—DOCUMENTS FOR TRANSFER OF SECURITIES

Enclose appropriate IRS Form W-9, Request for Taxpayer Identification Number and Certification (FF 15), Irrevocable Stock Power (Form 24) or Irrevocable Bond Power (Form 25), Affidavit of Domicile (Form 26), and return envelope. Send a copy of this letter, but not of the enclosures, to each client.

[**Today's date**]

2.45 or 2.76 or 2.101 or 9.56 or 9.99 or 9.139 or 9.181 or 10.101 or 10.151
2.47 or 2.78 or 2.103 or 9.58 or 9.101 or 9.141 or 9.183 or 10.103 or 10.153
2.48 or 2.79 or 2.104 or 9.59 or 9.102 or 9.142 or 9.184 or 10.104 or 10.154

If to a corporate fiduciary, add "Attention: 2.61, 2.63" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased

Dear **2.46 or 2.77 or 2.102 or 9.57 or 9.100 or 9.140 or 9.182 or 10.102 or 10.152**:

Enclosed with this letter are IRS Form W-9, a power, and an affidavit that must be completed with respect to the transfer of securities. Please sign the IRS form and the power, obtain a "medallion guarantee" of your signature from a national bank or a member of the New York Stock Exchange, complete the affidavit and have your acknowledgment taken by a notary, and return these items to me in the enclosed self-addressed envelope when these steps have been completed. Please let me know if you have any questions.

Yours very truly,

[**Attorney's name**]

Enclosures
IRS Form W-9

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Power
Affidavit
Return envelope

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LETTER 43—TRANSFER OF SECURITIES (IA, ADE, AWA, RDA, PDH, TBA, IBA)

Enclose the items specified in the body of the letter. Send a copy of the letter, but not of the enclosures, to each client.

[**Today's date**]

[REGISTERED/CERTIFIED] MAIL NO. [**number**]
RETURN RECEIPT REQUESTED

9.31 or 9.53 or 9.83 or 9.126 or 9.162
9.32 or 9.53 or 9.84 or 9.127 or 9.163
9.33 or 9.53 or 9.85 or 9.128 or 9.164

Re: Estate of **6.02**, Deceased
9.21 or 9.71 or 9.111 or 9.151

Greetings:

We enclose the following documents in support of the transfer of securities:

Power with medallion guarantee of signature

Decedent's death certificate

Affidavit of Domicile

IRS Form W-9

In the following item, insert each certificate number, and the number of shares or total face amount of bonds represented by that certificate, and the type and par value of preferred stock, and the kind of bond (see 9.22–9.27; 9.71–9.78; 9.114–9.115 of MIL). EXAMPLES: 110 shares of ExxonMobil common stock, Certificates C799406 (100) and NC439714 (10); AT&T $5,000 Debenture, Series of 1999, Certificate Number DB82066. If this security is unissued (held by stockbroker or in dividend reinvestment plan), delete this item.

Original certificate number:

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Omit the following item in proceedings to determine heirship.

Letters [testamentary/of administration]

Include the following item if D had a will or will and codicil.

Certified copies of [will/will and codicil] and Order Admitting [Will/Will and Codicil] to Probate

Include the following item only in a regular dependent administration, independent administration of intestate estate by agreement, or proceeding to determine heirship.

Judgment Declaring Heirship

Continue with the following.

Please register the securities as follows:

9.56 or 9.99 or 9.139 or 9.181
9.58 or 9.101 or 9.141 or 9.183
9.59 or 9.102 or 9.142 or 9.184
9.60 or 9.103 or 9.143 or 9.185

Upon the completion of this transfer, please forward the new certificate(s) *in care of this office*. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosures
[**List enclosures**]

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LETTER 44—SECURITIES TO TRANSFEREE

Send two copies of this letter, together with the specified certificates and a self-addressed, stamped envelope, to the addressee. Send a copy of this letter, but not of the enclosures, to each client.

[**Today's date**]

[REGISTERED/CERTIFIED] MAIL NO. [**number**]
RETURN RECEIPT REQUESTED

9.56 or 9.99 or 9.181
9.58 or 9.101 or 9.183
9.59 or 9.102 or 9.184

Re: Estate of **6.02**, Deceased

Dear **9.57 or 9.100 or 9.182**:

Enclosed with this letter you will find the following original securities registered in your name, representing the recent distribution from the above estate.

Select the appropriate paragraph(s), depending on whether stocks or bonds or both are being sent. Determine the required information from the certificate(s).

[**Number**] shares of **9.21 9.22** stock represented by certificate number[s] [**certificate number(s)**].

$[**Amount**] **9.73**% **9.72** issued by **9.71**, represented by certificate number[s] [**certificate number(s)**].

Certificate number[s] **9.155**, representing warrants exercisable on or before **9.173**, which grant the option to purchase **9.156** shares of **9.151** stock at a price of $**9.174** per share.

Continue with the following.

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Please acknowledge receipt of the above-described securities by signing and returning the enclosed copy of this letter in the enclosed self-addressed envelope. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosures
Certificate(s)
Copy of this letter
Return envelope

Receipt of the original copy of this letter and of the enclosures therein described is acknowledged on _____.

_____
9.56 or 9.99 or 9.181

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LETTER 45—INSURANCE ON LIFE OF ANOTHER

Send a copy of this letter to each client.

[**Today's date**]

14.07
14.08
14.09

Re: Estate of **6.02**, Deceased
Date of death: **1.07**
Your policy number **14.11**
14.12, Insured

Greetings:

From information available at this time, it appears that the above-named decedent owned a community property or other interest in the above policy. Please furnish me with three copies of IRS Form 712 properly completed as of the date of death for mandatory use in the preparation of the federal estate tax return. Thank you very much.

Yours very truly,

[**Attorney's name**]

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LETTER 46—NOTIFY DEBTOR FOR FUTURE PAYMENTS

Send a copy of this letter to each client.

[**Today's date**]

12.07
12.08
12.09

Re: Estate of **6.02**, Deceased

Dear [**name**]:

Obtain the payee name and mailing information from the attorney.

Our records indicate that you were indebted to the above-named decedent. Notice is hereby given to you that all future payments with respect to the debt are to be made payable to [**payee name**] and mailed as follows: [**mailing information**].

Should you have any questions concerning this matter, please contact me.

Yours very truly,

[**Attorney's name**]

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LETTER 47—DOCUMENTS TO BE SIGNED BY PROBATE JUDGE

Determine whether there is a filing fee; if so, determine the proper charge and enclose a check for that amount. Send a copy of this letter and of the enclosed document to each client.

[**Today's date**]

6.16
6.17
6.18

Re: No. **6.01**, Estate of **6.02**, Deceased
6.03 Court of **6.04** County, Texas

Greetings:

You will find enclosed with this letter an original and one copy of [**name or description of document**] and order thereon to be presented by you to the judge of the above-named court. [**Include if filing fee is required:** Payment of your fee is enclosed.]

Please advise this office of the date on which it was signed by conforming the copy and returning it in the enclosed self-addressed, stamped envelope. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosures
[**Name or description of document**]—2 copies
[**Include if applicable:** Check]
Return envelope

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LETTER 48—DOCUMENT TO BE SIGNED BEFORE A NOTARY

Send a copy of this letter and of the enclosed document to each client.

[**Today's date**]

Obtain names of heirs, distributees, grantors, or grantees from attorney.

2.29 or 2.45 or 2.76 or 2.101 or 2.116 or [name of heir, distributee, grantor, or grantee]
2.31 or 2.47 or 2.78 or 2.103 or 2.118 or [address of heir, distributee, grantor, or grantee]
2.32 or 2.48 or 2.79 or 2.104 or 2.119 or [city, state, zip of heir, distributee, grantor, or grantee]

If to a corporate fiduciary, add "Attention: 2.61, 2.63" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased

Dear **2.30 or 2.46 or 2.77 or 2.102 or 2.117 or [name of heir, distributee, grantor, or grantee]**:

Enclosed are an original and one copy of [**name or description of document**]. Please review this instrument for completeness and accuracy and, if it appears to be in order, sign all copies where indicated. Note that your signature must be witnessed by a notary, who should sign the instrument just below your signature. PLEASE USE BLUE INK and have the notary's name printed beneath the notary's signature. Please return the original to me in the enclosed self-addressed, stamped envelope. The copy is for your files.

If you have any questions or suggestions or desire additional information, please call me.

Yours very truly,

[**Attorney's name**]

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Enclosures
[**Name or description of document**]—2 copies
Return envelope

Letters 49 through 56 are reserved.

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LETTER 57—ADVISE ATTORNEY AD LITEM OF HEARING

Enclose a copy of Application to Declare Heirship (Form 77), Statement of Facts (Form 80), and Judgment Declaring Heirship (Form 81). If the court did not automatically appoint the attorney ad litem, also enclose a copy of Motion to Appoint Attorney Ad Litem and Order thereon (Form 78). If the court automatically appointed the attorney ad litem but did not serve the order, enclose the order. Send a copy of the letter, but not of the enclosures, to each client.

[**Today's date**]

6.126
6.129
6.130

Re: Estate of **6.02**, Deceased ("Decedent")

Dear **6.128**:

As you know, you have been appointed as attorney ad litem to represent Decedent's heirs whose names or locations are unknown. Your representation is to be in connection with a proceeding to determine heirship.

To provide you with background information, I have enclosed [a copy/copies] of the Application to Declare Heirship [**include if applicable:** and Motion to Appoint Attorney Ad Litem and Order thereon/and Order Appointing Attorney Ad Litem].

I plan to prove the necessary facts through the two witnesses whose proposed testimonies have been reduced to Statements of Facts, copies of which are enclosed.

The hearing has been set for [**time**] on **6.24 or 6.124A**. Assuming that your investigation does not alter any of the facts that we have alleged, I propose that you join me in signing the enclosed Judgment Declaring Heirship for submission to the judge. It is necessary for your State Bar of Texas identification number and fax number to be added to this judgment.

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Please call me after you have had an opportunity to review these enclosures. I look forward to working with you.

Yours very truly,

[**Attorney's name**]

Enclosures
Application to Declare Heirship
[Motion to Appoint Attorney Ad Litem and Order thereon/Order Appointing Attorney Ad Litem]
Statement of Facts
Judgment Declaring Heirship

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LETTER 58—DIVIDEND REINVESTMENT PROGRAM

Enclose a signed copy of Authorization (Form 2). Send a copy of this letter, but not of the enclosure, to each client.

[**Today's date**]

9.53

Re: Estate of **6.02**, Deceased
Date of death: **1.07**
Your account number **9.53**
9.21

Greetings:

According to our records, the above-named decedent participated in a dividend reinvestment plan that you administer.

Please advise me of the number of unissued shares on the date of death, whether any dividend on those shares was declared but unpaid on that date, and, if so, the amount of that dividend.

Please advise me of your requirements for transferring or terminating this account. A copy of our authorization is enclosed. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosure
Authorization

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LETTER 59—CONFIRM REPRESENTATION AND FEE AND OUTLINE ANTICIPATED SERVICES (ADE, AWA)

Address the letter jointly to all probable executors and administrators and send two copies, together with a copy of the Texas Lawyer's Creed, to each.

[**Today's date**]

2.45
2.47
2.48

If to a corporate fiduciary, add "Attention: 2.61, 2.63" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased

Dear **2.46**:

Thank you very much for employing this firm to represent you in the probate of this estate.

Receipt is hereby acknowledged of a cash payment of $**25.02D**, which will be applied to the payment of expenses incurred or for legal fees due with respect to such representation. As we agreed, the fee will be [$**25.02A**/**25.02B** percent of the gross estate as determined for federal estate tax purposes/based on time spent on your behalf, with hourly rates of $**25.02C** for attorney's time and $**25.02C** for staff time]. In addition to fees for services, you are to pay or reimburse expenses incurred on your behalf. These expenses include [**specify expenses you expect client to pay, e.g.,** filing fees; recording charges; publication of notices; appraisal fees; long-distance, facsimile, and delivery charges; photocopies; and postage].

The above fee is for the following services:

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1. Preparing the application for probate of the [will/will and codicil]

2. Arranging for the proof necessary to have the [will/will and codicil] admitted to probate

3. Appearing in court to have the [will/will and codicil] so admitted

4. Preparing the order to be signed by the judge to admit the [will/will and codicil] to probate

> In the following item, select "executor" for administration with dependent executor or "administrator" for administration with will annexed.

5. Preparing and filing the oath of the [executor/administrator]

6. Preparing and filing any bonds required by the court

7. Preparing and arranging for the publication of notice to creditors

8. Preparing and serving notices to secured creditors

9. Preparing and sending required notices to beneficiaries

10. Preparing and filing the certificate or affidavit of notice to beneficiaries

11. Determining the nature, extent, and valuation of the estate

12. Preparing and filing the statutory inventory, appraisement, and list of claims and obtaining the judge's approval of the same

13. Determining the nature and amount of the liabilities of the estate

14. Preparing and filing the final account and other documents necessary to authorize delivery of the estate to the persons entitled to receive it

15. Assisting in the transfer of title to all of the decedent's assets

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16. Investigating, determining, calculating, allocating, or dealing with asset valuations and tax basis information

With your prior approval, we may perform other services on your behalf and for additional agreed-upon fees, such as preparing and filing the United States Estate (and Generation-Skipping Transfer) Tax Return.

On appointment, the [executor's/administrator's] duty of care will require you to insure the estate, typically with property and liability insurance on real property, automobiles, and personal property of significant value. Decedent's contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

We are not insurance experts, and you cannot rely on our insurance advice. These suggestions may not be appropriate or adequate in your situation, and we offer them only to help you start a conversation with your insurance agent.

Unless you describe the necessary insurance with great specificity, an insurance agent is not liable for inadequate coverage. It may be wise to have an expert investigate the estate's insurance situation and analyze coverage, cost, insurable risks, and exposures to loss. Before you sign, we can review any insurance analysis contract.

If the estate is not closed within one year, it will be necessary to file annual accountings each year that the estate is still open. In some estates, there is a need to apply to the court for permission to dispose of real or personal property or to enter into a mineral lease. Occasionally an estate becomes involved in litigation. When these situations arise, the procedures are quite technical, but we will be in a position to help you with them. However, such matters will be subject to additional charges.

You will be responsible for calendaring and for preparing all of Decedent's and the estate's gift and income tax returns. Most clients use a certified public accountant to keep the

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estate's fiduciary accounts, prepare tax returns, and complete Schedule K-1 (Form 1041) (to report each beneficiary's share of income, deductions, and credits).

With Decedent's death, the beneficiaries receive many assets having a new income tax basis. Generally speaking, the income tax basis for most assets will be adjusted to the values shown on the federal estate tax return or, if no such return, then as shown on the statutory inventory that will be prepared. Most retirement benefits do not receive an adjusted basis. Death benefits from those plans and life insurance are not controlled by a will but are controlled by beneficiary designations. These assets are usually referred to as "nonprobate assets." Taxation of retirement benefits is a matter for you to discuss with the person who prepares income tax returns for the estate.

> In the following paragraph, select "executor" for administration with dependent executor or "administrator" for administration with will annexed.

Before we begin, we must deal with an important ethical matter to avoid questions of conflicts of interest. As [executor/administrator], only you will be a client of this firm for matters related to the estate. While this may appear obvious, there are many instances in which family members and other beneficiaries believe that a lawyer represents "the estate" directly and thus represents them indirectly. This is not the case. To avoid these conflicts, it is the policy of this firm to recommend that they obtain the advice and services of independent attorneys of their own choosing.

As we go along, you will receive copies and information regarding the estate. Please provide affected family members and beneficiaries with updates on a regular basis. In doing so, please make it clear that this firm represents only you.

We are not now aware of any conflicts that exist or any facts that would create a conflict, although that possibility always exists. If you become aware of any conflict relating to this

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estate, your service as a fiduciary, or anything affecting our representation, you must call it to our attention.

Please understand that to protect your interests in the event of my death, disability, or retirement, it may be necessary or appropriate for another lawyer or a staff member of this firm, a personal representative (including someone acting under a power of attorney), or another lawyer who is retained by any such person to have access to your file and records in order to contact you to determine appropriate handling of your matters and of your files and to make an appropriate referral (subject to your approval) to other attorneys for future handling. In that regard, you grant permission and waive all privileges solely to the extent necessary or appropriate for those purposes.

Furthermore, in the event of my death, disability, or retirement, if further services are required in connection with this representation and you engage another lawyer to perform those services, you expressly authorize the division of fees based on the proportion of the work done or responsibilities assumed by this firm and by your new attorney. Such division specifically authorizes the payment of fees and expenses to my estate, personal representatives, and heirs.

With respect to documents provided by you as well as original documents generated in connection with this representation, those that are not filed with the court will be returned to you. This firm is entitled to retain copies of all such documents as well as all other materials used in connection with the representation. All other documents, including notes and the remaining contents of your file, are attorney work product and are owned by the firm. Of course, during our representation of you and for as long thereafter as we retain any of such items, we will make your files available to you for inspection and copying.

Please note that we may destroy any of your files at any time with your written consent and, in any event, after one year following written notice to you sent by regular mail to your

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last known address as reflected in our records. No further notice to you will be required before such destruction.

Enclosed is a copy of the Texas Lawyer's Creed. This mandate for professionalism was promulgated by the Supreme Court of Texas and the Texas Court of Criminal Appeals in 1989. All lawyers and members of our staff do our best to adhere to the high standards it sets for the lawyers of Texas. We invite your questions and comments regarding that creed and your perception of our adherence to its objectives.

We all take seriously our obligation to maintain the highest standards of ethical conduct toward our clients and others. To enforce ethical conduct, the State Bar of Texas investigates and prosecutes complaints of professional misconduct. If you have questions about this process or how to file a complaint, you should contact the office of the State Bar of Texas at 1-800-932-1900 toll-free for more information.

If the foregoing letter correctly reflects your understanding of our agreement, please sign both copies of this letter, retain one for your files, and return one copy in the enclosed envelope. If you have any questions about the proposed engagement, please contact me as soon as possible. Certainly, you should feel free to consult with another lawyer about the effect of signing this letter.

Thank you again for the confidence that you have expressed in me and this firm at this very difficult time. Please call me if you have any questions. Kindest regards.

Yours very truly,

[**Attorney's name**]

Enclosures
Texas Lawyer's Creed
Return envelope

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The foregoing letter correctly reflects my understanding of our agreement. Dated _____.

_____

2.45

LETTER 60—ORDER CERTIFIED COPIES (IA, ADE, AWA, TBA)

Determine the appropriate charge for the copies and enclose a check for that amount. Send a copy of this letter, but not of the enclosure, to each client.

[**Today's date**]

6.16
6.17
6.18

Re: No. **6.01**, Estate of **6.02**, Deceased
6.03 Court of **6.04** County, Texas

Greetings:

Please prepare and send me certified copies of the following items previously filed in connection with the foregoing estate:

1. Application for Probate of Will

2. [Will/Will and codicil]

3. Order Admitting [Will/Will and Codicil] to Probate

Include item 4 if power of sale is based on distributee agreement rather than contained in will. Use the first alternative if IA; use the second alternative if TBA.

4. [[Distributee's/Distributees'] Agreement[s] to Power of Sale/[Distributee's/Distributees'] Agreement[s] to Independent Administration and Power of Sale]

Include item 5 if IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, was filed.

5. Internal Revenue Service closing letter

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Payment is enclosed. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosure
Check

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LETTER 61—RECORD PROCEEDINGS IN COUNTY OTHER THAN COUNTY OF PROBATE

Determine the appropriate recording charges and enclose a check for that amount.

Send a copy of this letter, but not of the enclosures, to each client.

[**Today's date**]

County Clerk of **7.11** County
Courthouse
[**City in which courthouse located**], Texas [**zip**]

Re: Estate of **6.02**, Deceased

Greetings:

Enclosed with this letter you will find certified copies of documents relating to the above estate to be recorded in the deed or real property records of your county, together with payment for your recording charges. Please return these recorded documents to me. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosures
Check
[**List each document**]

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LETTER 62—NOTICE OF TERMINATION OF FIDUCIARY RELATIONSHIP

Enclose IRS Form 56, Notice Concerning Fiduciary Relationship (FF 7). Send a copy of this letter and of the enclosure to each client.

Consult the current IRS instructions for this form to determine the mailing address. Complete this letter with the full address. See Special Instruction 77—Filing IRS Forms.

[**Today's date**]

Internal Revenue Service Center
[**Address**]

Re: Estate of **6.02**, Deceased
Employer identification number **26.13**

Greetings:

Enclosed with this letter you will find IRS Form 56, providing notice of termination of fiduciary relationship.

Yours very truly,

[**Attorney's name**]

Enclosure
IRS Form 56

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LETTER 63—RETURN ALL ITEMS

Send two copies of this letter, together with the listed items and a self-addressed, stamped envelope, to the addressee. Send a copy of this letter, but not of the enclosures, to each client who is not the addressee.

[**Today's date**]

Name and address of person who furnished documents being returned.

Re: Estate of **6.02**, Deceased

Dear [**name**]:

Enclosed with this letter I am returning all the documents no longer needed for use in connection with this estate. These items are as follows:

List all items separately.

Please acknowledge receipt of these enclosures by signing and returning the copy of this letter in the enclosed self-addressed, stamped envelope.

[**Include if letter is addressed to client:** Thank you very much for letting me have the opportunity to help you during this very trying time.] I appreciate your confidence and your cooperation. Kindest regards.

Yours very truly,

[**Attorney's name**]

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Enclosures
Copy of this letter
Return envelope

Receipt of the original copy of this letter and of the enclosures therein described is acknowledged on _____.

_____
[**Name of addressee**]

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LETTER 64—CONFIRM REPRESENTATION AND FEE AND OUTLINE ANTICIPATED SERVICES (MT)

Address the letter to your client, who will ordinarily be the applicant, and send two copies, together with a copy of the Texas Lawyer's Creed.

[**Today's date**]

2.29
2.31
2.32

Re: Estate of **6.02**, Deceased

Dear **2.30**:

Thank you very much for employing this firm to represent you in the probate of this estate.

Receipt is hereby acknowledged of a cash payment of $**25.02D**, which will be applied to the payment of expenses incurred or for legal fees due with respect to such representation. As we agreed, the fee will be [$**25.02A**/**25.02B** percent of the gross estate as determined for federal estate tax purposes/based on time spent on your behalf, with hourly rates of $**25.02C** for attorney's time and $**25.02C** for staff time]. In addition to fees for services, you are to pay or reimburse expenses incurred on your behalf. These expenses include [**specify expenses you expect client to pay, e.g.,** filing fees; recording charges; publication of notices; appraisal fees; long-distance, facsimile, and delivery charges; photocopies; and postage].

The above fee is for the following services:

1. Preparing the application for probate of the [will/will and codicil]

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2. Arranging for the proof necessary to have the [will/will and codicil] admitted to probate

3. Appearing in court to have the [will/will and codicil] so admitted

4. Preparing the order to be signed by the judge to admit the [will/will and codicil] to probate

5. Unless waived by the court, preparing and filing the affidavit regarding fulfillment of the terms of the [will/will and codicil]

6. Determining the nature, extent, and valuation of the estate

7. If ordered by the court, preparing and filing the statutory inventory, appraisement, and list of claims and obtaining the judge's approval of the same

8. Assisting in the transfer of title to all of the decedent's assets

9. Investigating, determining, calculating, allocating, or dealing with asset valuations and tax basis information

With your prior approval, we may perform other services on your behalf and for additional agreed-upon fees, such as preparing and filing the United States Estate (and Generation-Skipping Transfer) Tax Return.

An executor's duty of care requires property and liability insurance on real property, automobiles, and personal property of significant value. Decedent's contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

You will not have the authority of an executor, but you may have the liability of one. Instead of an administration, we will use a different procedure, and you will not receive letters

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testamentary. You may be held responsible for your management of the estate as an informal fiduciary.

Ask Decedent's insurance agent whether the estate's insurance needs can be managed without appointment of an executor or administrator and without issuance of letters to a personal representative. If insurance has lapsed or is inadequate, who can request coverage?

If the estate's insurance needs cannot be met without appointment of a personal representative, let us know immediately, so we can discuss whether a different probate procedure is warranted.

We are not insurance experts, and you cannot rely on our insurance advice. These suggestions may not be appropriate or adequate in your situation, and we offer them only to help you start a conversation with your insurance agent.

Unless you describe the necessary insurance with great specificity, an insurance agent is not liable for inadequate coverage. It may be wise to have an expert investigate the estate's insurance situation and analyze coverage, cost, insurable risks, and exposures to loss. Before you sign, we can review any insurance analysis contract.

You will be responsible for calendaring and for preparing all of Decedent's and the estate's gift and income tax returns. Most clients use a certified public accountant to keep the estate's fiduciary accounts, prepare tax returns, and complete Schedule K-1 (Form 1041) (to report each beneficiary's share of income, deductions, and credits).

With Decedent's death, the beneficiaries receive many assets having a new income tax basis. Generally speaking, the income tax basis for most assets will be adjusted to the fair market value on the date of death. Most retirement benefits do not receive an adjusted basis. Death benefits from those plans and life insurance are not controlled by a will but are controlled by beneficiary designations. These assets are usually referred to as "nonprobate assets." Taxation

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of retirement benefits is a matter for you to discuss with the person who prepares income tax returns for the estate.

Before we begin, we must deal with an important ethical matter to avoid questions of conflicts of interest. Only you will be a client of this firm for matters related to the estate. While this may appear obvious, there are many instances in which family members and other beneficiaries believe that a lawyer represents "the estate" directly and thus represents them indirectly. This is not the case. To avoid these conflicts, it is the policy of this firm to recommend that they obtain the advice and services of independent attorneys of their own choosing.

As we go along, you will receive copies and information regarding the estate. Please provide affected family members and beneficiaries with updates on a regular basis. In doing so, please make it clear that this firm represents only you.

We are not now aware of any conflicts that exist or any facts that would create a conflict, although that possibility always exists. If you become aware of any conflict relating to this estate or anything affecting our representation, you must call it to our attention.

Please understand that to protect your interests in the event of my death, disability, or retirement, it may be necessary or appropriate for another lawyer or a staff member of this firm, a personal representative (including someone acting under a power of attorney), or another lawyer who is retained by any such person to have access to your file and records in order to contact you to determine appropriate handling of your matters and of your files and to make an appropriate referral (subject to your approval) to other attorneys for future handling. In that regard, you grant permission and waive all privileges solely to the extent necessary or appropriate for those purposes.

Furthermore, in the event of my death, disability, or retirement, if further services are required in connection with this representation and you engage another lawyer to perform those services, you expressly authorize the division of fees based on the proportion of the work done

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or responsibilities assumed by this firm and by your new attorney. Such division specifically authorizes the payment of fees and expenses to my estate, personal representatives, and heirs.

With respect to documents provided by you as well as original documents generated in connection with this representation, those that are not filed with the court will be returned to you. This firm is entitled to retain copies of all such documents as well as all other materials used in connection with the representation. All other documents, including notes and the remaining contents of your file, are attorney work product and are owned by the firm. Of course, during our representation of you and for as long thereafter as we retain any of such items, we will make your files available to you for inspection and copying.

Please note that we may destroy any of your files at any time with your written consent and, in any event, after one year following written notice to you sent by regular mail to your last known address as reflected in our records. No further notice to you will be required before such destruction.

Enclosed is a copy of the Texas Lawyer's Creed. This mandate for professionalism was promulgated by the Supreme Court of Texas and the Texas Court of Criminal Appeals in 1989. All lawyers and members of our staff do our best to adhere to the high standards it sets for the lawyers of Texas. We invite your questions and comments regarding that creed and your perception of our adherence to its objectives.

We all take seriously our obligation to maintain the highest standards of ethical conduct toward our clients and others. To enforce ethical conduct, the State Bar of Texas investigates and prosecutes complaints of professional misconduct. If you have questions about this process or how to file a complaint, you should contact the office of the State Bar of Texas at 1-800-932-1900 toll-free for more information.

If the foregoing letter correctly reflects your understanding of our agreement, please sign both copies of this letter, retain one for your files, and return one copy in the enclosed envelope.

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If you have any questions about the proposed engagement, please contact me as soon as possible. Certainly, you should feel free to consult with another lawyer about the effect of signing this letter.

Thank you again for the confidence that you have expressed in me and this firm at this very difficult time. Please call me if you have any questions. Kindest regards.

Yours very truly,

[**Attorney's name**]

Enclosures
Texas Lawyer's Creed
Return envelope

The foregoing letter correctly reflects my understanding of our agreement. Dated _____.

_____
2.29

Letter 65 is reserved.

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LETTER 66—EXPLAIN MUNIMENT OF TITLE PROCEDURE AND ACTIONS TO FOLLOW

Enclose the indicated items.

[**Today's date**]

2.29
2.31
2.32

Re: Estate of **6.02**, Deceased ("Decedent")

Dear **2.30**:

As you know, the order admitting Decedent's [will/will and codicil] to probate for this estate was signed by the judge on **6.26**. Since there were no unsecured debts, it was not necessary to have a "full-scale" administration of this estate, or for that matter, any administration of the estate.

Even though many of the ordinary probate procedures have been eliminated, we still have much to do. The purpose of this letter is to summarize the steps remaining. The information contained in this letter is designed to enable you to more fully appreciate the procedures that will follow.

Even though you are not an executor, we, if not the probate court, consider you Decedent's representative for the purposes of terminating Decedent's affairs. This requires you to locate and assist in the valuation of Decedent's assets; [**include if court required filing of an inventory:** to help us in the preparation of an inventory listing those assets;] to ensure the payment of debts, expenses of probate, and taxes; and, finally, to distribute the remaining assets to the beneficiaries named in Decedent's [will/will and codicil].

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Include the following paragraph if the court did not waive the affidavit of compliance with the will.

Within 181 days after the date Decedent's will was admitted to probate, **6.69B**, you must provide the court with an affidavit stating the terms of Decedent's will that have been fulfilled and the terms that have not been fulfilled. We will prepare the affidavit for your signature and file it with the court.

Continue with the following.

If the value of Decedent's gross estate (all of Decedent's separate property [**include if D was married:** plus half the community property] plus the value of certain lifetime transfers) exceeds $**26.21** on the date of death, a federal estate tax return must also be filed and estate taxes paid within nine months after the date of death, **26.28**. [**Include if D was married:** In smaller estates, the surviving spouse may wish to file an estate tax return to elect portability of the deceased spouse's unused exclusion ("DSUE") amount.] For purposes of that return, Decedent's assets are valued as of the date of death. The preparation of that return is not a part of our regular service and is subject to a separate agreement for payment of additional fees and expenses.

Include the following paragraph if disclaimers appear necessary for postmortem tax or other planning.

Nine months after the date of death, **26.28**, is also the deadline to file a qualified disclaimer. The goal of a disclaimer is to pass assets from the named beneficiary into the hands of an alternate beneficiary—for example, the Family Trust—in order to minimize tax or other adverse consequences of the asset's passing to the "wrong" beneficiary. For the disclaimer to qualify, the original beneficiary must not have assumed any aspect of ownership of the disclaimed assets. For example, if the surviving spouse files a claim with the insurance company, receives a check for the insurance proceeds, and places that check in that spouse's personal account, the surviving spouse has accepted that gift and the surviving spouse's disclaimer

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option is lost. Likewise, if a child is named as the primary beneficiary of a retirement plan or an IRA and, following the parent owner's death, does an "IRA rollover" of the deceased parent's funds into a new IRA in the child's name, the child has effectively accepted that gift and the disclaimer option is again precluded. As these examples illustrate, before you or any other beneficiary collects an asset, changes title on an account, applies for insurance benefits, or makes an IRA rollover, you should contact a qualified advisor to discuss the tax and other issues involved in these decisions.

Include the following paragraph if D was not married.

Decedent's final federal income tax return (Form 1040), covering the period beginning on January 1 and ending on the date of Decedent's death, must be prepared and filed if Decedent had a certain minimum amount of gross income. If one is due, it must be filed and the taxes must be paid on or before April 15 of the year following Decedent's death.

Continue with the following.

You will be responsible for calendaring and for preparing all of Decedent's and the estate's gift and income tax returns. Most clients use a certified public accountant to keep the estate's fiduciary accounts, prepare tax returns, and complete Schedule K-1 (Form 1041) (to report each beneficiary's share of income, deductions, and credits).

With Decedent's death, the beneficiaries receive many assets having a new income tax basis. Generally speaking, the income tax basis for most assets will be adjusted to the fair market value on the date of death. Most retirement benefits do not receive an adjusted basis. Death benefits from those plans and life insurance are not controlled by a will but are controlled by beneficiary designations. These assets are usually referred to as "nonprobate assets." Taxation of retirement benefits is a matter for you to discuss with the person who prepares income tax returns for the estate.

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If this estate will exceed $**26.21**, PLEASE do not transfer *any* assets to anyone without consulting with us.

When the [will was/will and codicil were] admitted to probate, you represented to the court that all known unsecured debts of Decedent had been paid or that for another reason there was no necessity for administration. If any valid debts or claims should now exist, they should be paid by the persons receiving benefits under Decedent's [will/will and codicil], following which you may distribute the remaining assets to the appropriate beneficiaries.

By way of a partial summary, the probate of this estate is an essential and very important process. It clears title to real estate. It settles legitimate debts. It establishes a new income tax basis for Decedent's property [**include if D was married:** as well as for the community property interest of the surviving spouse]. It permits clear title distribution of property to the persons entitled to receive it under the terms of the [will/will and codicil].

To the extent that you elect to handle matters directly, it is very important for you to keep us advised and to furnish copies of all outgoing and incoming correspondence and other documents, especially matters dealing with the Internal Revenue Service.

To assist you in properly performing your duties, we will need to obtain a great deal of additional information, and we will need to work together very closely in the coming months. For your records, copies of all documents that have not yet been sent to you are enclosed, and we will send you copies of all future correspondence and other documents as they are prepared. Please contact me if you have any questions concerning this letter, your duties, or the future procedures.

We look forward to working closely with you. Kindest regards.

Yours very truly,

[**Attorney's name**]

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Enclosures

[**List copies of documents and correspondence, e.g., application, proof, order, oath**]

Letter 67 is reserved.

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LETTER 68—TRANSFER OF SECURITIES (MT)

Enclose the items specified in the body of the letter. Send a copy of this letter, but not of the enclosures, to each client.

[**Today's date**]

[REGISTERED/CERTIFIED] MAIL NO. [**number**]
RETURN RECEIPT REQUESTED

9.31 or 9.53 or 9.83 or 9.126 or 9.162
9.32 or 9.53 or 9.84 or 9.127 or 9.163
9.33 or 9.53 or 9.85 or 9.128 or 9.164

Attention: Stock Transfer Department

Re: Estate of **6.02**, Deceased ("Decedent")
Date of death: **1.07**
9.21 or 9.71 or 9.111 or 9.151

Greetings:

This letter is to advise you that the above-named decedent, the owner of the above-described securities, died on the above date.

Since there are no debts owing by Decedent's estate, there is no need for an administration. We have filed Decedent's [will/will and codicil/will and codicils] as a muniment of title, but no executor has been or will be appointed and no letters testamentary or of administration have been or will be granted.

Section 257.102 of the Texas Estates Code provides:

> "(a) An order admitting a will to probate as a muniment of title constitutes sufficient legal authority for each person who owes money to the testator's estate, has custody of property, acts as registrar or transfer agent of any evidence of

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interest, indebtedness, property, or right belonging to the estate, or purchases from or otherwise deals with the estate, to pay or transfer without administration the applicable asset without liability to a person described in the will as entitled to receive the asset.

(b) A person who is entitled to property under the provisions of a will admitted to probate as a muniment of title is entitled to deal with and treat the property in the same manner as if the record of title to the property was vested in the person's name."

We enclose the following documents in support of the transfer of securities:

Power with signature properly guaranteed

Decedent's death certificate

Affidavit of Domicile

IRS Form W-9

> In the following item, insert each certificate number, and the number of shares or total face amount of bonds represented by that certificate, and the type and par value of preferred stock, and the kind of bond (see 9.22–9.27; 9.71–9.78; 9.114–9.115 of MIL). EXAMPLES: 110 shares of ExxonMobil common stock, Certificates C799406 (100) and NC439714 (10); AT&T $5,000 Debenture, Series of 1999, Certificate Number DB82066. If this security is unissued (held by stockbroker or in dividend reinvestment plan), delete the item.

Original certificate number

Certified copies of [will/will and codicil] and Order Admitting [Will/Will and Codicil] to Probate as a Muniment of Title

Please register the securities as follows:

9.56 or 9.99 or 9.139 or 9.181
9.58 or 9.101 or 9.141 or 9.183
9.59 or 9.102 or 9.142 or 9.184
9.60 or 9.103 or 9.143 or 9.185

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Upon the completion of this transfer, please forward the new certificate(s) *in care of this office*. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosures
[**List enclosures**]

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LETTER 69—ORDER CERTIFIED COPIES (MT)

Determine the appropriate charge for the copies and enclose a check for that amount. Send a copy of this letter, but not of the enclosure, to each client.

[**Today's date**]

6.16
6.17
6.18

Re: No. **6.01**, Estate of **6.02**, Deceased
6.03 Court of **6.04** County, Texas

Greetings:

Please prepare and send me certified copies of the following items filed in connection with the foregoing estate:

1. Application to Probate [Will/Will and Codicil] as a Muniment of Title

2. [Will/Will and codicil]

3. Order Admitting [Will/Will and Codicil] to Probate as a Muniment of Title

Include item 4 if IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, was filed.

4. Internal Revenue Service closing letter

Payment is enclosed. Thank you very much.

Yours very truly,

[**Attorney's name**]

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Enclosure
Check

Letters 70 through 72 are reserved.

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LETTER 73—ADVISE OF DUTIES AND ACTIONS TO FOLLOW (ADE, AWA)

Enclose the indicated items.

[**Today's date**]

2.45
2.47
2.48

If to a corporate fiduciary, add "Attention: 2.61, 2.63" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased ("Decedent")

Dear **2.46**:

As you know, the order admitting Decedent's [will/will and codicil] to probate for this estate was signed by the judge on **6.26**. You have qualified as [executor/administrator] of this estate by the filing of your oath. This also entitles you to receive letters [testamentary/of administration].

These letters represent evidence of your appointment as [executor/administrator] and give you authority, subject to appropriate orders of the court, to act for and on behalf of the estate. Original letters are enclosed for your use. All letters show the date on which they were issued and are valid for only sixty days from that date. Do not worry if they expire before they are used since, for a modest charge, we can obtain additional letters at any time during the administration. As you need additional letters, please contact our office.

The information contained in this letter is designed to enable you to more fully appreciate the office you now hold and to provide you with guidance to assist you in carrying out your responsibilities.

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In your capacity as [executor/administrator], you are Decedent's representative for the purposes of terminating Decedent's affairs. This is called "administration" and requires you to locate and assist in the valuation of Decedent's assets; to help us in the preparation of an inventory listing those assets; to pay debts, expenses of administration, and taxes; and to distribute the remaining assets to the beneficiaries named in Decedent's [will/will and codicil]. Do not commingle Decedent's assets with your own while this administration is pending. Your first duty should be to take possession of Decedent's assets, valuable papers, and records and safeguard Decedent's property.

The [executor's/administrator's] duty of care requires you to insure the estate promptly, typically with property and liability insurance on real property, automobiles, and personal property of significant value. Decedent's contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

If you have not already, please inform each insurance agent of Decedent's date of death and your appointment as [executor/administrator] and ask for the declarations page of each policy in which Decedent has an interest, the tasks and deadlines to keep each policy in force, and a list of any coverage changes needed immediately. Please ask to be added as a named insured to Decedent's homeowner's and other insurance policies. Do not remove Decedent's name from any policy. On request, we can contact each agent for you.

If you open bank accounts and certificates of deposit for this estate, you will need an employer identification number. Please let us know if you wish for us to assist you in getting it. Also, be sure that the total estate funds at any one institution do not exceed the amount insured by the FDIC.

To avoid personal liability, you should sign documents on behalf of the estate as "**2.45**, [Executor/Administrator] of the Estate of **6.02**, Deceased."

Several deadlines must be observed.

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Within sixty days following the order of the court that admitted Decedent's will to probate, **6.69**, you must send notice to each beneficiary named in Decedent's will and provide them with copies of the will and order. We will prepare these notices for your signature and will send them to each of those beneficiaries. Within ninety days following that order of the court, **6.69A**, we must file a certificate regarding the notice given to the beneficiaries.

Within one month from the date the clerk first issued letters, **21.23**, notice to the general creditors of the estate must be published. We will prepare that notice and have it published in an appropriate newspaper.

Within two months from the date the clerk first issued letters, **7.35**, you must send notice to any creditors whose notes are secured by liens on real estate or on automobiles or other personal property. If you will provide names and addresses, we will prepare these notices for your signature and will send them to each of those creditors. We must file your affidavit regarding notices to secured creditors, and we will prepare that for your signature.

Within ninety days you qualified as [executor/administrator], **6.85**, we must file an inventory, appraisement, and list of claims, including proper and complete descriptions of the various assets with accurate evaluations. It is possible to obtain an extension of time for filing this inventory. If it is necessary to file so-called death tax returns, we will want to coordinate this inventory with the United States Estate (and Generation-Skipping Transfer) Tax Return, and we will request this extension.

If the value of Decedent's gross estate (all of Decedent's separate property [**include if D was married:** plus half the community property] plus the value of certain lifetime transfers) exceeds $**26.21** on the date of death, a federal estate tax return must be filed and estate taxes paid within nine months after the date of death, **26.28**. [**Include if D was married:** In smaller estates, the surviving spouse may wish to file an estate tax return to elect portability of the deceased spouse's unused exclusion ("DSUE") amount.] For purposes of that return, Dece-

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dent's assets are valued as of the date of death. The preparation of that return is not a part of our regular service and is subject to a separate agreement for payment of additional fees and expenses.

Include the following paragraph if disclaimers appear necessary for postmortem tax or other planning.

Nine months after the date of death, **26.28**, is also the deadline to file a qualified disclaimer. The goal of a disclaimer is to pass assets from the named beneficiary into the hands of an alternate beneficiary—for example, the Family Trust—in order to minimize tax or other adverse consequences of the asset's passing to the "wrong" beneficiary. For the disclaimer to qualify, the original beneficiary must not have assumed any aspect of ownership of the disclaimed assets. For example, if the surviving spouse files a claim with the insurance company, receives a check for the insurance proceeds, and places that check in that spouse's personal account, the surviving spouse has accepted that gift and the surviving spouse's disclaimer option is lost. Likewise, if a child is named as the primary beneficiary of a retirement plan or an IRA and, following the parent owner's death, does an "IRA rollover" of the deceased parent's funds into a new IRA in the child's name, the child has effectively accepted that gift and the disclaimer option is again precluded. As these examples illustrate, before you or any other beneficiary collects an asset, changes title on an account, applies for insurance benefits, or makes an IRA rollover, you should contact a qualified advisor to discuss the tax and other issues involved in these decisions.

Include the following paragraph if D was not married.

Decedent's final federal income tax return (Form 1040), covering the period beginning on January 1 and ending on the date of Decedent's death, must be prepared and filed if Decedent had a certain minimum amount of gross income. If one is due, it must be filed and the taxes must be paid on or before April 15 of the year following Decedent's death.

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Include the following paragraph if income tax return is to be filed for D's estate.

A fiduciary income tax return for income of Decedent's estate (Form 1041) will be required in all years in which the income of Decedent's estate exceeds $600. The beginning date of the first year is the date of Decedent's death, and it may end on December 31 or at the end of any other month, provided that it does not extend beyond one year from the date of Decedent's death.

Continue with the following.

You will be responsible for calendaring and for preparing all of Decedent's and the estate's gift and income tax returns. Most clients use a certified public accountant to keep the estate's fiduciary accounts, prepare tax returns, and complete Schedule K-1 (Form 1041) (to report each beneficiary's share of income, deductions, and credits).

With Decedent's death, the beneficiaries receive many assets having a new income tax basis. Generally speaking, the income tax basis for most assets will be adjusted to the values shown on the federal estate tax return or, if no such return, then as shown on the statutory inventory that will be prepared. Most retirement benefits do not receive an adjusted basis. Death benefits from those plans and life insurance are not controlled by a will but are controlled by beneficiary designations. These assets are usually referred to as "nonprobate assets." Taxation of retirement benefits is a matter for you to discuss with the person who prepares income tax returns for the estate.

If this estate will exceed $**26.21**, PLEASE do not transfer *any* assets to anyone without consulting with us.

Claims of creditors may be presented at any time while the estate is open. For a debt to be paid, it must go through the claim process. If a claim is presented to you, you must allow it within thirty days or it will be automatically disallowed. Even when you allow a claim, it still

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must be presented to the court for approval before it can be paid. Please remember that you are *not* to write any checks on the estate's account without court authority.

After all known debts and taxes of Decedent and of Decedent's estate have been paid, it is necessary to properly identify the rightful heirs and beneficiaries who will receive the balance of the estate. Following this determination, a final accounting must be prepared and filed to show all receipts and disbursements during the administration. If the estate is not closed within one year, annual accountings will be required while the estate remains open. When the court has approved the final accounting, you may deliver the assets of the estate to the heirs and beneficiaries and, upon doing so, you will be discharged. You must not make any transfers to anyone without approval by the court.

By way of a partial summary, the administration of this estate is an essential and very important process. It clears title to real estate. It settles legitimate debts (and wipes out others). It establishes a new income tax basis for Decedent's property [**include if D was married:** as well as for the community property interest of the surviving spouse]. It permits clear title distribution of property to the persons entitled to receive it under the terms of the will.

To the extent that you elect to handle matters directly, it is very important for you to keep us advised and to furnish copies of all outgoing and incoming correspondence and other documents, especially matters dealing with the Internal Revenue Service.

To assist you in properly performing your duties, we will need to obtain a great deal of additional information, and we will need to work together very closely in the coming months. For your records, copies of all documents that have not yet been sent to you are enclosed, and we will send you copies of all future correspondence and other documents as they are prepared. Please contact me if you have any questions concerning this letter, your duties, or the future procedures. We look forward to working closely with you. Kindest regards.

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Yours very truly,

[**Attorney's name**]

Enclosures
Letters [testamentary/of administration]
[**List copies of other documents and correspondence, e.g., application, proof, order, oath**]

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LETTER 74—CONFIRM REPRESENTATION AND FEE AND OUTLINE ANTICIPATED SERVICES (TDA)

Send two copies of this letter, together with a copy of the Texas Lawyer's Creed, to the client.

[**Today's date**]

2.76
2.78
2.79

Re: Estate of **6.02**, Deceased

Dear **2.77**:

Thank you very much for employing this firm to represent you. Based on the information you have provided, there is an urgent and immediate need for the appointment of a temporary administrator.

To qualify you to be appointed as temporary administrator, we anticipate performing the following services:

1. Preparing the application for letters of temporary administration
2. Arranging for the proof necessary to have the letters authorized by the court
3. Appearing in court to have the letters authorized
4. Preparing the order to be signed by the judge granting letters of temporary administration
5. Preparing and filing the oath of the temporary administrator
6. Preparing and filing any bonds required by the court

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7. Arranging for the posting of proper citation

8. Arranging for clerk to issue letters of temporary administration as your authority to act in this estate

On the day the clerk issues letters of temporary administration, you must send notice of your appointment to each known heir of Decedent. If you will provide names and addresses, we will prepare these notices for your signature and will send them to each of those heirs. We must file your affidavit regarding notice to heirs, and we will prepare that for your signature.

Once you are appointed as temporary administrator, you will have those powers (but *only* those powers) specified in the order signed by the judge. You will incur personal liability if you take action beyond the scope of that authorization.

On appointment, the administrator's duty of care will require you to insure the estate, typically with property and liability insurance on real property, automobiles, and personal property of significant value. Decedent's contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

We are not insurance experts, and you cannot rely on our insurance advice. These suggestions may not be appropriate or adequate in your situation, and we offer them only to help you start a conversation with your insurance agent.

Unless you describe the necessary insurance with great specificity, an insurance agent is not liable for inadequate coverage. It may be wise to have an expert investigate the estate's insurance situation and analyze coverage, cost, insurable risks, and exposures to loss. Before you sign, we can review any insurance analysis contract.

Receipt is hereby acknowledged of a cash payment of $**25.02D**, which will be applied to the payment of expenses incurred or for legal fees due with respect to such representation. As we agreed, the total fee for the enumerated services will be [$**25.02A**/**25.02B** percent of the gross

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estate as determined for federal estate tax purposes/based on time spent on your behalf, with hourly rates of $**25.02C** for attorney's time and $**25.02C** for staff time]. In addition to fees for services, you are to pay or reimburse expenses incurred on your behalf. These expenses include [**specify expenses you expect client to pay, e.g.,** filing fees; recording charges; publication of notices; appraisal fees; long-distance, facsimile, and delivery charges; photocopies; and postage].

Except for the items specified above, any services we are called on to perform in connection with this estate will be subject to additional charges.

Before we begin, we must deal with an important ethical matter to avoid questions of conflicts of interest. As temporary administrator, only you will be a client of this firm for matters related to the estate. While this may appear obvious, there are many instances in which family members and other beneficiaries believe that a lawyer represents "the estate" directly and thus represents them indirectly. This is not the case. To avoid these conflicts, it is the policy of this firm to recommend that they obtain the advice and services of independent attorneys of their own choosing.

As we go along, you will receive copies and information regarding the estate. Please provide affected family members and beneficiaries with updates on a regular basis. In doing so, please make it clear that this firm represents only you.

We are not now aware of any conflicts that exist or any facts that would create a conflict, although that possibility always exists. If you become aware of any conflict relating to this estate, your service as a fiduciary, or anything affecting our representation, you must call it to our attention.

Please understand that to protect your interests in the event of my death, disability, or retirement, it may be necessary or appropriate for another lawyer or a staff member of this firm, a personal representative (including someone acting under a power of attorney), or another law-

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yer who is retained by any such person to have access to your file and records in order to contact you to determine appropriate handling of your matters and of your files and to make an appropriate referral (subject to your approval) to other attorneys for future handling. In that regard, you grant permission and waive all privileges solely to the extent necessary or appropriate for those purposes.

Furthermore, in the event of my death, disability, or retirement, if further services are required in connection with this representation and you engage another lawyer to perform those services, you expressly authorize the division of fees based on the proportion of the work done or responsibilities assumed by this firm and by your new attorney. Such division specifically authorizes the payment of fees and expenses to my estate, personal representatives, and heirs.

With respect to documents provided by you as well as original documents generated in connection with this representation, those that are not filed with the court will be returned to you. This firm is entitled to retain copies of all such documents as well as all other materials used in connection with the representation. All other documents, including notes and the remaining contents of your file, are attorney work product and are owned by the firm. Of course, during our representation of you and for as long thereafter as we retain any of such items, we will make your files available to you for inspection and copying.

Please note that we may destroy any of your files at any time with your written consent and, in any event, after one year following written notice to you sent by regular mail to your last known address as reflected in our records. No further notice to you will be required before such destruction.

Enclosed is a copy of the Texas Lawyer's Creed. This mandate for professionalism was promulgated by the Supreme Court of Texas and the Texas Court of Criminal Appeals in 1989. All lawyers and members of our staff do our best to adhere to the high standards it sets for the

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lawyers of Texas. We invite your questions and comments regarding that creed and your perception of our adherence to its objectives.

We all take seriously our obligation to maintain the highest standards of ethical conduct toward our clients and others. To enforce ethical conduct, the State Bar of Texas investigates and prosecutes complaints of professional misconduct. If you have questions about this process or how to file a complaint, you should contact the office of the State Bar of Texas at 1-800-932-1900 toll-free for more information.

If the foregoing letter correctly reflects your understanding of our agreement, please sign both copies of this letter, retain one for your files, and return one copy in the enclosed envelope. If you have any questions about the proposed engagement, please contact me as soon as possible. Certainly, you should feel free to consult with another lawyer about the effect of signing this letter.

Thank you again for the confidence that you have expressed in me and this firm at this very difficult time. Please call me if you have any questions. Kindest regards.

Yours very truly,

[**Attorney's name**]

Enclosures
Texas Lawyer's Creed
Return envelope

The foregoing letter correctly reflects my understanding of our agreement. Dated _____.

_____

2.76

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LETTER 75—CLAIM FORM TO CREDITOR

Enclose three copies of Authenticated Unsecured Claim (Form 58). Send a copy of this letter, but not of the enclosures, to each client.

To avoid establishing an attorney-client relationship, address this letter c/o the creditor's attorney.

[**Today's date**]

21.06–21.14

Re: Estate of **6.02**, Deceased

Greetings:

My records indicate that you have a claim against this estate that the [executor/administrator] desires to pay.

Before any claim may be paid, the claimant must properly complete, swear to, and present the proper claim form, and the claim must then be approved by the [executor/administrator] [**include if dependent administration:** *and* by the court]. To assist you in presenting your claim, I am enclosing the proper form for you to complete.

Please return two copies of this properly completed form to this office in the enclosed self-addressed, stamped envelope for our review and approval. The other copy is for your files. [**Include if dependent administration:** You will be paid following court authorization.] Please give this your prompt attention.

Since I am acting on behalf of the estate, I do not represent you. If you have any questions, you must consult with another attorney of your selection.

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Yours very truly,

[**Attorney's name**]

Enclosures
Authenticated Unsecured Claim—3 copies
Return envelope

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LETTER 76—VERIFICATION OF FUNDS ON DEPOSIT

Enclose the original and one copy of Verification of Funds on Deposit (Form 63) and a single copy of Authorization (Form 2). Send a copy of the letter and of the verification form to each client.

[**Today's date**]

11.07
11.08
11.09

Re: No. **6.01**, Estate of **6.02**, Deceased
6.03 Court of **6.04** County, Texas
Your account number **11.11**

Greetings:

Enclosed with this letter you will find duplicate copies of a form entitled Verification of Funds on Deposit to be completed by one of your officers to verify the balance of funds on deposit for the estate. Please note that we need the balance as of the date shown in the form itself, rather than as of the current date.

Please complete and return this verification at your earliest convenience so that we may file the required accounting with the court. Proper authorization is enclosed. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosures
Verification of Funds on Deposit—2 copies
Authorization

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LETTER 77—CONFIRMATION OF SAFEKEEPING OF FUNDS, SECURITIES, AND OTHER ITEMS

Enclose the original and one copy of Confirmation of Safekeeping (Form 64) and a single copy of Authorization (Form 2). Send a copy of the letter and of the confirmation form to each client.

[**Today's date**]

6.16 or 6.29 or 11.07
6.17 or 6.30 or 11.08
6.18 or 6.31 or 11.09

Re: No. **6.01**, Estate of **6.02**, Deceased
6.03 Court of **6.04** County, Texas

Enclosed with this letter you will find duplicate copies of a form entitled Confirmation of Safekeeping to be properly completed to verify the deposit of the securities or other assets of the estate that are described in that form. Please note that this verification is to be as of the date shown in the form itself, rather than as of the current date.

Please complete and return this confirmation at your earliest convenience so that we may file the required accounting with the court. Proper authorization is enclosed. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosures
Confirmation of Safekeeping—2 copies
Authorization

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LETTER 78—COPY OF ACCOUNT TO SURETY

Enclose a copy of Annual Account and Order thereon (Form 62) or Account for Final Settlement (Form 65) and Order Approving Account for Final Settlement and Authorizing Distribution of Estate (Form 66). Send a copy of the letter, but not of the enclosures, to each client.

[**Today's date**]

6.29
6.30
6.31

Attention: **6.33**

Re: No. **6.01**, Estate of **6.02**, Deceased
6.03 Court of **6.04** County, Texas

Greetings:

In connection with the above-captioned estate, for which you are a surety, you will find enclosed with this letter a copy of the [Annual Account and Order thereon/Account for Final Settlement and Order Approving Account for Final Settlement and Authorizing Distribution of Estate] that has recently been approved by the court. Please let me know if you have any questions.

Yours very truly,

[**Attorney's name**]

Enclosure
[Annual Account and Order thereon/Account for Final Settlement and Order Approving Account for Final Settlement and Authorizing Distribution of Estate]

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LETTER 79—DISCHARGE OF SURETY

Enclose a copy of Order Closing Estate and Discharging Personal Representative (Form 68) or Order Closing Temporary Administration (Form 95). Send a copy of the letter and of the enclosure to each client.

[**Today's date**]

6.29
6.30
6.31

Attention: **6.33**

Re: Estate of **6.02**, Deceased

Greetings:

Enclosed with this letter you will find a copy of the [Order Closing Estate and Discharging Personal Representative/Order Closing Temporary Administration] terminating the administration of this estate and relieving you of further responsibility as surety on the bond. Thank you very much for your past courtesies and cooperation.

Yours very truly,

[**Attorney's name**]

Enclosure
Order

Letters 80 and 81 are reserved.

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LETTER 82—NOTICE TO COMPTROLLER

Enclose a copy of Notice to Creditors and Publisher's Affidavit (Form 20). Send a copy of the letter, but not of the enclosure, to each client.

[**Today's date**]

RESTRICTED DELIVERY—SIGNATURE REQUIRED

Select one of the following.

[REGISTERED/CERTIFIED] MAIL NO. [**number**]
RETURN RECEIPT REQUESTED

Or

[**Name of delivery service**] TRACKING NO. [**number**]
PROOF OF DELIVERY REQUESTED

Continue with the following.

Comptroller of Public Accounts
Capitol Station
Austin, Texas 78774

Re: Estate of **6.02**, Deceased

Greetings:

According to our records, the decedent remitted or should have remitted taxes administered by your office. Enclosed is a copy of the Notice to Creditors for this estate.

Yours very truly,

2.45 or 2.76, 2.85

Enclosure
Notice to Creditors

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LETTER 83—CONFIRM REPRESENTATION AND FEE AND OUTLINE ANTICIPATED SERVICES (RDA)

Send two copies of this letter, together with a copy of the Texas Lawyer's Creed, to each client.

[**Today's date**]

2.76
2.78
2.79

Re: Estate of **6.02**, Deceased

Dear **2.77**:

Thank you very much for employing this firm to represent you in the probate of this estate.

Receipt is hereby acknowledged of a cash payment of $**25.02D**, which will be applied to the payment of expenses incurred or for legal fees due with respect to such representation. As we agreed, the fee will be [$**25.02A**/**25.02B** percent of the gross estate as determined for federal estate tax purposes/based on time spent on your behalf, with hourly rates of $**25.02C** for attorney's time and $**25.02C** for staff time]. In addition to fees for services, you are to pay or reimburse expenses incurred on your behalf. These expenses include [**specify expenses you expect client to pay, e.g.,** filing fees; recording charges; publication of notices; appraisal fees; long-distance, facsimile, and delivery charges; photocopies; and postage].

The above fee is for the following services:

1. Preparing the application for letters of administration

2. Arranging for the proof necessary to have the letters authorized by the court

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3. Appearing in court to have the letters authorized

4. Preparing the order to be signed by the judge granting letters of administration

5. Preparing and filing the oath of the administrator

6. Preparing and filing any bonds required by the court

7. Preparing and arranging for the publication of notice to creditors

8. Preparing and serving notices to secured creditors

9. Determining the nature, extent, and valuation of the estate

10. Preparing and filing the statutory inventory, appraisement, and list of claims and obtaining the judge's approval of the same

11. Determining the nature and amount of the liabilities of the estate

12. Preparing and filing the final account and other documents necessary to authorize delivery of the estate to the persons entitled to receive it

13. Assisting in the transfer of title to all of the decedent's assets

14. Investigating, determining, calculating, allocating, or dealing with asset valuations and tax basis information

With your prior approval, we may perform other services on your behalf and for additional agreed-upon fees, such as preparing and filing the United States Estate (and Generation-Skipping Transfer) Tax Return.

On appointment, the administrator's duty of care will require you to insure the estate, typically with property and liability insurance on real property, automobiles, and personal property of significant value. Decedent's contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

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We are not insurance experts, and you cannot rely on our insurance advice. These suggestions may not be appropriate or adequate in your situation, and we offer them only to help you start a conversation with your insurance agent.

Unless you describe the necessary insurance with great specificity, an insurance agent is not liable for inadequate coverage. It may be wise to have an expert investigate the estate's insurance situation and analyze coverage, cost, insurable risks, and exposures to loss. Before you sign, we can review any insurance analysis contract.

If the estate is not closed within one year, it will be necessary to file annual accountings each year that the estate is still open. In some estates, there is a need to apply to the court for permission to dispose of real or personal property or to enter into a mineral lease. Occasionally an estate becomes involved in litigation. When these situations arise, the procedures are quite technical, but we will be in a position to help you with them. However, such matters will be subject to additional charges.

You will be responsible for calendaring and for preparing all of Decedent's and the estate's gift and income tax returns. Most clients use a certified public accountant to keep the estate's fiduciary accounts, prepare tax returns, and complete Schedule K-1 (Form 1041) (to report each beneficiary's share of income, deductions, and credits).

With Decedent's death, the beneficiaries receive many assets having a new income tax basis. Generally speaking, the income tax basis for most assets will be adjusted to the values shown on the federal estate tax return or, if no such return, then as shown on the statutory inventory that will be prepared. Most retirement benefits do not receive an adjusted basis. Death benefits from those plans and life insurance are not controlled by the laws of intestacy but are controlled by beneficiary designations. These assets are usually referred to as "nonprobate assets." Taxation of retirement benefits is a matter for you to discuss with the person who prepares income tax returns for the estate.

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Before we begin, we must deal with an important ethical matter to avoid questions of conflicts of interest. As administrator, only you will be a client of this firm for matters related to the estate. While this may appear obvious, there are many instances in which family members and other beneficiaries believe that a lawyer represents "the estate" directly and thus represents them indirectly. This is not the case. To avoid these conflicts, it is the policy of this firm to recommend that they obtain the advice and services of independent attorneys of their own choosing.

As we go along, you will receive copies and information regarding the estate. Please provide affected family members and beneficiaries with updates on a regular basis. In doing so, please make it clear that this firm represents only you.

We are not now aware of any conflicts that exist or any facts that would create a conflict, although that possibility always exists. If you become aware of any conflict relating to this estate, your service as a fiduciary, or anything affecting our representation, you must call it to our attention.

Please understand that to protect your interests in the event of my death, disability, or retirement, it may be necessary or appropriate for another lawyer or a staff member of this firm, a personal representative (including someone acting under a power of attorney), or another lawyer who is retained by any such person to have access to your file and records in order to contact you to determine appropriate handling of your matters and of your files and to make an appropriate referral (subject to your approval) to other attorneys for future handling. In that regard, you grant permission and waive all privileges solely to the extent necessary or appropriate for those purposes.

Furthermore, in the event of my death, disability, or retirement, if further services are required in connection with this representation and you engage another lawyer to perform those services, you expressly authorize the division of fees based on the proportion of the work done

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or responsibilities assumed by this firm and by your new attorney. Such division specifically authorizes the payment of fees and expenses to my estate, personal representatives, and heirs.

With respect to documents provided by you as well as original documents generated in connection with this representation, those that are not filed with the court will be returned to you. This firm is entitled to retain copies of all such documents as well as all other materials used in connection with the representation. All other documents, including notes and the remaining contents of your file, are attorney work product and are owned by the firm. Of course, during our representation of you and for as long thereafter as we retain any of such items, we will make your files available to you for inspection and copying.

Please note that we may destroy any of your files at any time with your written consent and, in any event, after one year following written notice to you sent by regular mail to your last known address as reflected in our records. No further notice to you will be required before such destruction.

Enclosed is a copy of the Texas Lawyer's Creed. This mandate for professionalism was promulgated by the Supreme Court of Texas and the Texas Court of Criminal Appeals in 1989. All lawyers and members of our staff do our best to adhere to the high standards it sets for the lawyers of Texas. We invite your questions and comments regarding that creed and your perception of our adherence to its objectives.

We all take seriously our obligation to maintain the highest standards of ethical conduct toward our clients and others. To enforce ethical conduct, the State Bar of Texas investigates and prosecutes complaints of professional misconduct. If you have questions about this process or how to file a complaint, you should contact the office of the State Bar of Texas at 1-800-932-1900 toll-free for more information.

If the foregoing letter correctly reflects your understanding of our agreement, please sign both copies of this letter, retain one for your files, and return one copy in the enclosed envelope.

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If you have any questions about the proposed engagement, please contact me as soon as possible. Certainly, you should feel free to consult with another lawyer about the effect of signing this letter.

Thank you again for the confidence that you have expressed in me and this firm at this very difficult time. Please call me if you have any questions. Kindest regards.

Yours very truly,

[**Attorney's name**]

Enclosures
Texas Lawyer's Creed
Return envelope

The foregoing letter correctly reflects my understanding of our agreement. Dated _____.

_____

2.76

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LETTER 84—CITATION TO NEWSPAPER

Determine the proper charge for publication. Enclose the original and one copy of the citation, together with a check for the proper charge. Send a copy of this letter, but not of the enclosures, to each client.

[**Today's date**]

21.19
21.20
21.21

Re: Estate of **6.02**, Deceased

Greetings:

Enclosed with this letter is citation prepared by the clerk for the above-captioned estate. Please publish it in one issue of your newspaper, following which you should complete the appropriate Publisher's Affidavit, attach a copy of the published notice, and send duplicate copies to me.

Payment for this publication is enclosed. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosures
Citation
Check

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LETTER 85—CONFIRM REPRESENTATION AND FEE AND OUTLINE ANTICIPATED SERVICES (PDH)

Send two copies of this letter, together with a copy of the Texas Lawyer's Creed, to the client.

[**Today's date**]

2.101
2.103
2.104

Re: Estate of **6.02**, Deceased

Dear **2.102**:

Thank you very much for employing this firm to represent you in the probate of this estate.

Receipt is hereby acknowledged of a cash payment of $**25.02D**, which will be applied to the payment of expenses incurred or for legal fees due with respect to such representation. As we agreed, the fee will be [$**25.02A**/**25.02B** percent of the gross estate as determined for federal estate tax purposes/based on time spent on your behalf, with hourly rates of $**25.02C** for attorney's time and $**25.02C** for staff time]. In addition to fees for services, you are to pay or reimburse expenses incurred on your behalf. These expenses include [**specify expenses you expect client to pay, e.g.,** filing fees; recording charges; publication of notices; appraisal fees; long-distance, facsimile, and delivery charges; photocopies; and postage].

The above fee is for the following services:

1. Determining the nature, extent, and valuation of the estate

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2. Determining the nature and amount of the liabilities of the estate and arranging for payment of properly authorized debts and claims before court proceedings

3. Preparing the application to declare heirship

4. Arranging for the proof necessary to have the court make its determination of the people who are the proper heirs and beneficiaries

5. Giving proper legal notice to all persons who have any legal interest in the estate

6. Preparing the judgment declaring heirship to be signed by the judge

7. Appearing in court to have the judgment approved to authorize delivery of the estate to the persons entitled to receive it

8. Assisting in the transfer of title to all of the decedent's assets

9. Investigating, determining, calculating, allocating, or dealing with asset valuations and tax basis information

With your prior approval, we may perform other services on your behalf and for additional agreed-upon fees, such as preparing and filing the United States Estate (and Generation-Skipping Transfer) Tax Return.

An administrator's duty of care requires property and liability insurance on real property, automobiles, and personal property of significant value. Decedent's contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

You will not have the authority of an administrator, but you may have the liability of one. Instead of an administration, we will use a different procedure, and you will not receive letters of administration. You may be held responsible for your management of the estate as an informal fiduciary.

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Ask Decedent's insurance agent whether the estate's insurance needs can be managed without appointment of an administrator and without issuance of letters to a personal representative. If insurance has lapsed or is inadequate, who can request coverage?

If the estate's insurance needs cannot be met without appointment of a personal representative, let us know immediately, so we can discuss whether a different probate procedure is warranted.

We are not insurance experts, and you cannot rely on our insurance advice. These suggestions may not be appropriate or adequate in your situation, and we offer them only to help you start a conversation with your insurance agent.

Unless you describe the necessary insurance with great specificity, an insurance agent is not liable for inadequate coverage. It may be wise to have an expert investigate the estate's insurance situation and analyze coverage, cost, insurable risks, and exposures to loss. Before you sign, we can review any insurance analysis contract.

You will be responsible for calendaring and for preparing all of Decedent's and the estate's gift and income tax returns. Most clients use a certified public accountant to keep the estate's fiduciary accounts, prepare tax returns, and complete Schedule K-1 (Form 1041) (to report each beneficiary's share of income, deductions, and credits).

With Decedent's death, the beneficiaries receive many assets having a new income tax basis. Generally speaking, the income tax basis for most assets will be adjusted to the fair market value on the date of death. Most retirement benefits do not receive an adjusted basis. Death benefits from those plans and life insurance are not controlled by the laws of intestacy but are controlled by beneficiary designations. These assets are usually referred to as "nonprobate assets." Taxation of retirement benefits is a matter for you to discuss with the person who prepares income tax returns for the estate.

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Before we begin, we must deal with an important ethical matter to avoid questions of conflicts of interest. Only you will be a client of this firm for matters related to the estate. While this may appear obvious, there are many instances in which family members and other beneficiaries believe that a lawyer represents "the estate" directly and thus represents them indirectly. This is not the case. To avoid these conflicts, it is the policy of this firm to recommend that they obtain the advice and services of independent attorneys of their own choosing.

As we go along, you will receive copies and information regarding the estate. Please provide affected family members and beneficiaries with updates on a regular basis. In doing so, please make it clear that this firm represents only you.

We are not now aware of any conflicts that exist or any facts that would create a conflict, although that possibility always exists. If you become aware of any conflict relating to this estate, or anything affecting our representation, you must call it to our attention.

Please understand that to protect your interests in the event of my death, disability, or retirement, it may be necessary or appropriate for another lawyer or a staff member of this firm, a personal representative (including someone acting under a power of attorney), or another lawyer who is retained by any such person to have access to your file and records in order to contact you to determine appropriate handling of your matters and of your files and to make an appropriate referral (subject to your approval) to other attorneys for future handling. In that regard, you grant permission and waive all privileges solely to the extent necessary or appropriate for those purposes.

Furthermore, in the event of my death, disability, or retirement, if further services are required in connection with this representation and you engage another lawyer to perform those services, you expressly authorize the division of fees based on the proportion of the work done or responsibilities assumed by this firm and by your new attorney. Such division specifically authorizes the payment of fees and expenses to my estate, personal representatives, and heirs.

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With respect to documents provided by you as well as original documents generated in connection with this representation, those that are not filed with the court will be returned to you. This firm is entitled to retain copies of all such documents as well as all other materials used in connection with the representation. All other documents, including notes and the remaining contents of your file, are attorney work product and are owned by the firm. Of course, during our representation of you and for as long thereafter as we retain any of such items, we will make your files available to you for inspection and copying.

Please note that we may destroy any of your files at any time with your written consent and, in any event, after one year following written notice to you sent by regular mail to your last known address as reflected in our records. No further notice to you will be required before such destruction.

Enclosed is a copy of the Texas Lawyer's Creed. This mandate for professionalism was promulgated by the Supreme Court of Texas and the Texas Court of Criminal Appeals in 1989. All lawyers and members of our staff do our best to adhere to the high standards it sets for the lawyers of Texas. We invite your questions and comments regarding that creed and your perception of our adherence to its objectives.

We take seriously our obligation to maintain the highest standards of ethical conduct toward our clients and others. To enforce ethical conduct, the State Bar of Texas investigates and prosecutes complaints of professional misconduct. If you have questions about this process or how to file a complaint, you should contact the office of the State Bar of Texas at 1-800-932-1900 toll-free for more information.

If the foregoing letter correctly reflects your understanding of our agreement, please sign both copies of this letter, retain one for your files, and return one copy in the enclosed envelope. If you have any questions about the proposed engagement, please contact me as soon as possi-

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ble. Certainly, you should feel free to consult with another lawyer about the effect of signing this letter.

Thank you again for the confidence that you have expressed in me and this firm at this very difficult time. Please call me if you have any questions. Kindest regards.

Yours very truly,

[**Attorney's name**]

Enclosures
Texas Lawyer's Creed
Return envelope

The foregoing letter correctly reflects my understanding of our agreement. Dated _____.

_____

2.101

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LETTER 86—ORDER CERTIFIED COPIES (PDH)

Determine the appropriate charge for the copies and enclose a check for that amount. Send a copy of this letter, but not of the enclosure, to each client.

[**Today's date**]

6.16
6.17
6.18

Re: No. **6.01**, Estate of **6.02**, Deceased
6.03 Court of **6.04** County, Texas

Greetings:

Please prepare and send me certified copies of the following items previously filed in connection with the foregoing estate:

1. Application to Declare Heirship

2. Judgment Declaring Heirship

Include item 3 if IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, was filed.

3. Internal Revenue Service closing letter

Include items 4 and 5 *only* if D had a will or will and codicil.

4. [Will/Will and codicil]

5. Order Admitting [Will/Will and Codicil] to Probate

Payment is enclosed. Thank you very much.

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Yours very truly,

[**Attorney's name**]

Enclosure
Check

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LETTER 87—CONFIRM REPRESENTATION AND FEE AND OUTLINE ANTICIPATED SERVICES (SE)

Send two copies of this letter, together with a copy of the Texas Lawyer's Creed, to each client.

[**Today's date**]

2.116
2.118
2.119

Dear **2.117**:

Thank you very much for employing this firm to represent you in the probate of the estate of **1.02** ("Decedent").

Receipt is hereby acknowledged of a cash payment of $**25.02A**, which will be for legal fees due with respect to such representation. In addition to this fee, you are to pay or reimburse this firm for the payment of all court costs, certified copies, reproduction charges, long-distance telephone charges, travel expenses, and other necessary out-of-pocket expenses.

You have furnished information concerning the assets of this estate, together with their values. Based on this information, we have determined that the *gross* value of Decedent's interest in these assets, exclusive of homestead and exempt property, does not exceed $75,000 and that the nonexempt assets exceed the known liabilities of this estate. Based on the accuracy of this assumption, it is possible for us to avoid a full-scale administration of this estate and we will be able to handle the probate as a small estate proceeding.

For the family to obtain possession and good title to the assets, it is necessary to prepare a Small Estate Affidavit, which *must* be signed by all the distributees of the estate; if any of them are minors or incompetents, it must be signed by their guardians or next of kin. Unless *all*

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of them can be located and sign, it will not be possible for us to follow this simple procedure, and the additional services then required will be subject to additional fees.

Once this affidavit has been properly signed and sworn to, it will be filed with the clerk of the court and will be presented to the judge. If the judge is satisfied that it contains the information required by the Texas Estates Code, the judge will sign an order to the effect that the estate qualifies as a small estate and will approve the affidavit, and it will be properly recorded. Once this has been done, the clerk will be able to issue certified copies of the affidavit and order for you to furnish to banks, savings and loan associations, stock transfer agents, and other persons or institutions holding property of the estate. When the certified copy is so presented, these persons or institutions will be legally authorized to transfer the assets to the distributees.

Even though no formal administration will be necessary, it is still necessary to pay creditors. Please make and furnish us with a complete list of creditors and debts as of the date of death.

Again, the extreme importance of accurate valuation of the nonexempt property cannot be overemphasized. If any creditor or any other interested party could ever show that this value exceeded $75,000, these entire proceedings could be set aside and a full administration required.

An administrator's duty of care requires property and liability insurance on real property, automobiles, and personal property of significant value. Decedent's contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

You will not have the authority of an administrator, but you may have the liability of one. Instead of an administration, we will use a different procedure, and you will not receive letters of administration. You may be held responsible for your management of the estate as an informal fiduciary.

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Ask Decedent's insurance agent whether the estate's insurance needs can be managed without appointment of an administrator and without issuance of letters to a personal representative. If insurance has lapsed or is inadequate, who can request coverage?

If the estate's insurance needs cannot be met without appointment of a personal representative, let us know immediately, so we can discuss whether a different probate procedure is warranted.

We are not insurance experts, and you cannot rely on our insurance advice. These suggestions may not be appropriate or adequate in your situation, and we offer them only to help you start a conversation with your insurance agent.

Unless you describe the necessary insurance with great specificity, an insurance agent is not liable for inadequate coverage. It may be wise to have an expert investigate the estate's insurance situation and analyze coverage, cost, insurable risks, and exposures to loss. Before you sign, we can review any insurance analysis contract.

Before we begin, we must deal with an important ethical matter to avoid questions of conflicts of interest. Only you will be a client of this firm for matters related to the estate. While this may appear obvious, there are many instances in which family members and other beneficiaries believe that a lawyer represents "the estate" directly and thus represents them indirectly. This is not the case. To avoid these conflicts, it is the policy of this firm to recommend that they obtain the advice and services of independent attorneys of their own choosing.

As we go along, you will receive copies and information regarding the estate. Please provide affected family members and beneficiaries with updates on a regular basis. In doing so, please make it clear that this firm represents only you.

We are not now aware of any conflicts that exist or any facts that would create a conflict, although that possibility always exists. If you become aware of any conflict relating to this estate or anything affecting our representation, you must call it to our attention.

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Please understand that to protect your interests in the event of my death, disability, or retirement, it may be necessary or appropriate for another lawyer or a staff member of this firm, a personal representative (including someone acting under a power of attorney), or another lawyer who is retained by any such person to have access to your file and records in order to contact you to determine appropriate handling of your matters and of your files and to make an appropriate referral (subject to your approval) to other attorneys for future handling. In that regard, you grant permission and waive all privileges solely to the extent necessary or appropriate for those purposes.

Furthermore, in the event of my death, disability, or retirement, if further services are required in connection with this representation and you engage another lawyer to perform those services, you expressly authorize the division of fees based on the proportion of the work done or responsibilities assumed by this firm and by your new attorney. Such division specifically authorizes the payment of fees and expenses to my estate, personal representatives, and heirs.

With respect to documents provided by you as well as original documents generated in connection with this representation, those that are not filed with the court will be returned to you. This firm is entitled to retain copies of all such documents as well as all other materials used in connection with the representation. All other documents, including notes and the remaining contents of your file, are attorney work product and are owned by the firm. Of course, during our representation of you and for as long thereafter as we retain any of such items, we will make your files available to you for inspection and copying.

Please note that we may destroy any of your files at any time with your written consent and, in any event, after one year following written notice to you sent by regular mail to your last known address as reflected in our records. No further notice to you will be required before such destruction.

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Enclosed is a copy of the Texas Lawyer's Creed. This mandate for professionalism was promulgated by the Supreme Court of Texas and the Texas Court of Criminal Appeals in 1989. All lawyers and members of our staff do our best to adhere to the high standards it sets for the lawyers of Texas. We invite your questions and comments regarding that creed and your perception of our adherence to its objectives.

We all take seriously our obligation to maintain the highest standards of ethical conduct toward our clients and others. To enforce ethical conduct, the State Bar of Texas investigates and prosecutes complaints of professional misconduct. If you have questions about this process or how to file a complaint, you should contact the office of the State Bar of Texas at 1-800-932-1900 toll-free for more information.

If the foregoing letter correctly reflects your understanding of our agreement, please sign both copies of this letter, retain one for your files, and return one copy in the enclosed envelope. If you have any questions about the proposed engagement, please contact me as soon as possible. Certainly, you should feel free to consult with another lawyer about the effect of signing this letter.

As soon as the affidavit has been prepared, I will contact you to make arrangements for proper signatures. Thank you again for the confidence that you have expressed in me and this firm at this very difficult time. Please call me if you have any questions. Kindest regards.

Yours very truly,

[**Attorney's name**]

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Enclosures
Texas Lawyer's Creed
Return envelope

The foregoing letter correctly reflects my understanding of our agreement. Dated _____.

_____

2.116

LETTER 88—TRANSFER OF SECURITIES (SE)

Enclose the items specified in the body of the letter. Send a copy of this letter, but not of the enclosures, to each client.

[**Today's date**]

[REGISTERED/CERTIFIED] MAIL NO. [**number**]
RETURN RECEIPT REQUESTED

9.31 or 9.53 or 9.83 or 9.126 or 9.162
9.32 or 9.53 or 9.84 or 9.127 or 9.163
9.33 or 9.53 or 9.85 or 9.128 or 9.164

Re: Estate of **6.02**, Deceased
9.21 or 9.71 or 9.111 or 9.151

Greetings:

We enclose the following documents in support of the transfer of securities:

Power with signature properly guaranteed

Decedent's death certificate

Affidavit of Domicile

IRS Form W-9

In the following item, insert each certificate number, and the number of shares or total face amount of bonds represented by that certificate, and the type and par value of preferred stock, and the kind of bond (see 9.22–9.27; 9.71–9.78; 9.114–9.115 of MIL). EXAMPLES: 110 shares of ExxonMobil common stock, Certificates C799406 (100) and NC439714 (10); AT&T $5,000 Debenture, Series of 1999, Certificate Number DB82066. If this security is unissued (held by stockbroker or in dividend reinvestment plan), delete the item.

Original certificate number

Certified copy of Small Estate Affidavit and Order

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Please note that no executor or administrator has been or will be appointed and no letters testamentary or letters of administration have been or will be granted. You should register the securities as follows:

9.56 or 9.99 or 9.139 or 9.181
9.58 or 9.101 or 9.141 or 9.183
9.59 or 9.102 or 9.142 or 9.184
9.60 or 9.103 or 9.143 or 9.185

Upon the completion of this transfer, please forward the new certificate(s) *in care of this office*. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosures
[**List enclosures**]

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LETTER 89—ORDER CERTIFIED COPIES (SE)

Determine the appropriate charge for the copy and enclose a check for that amount. Send a copy of this letter, but not of the enclosure, to each client.

[**Today's date**]

6.16
6.17
6.18

Re: No. **6.01**, Estate of **6.02**, Deceased
6.03 Court of **6.04** County, Texas

Greetings:

Please prepare and send me a certified copy of the Small Estate Affidavit and Order for the foregoing estate. Payment is enclosed. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosure
Check

Letter 90 is reserved.

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LETTER 91—ORDER CERTIFIED COPIES (RDA)

Determine the appropriate charge for the copies and enclose a check for that amount. Send a copy of this letter, but not of the enclosure, to each client.

[**Today's date**]

6.16
6.17
6.18

Re: No. **6.01**, Estate of **6.02**, Deceased
6.03 Court of **6.04** County, Texas

Greetings:

Please prepare and send me certified copies of the following items previously filed in connection with the foregoing estate:

1. Application to Declare Heirship

2. Judgment Declaring Heirship

3. Application for Letters of Administration

4. Order Authorizing Letters of Administration

5. Order Closing Estate and Discharging Personal Representative

Include item 6 if IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, was filed.

6. Internal Revenue Service closing letter

Payment is enclosed. Thank you very much.

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Yours very truly,

[**Attorney's name**]

Enclosure
Check

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LETTER 92—AFFIDAVIT FOR SIGNATURE (SE)

Enclose original and all copies of Small Estate Affidavit and Order (Form 82) and a return envelope. Send a copy of this letter and of the affidavit and order to each client.

[**Today's date**]

Obtain names of heirs or distributees from attorney.

3.83 or [name of heir or distributee]
3.85 or [address of heir or distributee]
3.86 or [city, state, zip of heir or distributee]

Re: Estate of **6.02**, Deceased

Dear **3.84 or [name of heir or distributee]**:

Enclosed are several copies of a Small Estate Affidavit and Order. Please review this instrument for completeness and accuracy and, if it is correct, sign all copies where indicated. Note that your signature must be witnessed by a notary, who should sign the instrument just below your signature. PLEASE USE BLUE INK and have the notary's name printed beneath the notary's signature. Please return *all* copies to me in the enclosed stamped, self-addressed envelope. When this affidavit has been signed by all necessary parties, I will send you a copy.

Include the following paragraph if addressee is a disinterested witness.

For the judge to authorize the proper distribution of the decedent's estate, it is necessary for you to sign this affidavit to assure the judge that the facts stated are true and correct. Your role is very important, and without your help a more expensive procedure would be necessary.

Continue with the following.

If you have any questions or suggestions or desire additional information, please call me.

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Yours very truly,

[**Attorney's name**]

Enclosures
Small Estate Affidavit and Order—original and copies
Return envelope

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LETTER 93—ACCOUNT FOR FINAL SETTLEMENT

Enclose a copy of Account for Final Settlement (Form 65). Send a copy of this letter and of the enclosure to each client.

[**Today's date**]

RESTRICTED DELIVERY—SIGNATURE REQUIRED

Select one of the following.

[REGISTERED/CERTIFIED] MAIL NO. [**number**]
RETURN RECEIPT REQUESTED

Or

[**Name of delivery service**] TRACKING NO. [**number**]
PROOF OF DELIVERY REQUESTED

Continue with the following.

3.03 or 3.37 or 3.58 or 3.72
3.04 or 3.40 or 3.59 or 3.73
3.05 or 3.41 or 3.60 or 3.74

Re: Estate of **6.02**, Deceased

Obtain name for salutation from attorney.

Dear [**name**]:

Enclosed with this letter you will find a copy of the Account for Final Settlement that has been presented for this estate. The date and time for scheduled consideration is **6.147** at **6.05 or 6.148**. If you contest this account, you are required to appear and contest the same. In this event, since I do not represent you, you should consult with an attorney of your own choosing. However, unless you desire to contest this account, there is no need for you to take any action.

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Yours very truly,

[**Attorney's name**]

Enclosure
Account for Final Settlement

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LETTER 94—ADVISE OF DUTIES AND ACTIONS TO FOLLOW (RDA)

Enclose the indicated items.

[**Today's date**]

2.76
2.78
2.79

Re: Estate of **6.02**, Deceased ("Decedent")

Dear **2.77**:

As you know, the order appointing you as administrator for this estate was signed by the judge on **6.26**. You have qualified as administrator of this estate by the filing of your oath. This also entitles you to receive letters of administration.

These letters represent evidence of your appointment as administrator and give you authority, subject to appropriate orders of the court, to act for and on behalf of the estate. Original letters are enclosed for your use. All letters show the date on which they were issued and are valid for only sixty days from that date. Do not worry if they expire before they are used since, for a modest charge, we can obtain additional letters at any time during the administration. As you need additional letters, please contact our office.

The information contained in this letter is designed to enable you to more fully appreciate the office you now hold and to provide you with guidance to assist you in carrying out your responsibilities.

In your capacity as administrator, you are Decedent's representative for the purposes of terminating Decedent's affairs. This is called "administration" and requires you to locate and

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assist in the valuation of Decedent's assets; to help us in the preparation of an inventory listing those assets; to pay debts, expenses of administration, and taxes; and to distribute the remaining assets to Decedent's legal heirs. Do not commingle Decedent's assets with your own while this administration is pending. Your first duty should be to take possession of Decedent's assets, valuable papers, and records and safeguard Decedent's property.

The administrator's duty of care requires you to insure the estate promptly, typically with property and liability insurance on real property, automobiles, and personal property of significant value. Decedent's contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

If you have not already, please inform each insurance agent of Decedent's date of death and your appointment as administrator and ask for the declarations page of each policy in which Decedent has an interest, the tasks and deadlines to keep each policy in force, and a list of any coverage changes needed immediately. Please ask to be added as a named insured to Decedent's homeowner's and other insurance policies. Do not remove Decedent's name from any policy. On request, we can contact each agent for you.

If you open bank accounts and certificates of deposit for this estate, you will need an employer identification number. Please let us know if you wish for us to assist you in getting it. Also, be sure that the total estate funds at any one institution do not exceed the amount insured by the FDIC.

To avoid personal liability, you should sign documents on behalf of the estate as "**2.76**, Administrator of the Estate of **6.02**, Deceased."

Several deadlines must be observed.

Within one month from the date the clerk first issued letters, **21.23**, notice to the general creditors of the estate must be published. We will prepare that notice and have it published in an appropriate newspaper.

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Within two months from the date the clerk first issued letters, **7.35**, you must send notice to any creditors whose notes are secured by liens on real estate or on automobiles or other personal property. If you will provide names and addresses, we will prepare these notices for your signature and will send them to each of those creditors. We must file your affidavit regarding notices to secured creditors, and we will prepare that for your signature.

Within ninety days after you qualified as administrator, **6.85**, we must file an inventory, appraisement, and list of claims, including proper and complete descriptions of the various assets with accurate evaluations. It is possible to obtain an extension of time for filing this inventory. If it is necessary to file so-called death tax returns, we will want to coordinate this inventory with the United States Estate (and Generation-Skipping Transfer) Tax Return, and we will request this extension.

If the value of Decedent's gross estate (all of Decedent's separate property [**include if D was married:** plus half the community property] plus the value of certain lifetime transfers) exceeds $**26.21** on the date of death, a federal estate tax return must also be filed and estate taxes paid within nine months after the date of death, **26.28**. [**Include if D was married:** In smaller estates, the surviving spouse may wish to file an estate tax return to elect portability of the deceased spouse's unused exclusion ("DSUE") amount.] For purposes of that return, Decedent's assets are valued as of the date of death. The preparation of that return is not a part of our regular service and is subject to a separate agreement for payment of additional fees and expenses.

Include the following paragraph if disclaimers appear necessary for postmortem tax or other planning.

Nine months after the date of death, **26.28**, is also the deadline to file a qualified disclaimer. The goal of a disclaimer is to pass assets from the named beneficiary into the hands of an alternate beneficiary—for example, the Family Trust—in order to minimize tax or other adverse consequences of the asset's passing to the "wrong" beneficiary. For the disclaimer to

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qualify, the original beneficiary must not have assumed any aspect of ownership of the disclaimed assets. For example, if the surviving spouse files a claim with the insurance company, receives a check for the insurance proceeds, and places that check in that spouse's personal account, the surviving spouse has accepted that gift and the surviving spouse's disclaimer option is lost. Likewise, if a child is named as the primary beneficiary of a retirement plan or an IRA and, following the parent owner's death, does an "IRA rollover" of the deceased parent's funds into a new IRA in the child's name, the child has effectively accepted that gift and the disclaimer option is again precluded. As these examples illustrate, before you or any other beneficiary collects an asset, changes title on an account, applies for insurance benefits, or makes an IRA rollover, you should contact a qualified advisor to discuss the tax and other issues involved in these decisions.

Include the following paragraph if D was not married.

Decedent's final federal income tax return (Form 1040), covering the period beginning on January 1 and ending on the date of Decedent's death, must be prepared and filed if Decedent had a certain minimum amount of gross income. If one is due, it must be filed and the taxes must be paid on or before April 15 of the year following Decedent's death.

Include the following paragraph if income tax return is to be filed for D's estate.

A fiduciary income tax return for income of Decedent's estate (Form 1041) will be required in all years in which the income of Decedent's estate exceeds $600. The beginning date of the first year is the date of Decedent's death, and it may end on December 31 or at the end of any other month, provided that it does not extend beyond one year from the date of Decedent's death.

Continue with the following.

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You will be responsible for calendaring and for preparing all of Decedent's and the estate's gift and income tax returns. Most clients use a certified public accountant to keep the estate's fiduciary accounts, prepare tax returns, and complete Schedule K-1 (Form 1041) (to report each beneficiary's share of income, deductions, and credits).

With Decedent's death, the beneficiaries receive many assets having a new income tax basis. Generally speaking, the income tax basis for most assets will be adjusted to the values shown on the federal estate tax return or, if no such return, then as shown on the statutory inventory that will be prepared. Most retirement benefits do not receive an adjusted basis. Death benefits from those plans and life insurance are not controlled by the laws of intestacy but are controlled by beneficiary designations. These assets are usually referred to as "nonprobate assets." Taxation of retirement benefits is a matter for you to discuss with the person who prepares income tax returns for the estate.

If this estate will exceed $**26.21**, PLEASE do not transfer *any* assets to anyone without consulting with us.

Claims of creditors may be presented at any time while the estate is open. For a debt to be paid, it must go through the claim process. If a claim is presented to you, you must allow it within thirty days or it will be automatically disallowed. Even when you allow a claim, it still must be presented to the court for approval before it can be paid. Please remember that you are *not* to write any checks on the estate's account without court authority.

After all known debts and taxes of Decedent and of Decedent's estate have been paid, it is necessary to have a court hearing called an heirship determination to properly identify the rightful heirs and beneficiaries who will receive the balance of the estate. Following this determination, a final accounting must be prepared and filed to show all receipts and disbursements during the administration. If the estate is not closed within one year, annual accountings will be required while the estate remains open. When the court has approved the final accounting,

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you may deliver the assets of the estate to the heirs and beneficiaries and, upon doing so, you will be discharged. You must not make any transfers to anyone without approval by the court.

By way of a partial summary, the administration of this estate is an essential and very important process. It clears title to real estate. It settles legitimate debts (and wipes out others). It establishes a new income tax basis for Decedent's property [**include if D was married:** as well as for the community property interest of the surviving spouse]. It permits clear title distribution of property to Decedent's heirs.

To the extent that you elect to handle matters directly, it is very important for you to keep us advised and to furnish copies of all outgoing and incoming correspondence and other documents, especially matters dealing with the Internal Revenue Service.

To assist you in properly performing your duties, we will need to obtain a great deal of additional information, and we will need to work together very closely in the coming months. For your records, copies of all documents that have not yet been sent to you are enclosed, and we will send you copies of all future correspondence and other documents as they are prepared. Please contact me if you have any questions concerning this letter, your duties, or the future procedures.

We look forward to working closely with you. Kindest regards.

Yours very truly,

[**Attorney's name**]

Enclosures
Letters of administration
[**List copies of other documents and correspondence, e.g., application, proof, order, oath**]

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LETTER 97—POWER OF ATTORNEY TO IRS

Enclose IRS Form 2848 (FF 10). Send a copy of this letter and of the completed Form 2848 to each client.

Consult the current IRS instructions for this form to determine the mailing address. Complete this letter with the full address. See Special Instruction 77—Filing IRS Forms.

[**Today's date**]

Internal Revenue Service
[**Address**]

Re: Estate of **6.02**, Deceased

Greetings:

Enclosed with this letter is the properly completed IRS Form 2848, Power of Attorney and Declaration of Representative.

Yours very truly,

[**Attorney's name**]

Enclosure
IRS Form 2848

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LETTER 98—NOTICE OF APPOINTMENT OF TEMPORARY ADMINISTRATOR (TDA)

Send a copy of this letter to each client.

[**Today's date**]

RESTRICTED DELIVERY—SIGNATURE REQUIRED

Select one of the following.

[REGISTERED/CERTIFIED] MAIL NO. [**number**]
RETURN RECEIPT REQUESTED

Or

[**Name of delivery service**] TRACKING NO. [**number**]
PROOF OF DELIVERY REQUESTED

Continue with the following.

[**Name and address obtained from attorney**]

Re: No. **6.01**, Estate of **6.02**, Deceased
6.03 Court of **6.04** County, Texas

Dear [**name**]:

You are hereby advised that I have been appointed as temporary administrator of this estate and that letters of temporary administration were issued to me today by the clerk of the court.

An interested person or heir may request a hearing to contest the appointment not later than the fifteenth day after the date that the letters of appointment are issued. If no contest is made within that period, the appointment will continue for the time specified in the order of appointment. The court may make the appointment permanent.

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If you have any questions, you should consult with your own attorney.

Yours very truly,

2.76, Temporary Administrator

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LETTER 99—PERMISSIVE NOTICE TO *UNSECURED* CREDITOR

Send a copy of this letter to each client.

[**Today's date**]

RESTRICTED DELIVERY—SIGNATURE REQUIRED

Select one of the following.

[REGISTERED/CERTIFIED] MAIL NO. [**number**]
RETURN RECEIPT REQUESTED

Or

[**Name of delivery service**] TRACKING NO. [**number**]
PROOF OF DELIVERY REQUESTED

Continue with the following.

21.06–**21.14**

Re: No. **6.01**, Estate of **6.02**, Deceased
6.03 Court of **6.04** County, Texas

Greetings:

Our records tentatively indicate that you may have an unsecured claim against this estate.

Notice is hereby given to you that you must present a claim before the 121st day after the date of the receipt of this notice or the claim is barred, if the claim is not barred by the general statutes of limitation. [**Include if D died on or after September 1, 2011, and this is an independent administration:** A claim may be effectively presented by only one of the methods prescribed by Chapter 403, Subchapter B, of the Texas Estates Code.]

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Original letters [testamentary/of administration] were issued on **6.39** in the above-numbered and -entitled estate. Your claim should be directed as follows:

Representative, Estate of **6.02**, Deceased
c/o **5.02**
5.05
5.06

Yours very truly,

2.45 or 2.76, 2.85

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LETTER 100—ADVISE *NOT* TO ALLOW CLAIM

Send a copy of this letter to each client.

[**Today's date**]

2.45 or 2.76
2.47 or 2.78
2.48 or 2.79

If to a corporate fiduciary, add "Attention: 2.61, 2.63" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased

Dear **2.46 or 2.77**:

This letter is to advise you that **21.15** failed to file a claim within the 120-day period allowed by law. Because this claim was not filed on time, it is now barred by law and may not be allowed by you. Please refer all inquiries made by this creditor directly to me.

Yours very truly,

[**Attorney's name**]

Letter 101 is reserved.

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LETTER 102—NOTIFY BENEFICIARY UNDER DECEDENT'S WILL

Note: Estates Code, Section 308.002(c), sets out a procedure to use in lieu of providing a copy of the will and order admitting it to probate. That procedure is not included in this System.

Enclose one copy of D's will and codicil and of the order admitting them to probate, as well as a blank IRS Form W-9 for completion by the beneficiary. Send a copy of this letter, but not of the enclosures, to each client.

[**Today's date**]

RESTRICTED DELIVERY—SIGNATURE REQUIRED

Select one of the following.

[REGISTERED/CERTIFIED] MAIL NO. [**number**]
RETURN RECEIPT REQUESTED

Or

[**Name of delivery service**] TRACKING NO. [**number**]
PROOF OF DELIVERY REQUESTED

Continue with the following.

3.03 or 3.37 or 3.58
3.04 or 3.40 or 3.59
3.05 or 3.41 or 3.60

Re: Estate of **6.02**, Deceased

Dear **3.06C or 3.43C or 3.61B**:

As required by Chapter 308, Subchapter A, of the Texas Estates Code, you are receiving this notice because it appears that you are entitled to receive real or personal property under Decedent's [will/will and codicil]. I am enclosing a copy of the [will/will and codicil] along with a copy of the order admitting the [will/will and codicil] to probate.

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My address is **2.47**, **2.48**, and I am the [independent] [executor/administrator/administrator with will annexed] of Decedent's estate.

IRS Form W-9 is enclosed. Please complete, sign, and return it to me by email at **2.53A**. Please include your phone number and preferred email address for correspondence. [**Include if applicable:** An interim distribution is planned for [approximately] [**date**], but receipt of your W-9 is necessary first.]

Yours very truly,

2.45, **2.85**

Enclosures
[Will/Will and codicil]
Order
IRS Form W-9

Letter 103 is reserved.

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LETTER 104—INVENTORY TO BENEFICIARY

Enclose one copy of Inventory, Appraisement, and List of Claims (Form 22). Send a copy of this letter, but not of the enclosure, to each client.

[**Today's date**]

3.03 or 3.37 or 3.58
3.04 or 3.40 or 3.59
3.05 or 3.41 or 3.60

Re: Estate of **6.02**, Deceased

Dear **3.06C or 3.43C or 3.61B**:

Enclosed is a verified, full, and detailed inventory and appraisement of this estate.

Please be advised that, to preserve privacy, this inventory will not be filed among the documents in this estate. You should retain this inventory as evidence of the fair market value of the assets shown thereon.

Yours very truly,

[**Attorney's name**]

Enclosure
Inventory

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LETTER 105—ORDER CERTIFIED COPIES (IBA)

Determine the appropriate charge for the copies and enclose a check for that amount. Send a copy of this letter, but not of the enclosure, to each client.

[**Today's date**]

6.16
6.17
6.18

Re: No. **6.01**, Estate of **6.02**, Deceased
6.03 Court of **6.04** County, Texas

Greetings:

Please prepare and send me certified copies of the following items previously filed in connection with the foregoing estate:

1. Application to Declare Heirship
2. Judgment Declaring Heirship
3. [Distributee's/Distributees'] Agreement[s] to Independent Administration and Power of Sale
4. Application for Letters of Administration
5. Order Authorizing Letters of Administration

Include item 6 if IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, was filed.

6. Internal Revenue Service closing letter

Payment is enclosed. Thank you very much.

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Yours very truly,

[**Attorney's name**]

Enclosure
Check

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LETTER 106—CONFIRM REPRESENTATION AND FEE AND OUTLINE ANTICIPATED SERVICES (TBA)

Address this letter jointly to all probable independent executors or administrators and send two copies, together with a copy of the Texas Lawyer's Creed, to each.

[**Today's date**]

2.45
2.47
2.48

If to a corporate executor or administrator, add "Attention: 2.61, 2.63" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased

Dear **2.46**:

Thank you very much for employing this firm to represent you in the probate of this estate.

Receipt is hereby acknowledged of a cash payment of $**25.02D**, which will be applied to the payment of expenses incurred or for legal fees due with respect to such representation. As we agreed, the fee will be [$**25.02A**/**25.02B** percent of the gross estate as determined for federal estate tax purposes/based on time spent on your behalf, with hourly rates of $**25.02C** for attorney's time and $**25.02C** for staff time]. In addition to fees for services, you are to pay or reimburse expenses incurred on your behalf. These expenses include [**specify expenses you expect client to pay, e.g.,** filing fees; recording charges; publication of notices; appraisal fees; long-distance, facsimile, and delivery charges; photocopies; and postage].

The above fee is for the following services:

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1. Preparing the application for probate of the [will/will and codicil] and independent administration

2. Preparing distributee consents for independent administration

3. Arranging for the proof necessary to have the [will/will and codicil] admitted to probate and independent administration authorized

4. Appearing in court to have the [will/will and codicil] so admitted and independent administration authorized

5. Preparing the order to be signed by the judge to admit the [will/will and codicil] to probate and authorize independent administration

6. Preparing and filing the oath of the [executor/administrator]

7. Preparing and arranging for the publication of notice to creditors

8. Preparing and serving notices to secured creditors

9. Preparing and sending required notices to beneficiaries

10. Preparing and filing the certificate or affidavit of notice to beneficiaries

11. Determining the nature, extent, and valuation of the estate

12. Preparing and filing the statutory inventory, appraisement, and list of claims or affidavit in lieu thereof and obtaining the judge's approval of the same

13. Determining the nature and amount of the liabilities of the estate

14. Assisting in the transfer of title to all of the decedent's assets

15. Investigating, determining, calculating, allocating, or dealing with asset valuations and tax basis information

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With your prior approval, we may perform other services on your behalf and for additional agreed-upon fees, such as preparing and filing the United States Estate (and Generation-Skipping Transfer) Tax Return.

On appointment, the [executor's/administrator's] duty of care will require you to insure the estate, typically with property and liability insurance on real property, automobiles, and personal property of significant value. Decedent's contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

We are not insurance experts, and you cannot rely on our insurance advice. These suggestions may not be appropriate or adequate in your situation, and we offer them only to help you start a conversation with your insurance agent.

Unless you describe the necessary insurance with great specificity, an insurance agent is not liable for inadequate coverage. It may be wise to have an expert investigate the estate's insurance situation and analyze coverage, cost, insurable risks, and exposures to loss. Before you sign, we can review any insurance analysis contract.

You will be responsible for calendaring and for preparing all of Decedent's and the estate's gift and income tax returns. Most clients use a certified public accountant to keep the estate's fiduciary accounts, prepare tax returns, and complete Schedule K-1 (Form 1041) (to report each beneficiary's share of income, deductions, and credits).

With Decedent's death, the beneficiaries receive many assets having a new income tax basis. Generally speaking, the income tax basis for most assets will be adjusted to the values shown on the federal estate tax return or, if no such return, then as shown on the statutory inventory that will be prepared. Most retirement benefits do not receive an adjusted basis. Death benefits from those plans and life insurance are not controlled by a will but are controlled by beneficiary designations. These assets are usually referred to as "nonprobate assets." Taxation

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of retirement benefits is a matter for you to discuss with the person who prepares income tax returns for the estate.

Before we begin, we must deal with an important ethical matter to avoid questions of conflicts of interest. As independent [executor/administrator], only you will be a client of this firm for matters related to the estate. While this may appear obvious, there are many instances in which family members and other beneficiaries believe that a lawyer represents "the estate" directly and thus represents them indirectly. This is not the case. To avoid these conflicts, it is the policy of this firm to recommend that they obtain the advice and services of independent attorneys of their own choosing.

As we go along, you will receive copies and information regarding the estate. Please provide affected family members and beneficiaries with updates on a regular basis. In doing so, please make it clear that this firm represents only you.

We are not now aware of any conflicts that exist or any facts that would create a conflict, although that possibility always exists. If you become aware of any conflict relating to this estate, your service as a fiduciary, or anything affecting our representation, you must call it to our attention.

Please understand that to protect your interests in the event of my death, disability, or retirement, it may be necessary or appropriate for another lawyer or a staff member of this firm, a personal representative (including someone acting under a power of attorney), or another lawyer who is retained by any such person to have access to your file and records in order to contact you to determine appropriate handling of your matters and of your files and to make an appropriate referral (subject to your approval) to other attorneys for future handling. In that regard, you grant permission and waive all privileges solely to the extent necessary or appropriate for those purposes.

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Furthermore, in the event of my death, disability, or retirement, if further services are required in connection with this representation and you engage another lawyer to perform those services, you expressly authorize the division of fees based on the proportion of the work done or responsibilities assumed by this firm and by your new attorney. Such division specifically authorizes the payment of fees and expenses to my estate, personal representatives, and heirs.

With respect to documents provided by you as well as original documents generated in connection with this representation, those that are not filed with the court will be returned to you. This firm is entitled to retain copies of all such documents as well as all other materials used in connection with the representation. All other documents, including notes and the remaining contents of your file, are attorney work product and are owned by the firm. Of course, during our representation of you and for as long thereafter as we retain any of such items, we will make your files available to you for inspection and copying.

Please note that we may destroy any of your files at any time with your written consent and, in any event, after one year following written notice to you sent by regular mail to your last known address as reflected in our records. No further notice to you will be required before such destruction.

Enclosed is a copy of the Texas Lawyer's Creed. This mandate for professionalism was promulgated by the Supreme Court of Texas and the Texas Court of Criminal Appeals in 1989. All lawyers and members of our staff do our best to adhere to the high standards it sets for the lawyers of Texas. We invite your questions and comments regarding that creed and your perception of our adherence to its objectives.

We all take seriously our obligation to maintain the highest standards of ethical conduct toward our clients and others. To enforce ethical conduct, the State Bar of Texas investigates and prosecutes complaints of professional misconduct. If you have questions about this process

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or how to file a complaint, you should contact the office of the State Bar of Texas at 1-800-932-1900 toll-free for more information.

If the foregoing letter correctly reflects your understanding of our agreement, please sign both copies of this letter, retain one for your files, and return one copy in the enclosed envelope. If you have any questions about the proposed engagement, please contact me as soon as possible. Certainly, you should feel free to consult with another lawyer about the effect of signing this letter.

Thank you again for the confidence that you have expressed in me and this firm at this very difficult time. Please call me if you have any questions. Kindest regards.

Yours very truly,

[**Attorney's name**]

Enclosures
Texas Lawyer's Creed
Return envelope

The foregoing letter correctly reflects my understanding of our agreement. Dated _____.

_____

2.45

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LETTER 107—CONFIRM REPRESENTATION AND FEE AND OUTLINE ANTICIPATED SERVICES (IBA)

Address this letter jointly to all probable independent administrators and send two copies, together with a copy of the Texas Lawyer's Creed, to each.

[**Today's date**]

2.45
2.47
2.48

If to a corporate administrator, add "Attention: 2.61, 2.63" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased

Dear **2.46**:

Thank you very much for employing this firm to represent you in the probate of this estate.

Receipt is hereby acknowledged of a cash payment of $**25.02D**, which will be applied to the payment of expenses incurred or for legal fees due with respect to such representation. As we agreed, the fee will be [$**25.02A**/**25.02B** percent of the gross estate as determined for federal estate tax purposes/based on time spent on your behalf, with hourly rates of $**25.02C** for attorney's time and $**25.02C** for staff time]. In addition to fees for services, you are to pay or reimburse expenses incurred on your behalf. These expenses include [**specify expenses you expect client to pay, e.g.,** filing fees; recording charges; publication of notices; appraisal fees; long-distance, facsimile, and delivery charges; photocopies; and postage].

The above fee is for the following services:

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1. Preparing the application for independent administration and letters of administration
2. Preparing the application to declare heirship
3. Arranging for the proof necessary to have the court make its determination of the people who are the proper heirs and beneficiaries
4. Preparing distributee consents for independent administration
5. Arranging for the proof necessary to have the independent administration and letters of administration authorized by the court
6. Appearing in court to have the heirs determined and the independent administration and letters authorized
7. Preparing the judgment declaring heirship to be signed by the judge
8. Preparing the order to be signed by the judge to authorize independent administration and letters of administration
9. Preparing and filing the oath of the administrator
10. Preparing and arranging for the publication of notice to creditors
11. Preparing and serving notices to secured creditors
12. Determining the nature, extent, and valuation of the estate
13. Preparing and filing the statutory inventory, appraisement, and list of claims or affidavit in lieu thereof and obtaining the judge's approval of the same
14. Determining the nature and amount of the liabilities of the estate
15. Assisting in the transfer of title to all of the decedent's assets

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16. Investigating, determining, calculating, allocating, or dealing with asset valuations and tax basis information

With your prior approval, we may perform other services on your behalf and for additional agreed-upon fees, such as preparing and filing the United States Estate (and Generation-Skipping Transfer) Tax Return.

On appointment, the administrator's duty of care will require you to insure the estate, typically with property and liability insurance on real property, automobiles, and personal property of significant value. Decedent's contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

We are not insurance experts, and you cannot rely on our insurance advice. These suggestions may not be appropriate or adequate in your situation, and we offer them only to help you start a conversation with your insurance agent.

Unless you describe the necessary insurance with great specificity, an insurance agent is not liable for inadequate coverage. It may be wise to have an expert investigate the estate's insurance situation and analyze coverage, cost, insurable risks, and exposures to loss. Before you sign, we can review any insurance analysis contract.

You will be responsible for calendaring and for preparing all of Decedent's and the estate's gift and income tax returns. Most clients use a certified public accountant to keep the estate's fiduciary accounts, prepare tax returns, and complete Schedule K-1 (Form 1041) (to report each beneficiary's share of income, deductions, and credits).

With Decedent's death, the beneficiaries receive many assets having a new income tax basis. Generally speaking, the income tax basis for most assets will be adjusted to the values shown on the federal estate tax return or, if no such return, then as shown on the statutory inventory that will be prepared. Most retirement benefits do not receive an adjusted basis. Death benefits from those plans and life insurance are not controlled by a will but are controlled by

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beneficiary designations. These assets are usually referred to as "nonprobate assets." Taxation of retirement benefits is a matter for you to discuss with the person who prepares income tax returns for the estate.

Before we begin, we must deal with an important ethical matter to avoid questions of conflicts of interest. As independent administrator, only you will be a client of this firm for matters related to the estate. While this may appear obvious, there are many instances in which family members and other beneficiaries believe that a lawyer represents "the estate" directly and thus represents them indirectly. This is not the case. To avoid these conflicts, it is the policy of this firm to recommend that they obtain the advice and services of independent attorneys of their own choosing.

As we go along, you will receive copies and information regarding the estate. Please provide affected family members and beneficiaries with updates on a regular basis. In doing so, please make it clear that this firm represents only you.

We are not now aware of any conflicts that exist or any facts that would create a conflict, although that possibility always exists. If you become aware of any conflict relating to this estate, your service as a fiduciary, or anything affecting our representation, you must call it to our attention.

Please understand that to protect your interests in the event of my death, disability, or retirement, it may be necessary or appropriate for another lawyer or a staff member of this firm, a personal representative (including someone acting under a power of attorney), or another lawyer who is retained by any such person to have access to your file and records in order to contact you to determine appropriate handling of your matters and of your files and to make an appropriate referral (subject to your approval) to other attorneys for future handling. In that regard, you grant permission and waive all privileges solely to the extent necessary or appropriate for those purposes.

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Furthermore, in the event of my death, disability, or retirement, if further services are required in connection with this representation and you engage another lawyer to perform those services, you expressly authorize the division of fees based on the proportion of the work done or responsibilities assumed by this firm and by your new attorney. Such division specifically authorizes the payment of fees and expenses to my estate, personal representatives, and heirs.

With respect to documents provided by you as well as original documents generated in connection with this representation, those that are not filed with the court will be returned to you. This firm is entitled to retain copies of all such documents as well as all other materials used in connection with the representation. All other documents, including notes and the remaining contents of your file, are attorney work product and are owned by the firm. Of course, during our representation of you and for as long thereafter as we retain any of such items, we will make your files available to you for inspection and copying.

Please note that we may destroy any of your files at any time with your written consent and, in any event, after one year following written notice to you sent by regular mail to your last known address as reflected in our records. No further notice to you will be required before such destruction.

Enclosed is a copy of the Texas Lawyer's Creed. This mandate for professionalism was promulgated by the Supreme Court of Texas and the Texas Court of Criminal Appeals in 1989. All lawyers and members of our staff do our best to adhere to the high standards it sets for the lawyers of Texas. We invite your questions and comments regarding that creed and your perception of our adherence to its objectives.

We all take seriously our obligation to maintain the highest standards of ethical conduct toward our clients and others. To enforce ethical conduct, the State Bar of Texas investigates and prosecutes complaints of professional misconduct. If you have questions about this process

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or how to file a complaint, you should contact the office of the State Bar of Texas at 1-800-932-1900 toll-free for more information.

If the foregoing letter correctly reflects your understanding of our agreement, please sign both copies of this letter, retain one for your files, and return one copy in the enclosed envelope. If you have any questions about the proposed engagement, please contact me as soon as possible. Certainly, you should feel free to consult with another lawyer about the effect of signing this letter.

Thank you again for the confidence that you have expressed in me and this firm at this very difficult time. Please call me if you have any questions. Kindest regards.

Yours very truly,

[**Attorney's name**]

Enclosures
Texas Lawyer's Creed
Return envelope

The foregoing letter correctly reflects my understanding of our agreement. Dated _____.

_____

2.45

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LETTER 108—ADVISE OF DUTIES AND ACTIONS TO FOLLOW (TBA)

Enclose the indicated items.

[**Today's date**]

2.45
2.47
2.48

If to a corporate administrator, add "Attention: 2.61, 2.63" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased ("Decedent")

Dear **2.46**:

As you know, the order admitting Decedent's [will/will and codicil] to probate for this estate and authorizing independent administration was signed by the judge on **6.26**. You have qualified as independent [executor/administrator] of this estate by the filing of your oath. This also entitles you to receive letters testamentary.

These letters represent evidence of your appointment as independent [executor/administrator] and give you the full authority to act for and on behalf of the estate. Original letters are enclosed for your use. All letters show the date on which they were issued and are valid for only sixty days from that date. Do not worry if they expire before they are used since, for a modest charge, we can obtain additional letters at any time during the administration. As you need additional letters, please contact our office.

The information contained in this letter is designed to enable you to more fully appreciate the office you now hold and to provide you with guidance to assist you in carrying out your responsibilities.

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First of all, you should be aware of the meaning of the term [“executor”/“administrator”]. [An “executor” is the person appointed in the will of the decedent/An “administrator” is the person appointed by the court] to carry out the desires of the decedent as expressed in the decedent’s will and to administer the estate of the decedent. The word “independent” means that the [executor/administrator] may act independently of control by the court except for the filing of the required inventory, appraisement, and list of claims or an affidavit in lieu of inventory. Without having been categorized as “independent,” virtually all your duties and actions would be subject to prior approval by the court, since a mere [executor/administrator] is required to obtain advance approval for virtually every action. This is obviously a cumbersome and expensive process, and since you are an *independent* [executor/administrator], we will not need to seek court approval for your actions.

In your capacity as independent [executor/administrator], you are Decedent’s representative for the purposes of terminating Decedent’s affairs. This is called “administration” and requires you to locate, identify, collect, and assist in the valuation of Decedent’s assets; to prepare an inventory listing those assets; to locate and identify creditors and pay debts, expenses of administration, and taxes; and to distribute the remaining assets to the beneficiaries named in Decedent’s [will/will and codicil]. In discharging your duties, keep in mind that you are a fiduciary and that you have a duty to deal fairly with the creditors, heirs, and beneficiaries of this estate and to carefully manage the estate for their benefit. Do not commingle Decedent’s assets with your own without my knowledge and direction. Your first duty should be to take possession of Decedent’s assets, valuable papers, and records and safeguard Decedent’s property.

The [executor’s/administrator’s] duty of care requires you to insure the estate promptly, typically with property and liability insurance on real property, automobiles, and personal property of significant value. Decedent’s contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

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If you have not already, please inform each insurance agent of Decedent's date of death and your appointment as [executor/administrator] and ask for the declarations page of each policy in which Decedent has an interest, the tasks and deadlines to keep each policy in force, and a list of any coverage changes needed immediately. Please ask to be added as a named insured to Decedent's homeowner's and other insurance policies. Do not remove Decedent's name from any policy. On request, we can contact each agent for you.

If you open bank accounts and certificates of deposit for this estate, you will need an employer identification number. Please let us know if you wish for us to assist you in getting it. Also, be sure that the total estate funds at any one institution do not exceed the amount insured by the FDIC.

To avoid personal liability, you should sign documents on behalf of the estate as "**2.45**, Independent [Executor/Administrator] of the Estate of **6.02**, Deceased."

Several deadlines must be observed.

Within sixty days following the order of the court that admitted Decedent's will to probate, **6.69**, you must send notice to each beneficiary named in Decedent's will and provide them with copies of the will and order. We will prepare these notices for your signature and will send them to each of those beneficiaries. Within ninety days following that order of the court, **6.69A**, we must file a certificate regarding the notice given to the beneficiaries.

Within one month from the date the clerk first issued letters, **21.23**, notice to the general creditors of the estate must be published. We will prepare that notice and have it published in an appropriate newspaper.

Within two months from the date the clerk first issued letters, **7.35**, you must send notice to any creditors whose notes are secured by liens on real estate or on automobiles or other personal property. If you will provide names and addresses, we will prepare these notices for your

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signature and will send them to each of those creditors. We must file your affidavit regarding notices to secured creditors, and we will prepare that for your signature.

Within ninety days after you qualified as independent [executor/administrator], **6.85**, we must file an inventory, appraisement, and list of claims, including proper and complete descriptions of the various assets with accurate evaluations. It is possible to obtain an extension of time for filing this inventory. If it is necessary to file so-called death tax returns, we will want to coordinate this inventory with the United States Estate (and Generation-Skipping Transfer) Tax Return, and we will request this extension. Although the inventory must always be prepared, it need not always be filed. Sometimes it is possible to file an affidavit in lieu of the inventory.

If the value of Decedent's gross estate (all of Decedent's separate property [**include if D was married:** plus half the community property] plus the value of certain lifetime transfers) exceeds $**26.21** on the date of death, a federal estate tax return must be filed and estate taxes paid within nine months after the date of death, **26.28**. [**Include if D was married:** In smaller estates, the surviving spouse may wish to file an estate tax return to elect portability of the deceased spouse's unused exclusion ("DSUE") amount.] For purposes of that return, Decedent's assets are valued as of the date of death. The preparation of that return is not a part of our regular service and is subject to a separate agreement for payment of additional fees and expenses.

Include the following paragraph if disclaimers appear necessary for postmortem tax or other planning.

Nine months after the date of death, **26.28**, is also the deadline to file a qualified disclaimer. The goal of a disclaimer is to pass assets from the named beneficiary into the hands of an alternate beneficiary—for example, the Family Trust—in order to minimize tax or other adverse consequences of the asset's passing to the "wrong" beneficiary. For the disclaimer to qualify, the original beneficiary must not have assumed any aspect of ownership of the dis-

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claimed assets. For example, if the surviving spouse files a claim with the insurance company, receives a check for the insurance proceeds, and places that check in that spouse's personal account, the surviving spouse has accepted that gift and the surviving spouse's disclaimer option is lost. Likewise, if a child is named as the primary beneficiary of a retirement plan or an IRA and, following the parent owner's death, does an "IRA rollover" of the deceased parent's funds into a new IRA in the child's name, the child has effectively accepted that gift and the disclaimer option is again precluded. As these examples illustrate, before you or any other beneficiary collects an asset, changes title on an account, applies for insurance benefits, or makes an IRA rollover, you should contact a qualified advisor to discuss the tax and other issues involved in these decisions.

Include the following paragraph if D was not married.

Decedent's final federal income tax return (Form 1040), covering the period beginning on January 1 and ending on the date of Decedent's death, must be prepared and filed if Decedent had a certain minimum amount of gross income. If one is due, it must be filed and the taxes must be paid on or before April 15 of the year following Decedent's death.

Include the following paragraph if income tax return is to be filed for D's estate.

A fiduciary income tax return for income of Decedent's estate (Form 1041) will be required in all years in which the income of Decedent's estate exceeds $600. The beginning date of the first year is the date of Decedent's death, and it may end on December 31 or at the end of any other month, provided that it does not extend beyond one year from the date of Decedent's death.

Continue with the following.

You will be responsible for calendaring and for preparing all of Decedent's and the estate's gift and income tax returns. Most clients use a certified public accountant to keep the

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estate's fiduciary accounts, prepare tax returns, and complete Schedule K-1 (Form 1041) (to report each beneficiary's share of income, deductions, and credits).

With Decedent's death, the beneficiaries receive many assets having a new income tax basis. Generally speaking, the income tax basis for most assets will be adjusted to the values shown on the federal estate tax return or, if no such return, then as shown on the statutory inventory that will be prepared. Most retirement benefits do not receive an adjusted basis. Death benefits from those plans and life insurance are not controlled by a will but are controlled by beneficiary designations. These assets are usually referred to as "nonprobate assets." Taxation of retirement benefits is a matter for you to discuss with the person who prepares income tax returns for the estate.

If this estate will exceed $**26.21**, PLEASE do not transfer *any* assets to anyone without consulting with us.

After all known debts and taxes of Decedent and of Decedent's estate have been paid, you may then distribute the remaining assets to the appropriate beneficiaries. It is normal for you to feel a great deal of moral pressure to pay all debts as soon as possible. It will be very helpful to us if you will resist this urge until we have a complete list of those debts and a clear financial picture of the estate. PLEASE cooperate with us about these debts.

By way of a partial summary, the administration of this estate is an essential and very important process. It clears title to real estate. It settles legitimate debts (and wipes out others). It establishes a new income tax basis for Decedent's property [**include if D was married:** as well as for the community property interest of the surviving spouse]. It permits clear title distribution of property to the persons entitled to receive it under the terms of the will.

To the extent that you elect to handle matters directly, it is very important for you to keep us advised and to furnish copies of all outgoing and incoming correspondence and other documents, especially matters dealing with the Internal Revenue Service.

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To assist you in properly performing your duties, we will need to obtain a great deal of additional information, and we will need to work together very closely in the coming months. For your records, copies of all documents and correspondence to date are enclosed, and we will send future correspondence and other documents as they are prepared. Please contact me if you have any questions concerning this letter, your duties, or the future procedures.

We look forward to working closely with you. Kindest regards.

Yours very truly,

[**Attorney's name**]

Enclosures
Letters [testamentary/of administration]
[**List of copies of other documents and correspondence, e.g., application, proof, order, oath**]

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LETTER 109—ADVISE OF DUTIES AND ACTIONS TO FOLLOW (IBA)

Enclose the indicated items.

[**Today's date**]

2.45
2.47
2.48

If to a corporate administrator, add "Attention: 2.61, 2.63" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased ("Decedent")

Dear **2.46**:

As you know, the order authorizing independent administration and letters of administration was signed by the judge on **6.26**. You have qualified as independent administrator of this estate by the filing of your oath. This also entitles you to receive letters of administration.

These letters represent evidence of your appointment as independent administrator and give you the full authority to act for and on behalf of the estate. Original letters are enclosed for your use. All letters show the date on which they were issued and are valid for only sixty days from that date. Do not worry if they expire before they are used since, for a modest charge, we can obtain additional letters at any time during the administration. As you need additional letters, please contact our office.

The information contained in this letter is designed to enable you to more fully appreciate the office you now hold and to provide you with guidance to assist you in carrying out your responsibilities.

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First of all, you should be aware of the meaning of the term "administrator." An "administrator" is the person appointed by the court to administer the estate of the decedent. The word "independent" means that the administrator may act independently of control by the court except for the filing of the required inventory, appraisement, and list of claims or an affidavit in lieu of inventory. Without having been categorized as "independent," virtually all your duties and actions would be subject to prior approval by the court, since a mere administrator is required to obtain advance approval for virtually every action. This is obviously a cumbersome and expensive process, and since you are an *independent* administrator, we will not need to seek court approval for your actions.

In your capacity as independent administrator, you are Decedent's representative for the purposes of terminating Decedent's affairs. This is called "administration" and requires you to locate, identify, collect, and assist in the valuation of Decedent's assets; to prepare an inventory listing those assets; to locate and identify creditors and pay debts, expenses of administration, and taxes; and to distribute the remaining assets to Decedent's legal heirs. In discharging your duties, keep in mind that you are a fiduciary and that you have a duty to deal fairly with the creditors and heirs of this estate and to carefully manage the estate for their benefit. Do not commingle Decedent's assets with your own without my knowledge and direction. Your first duty should be to take possession of Decedent's assets, valuable papers, and records and safeguard Decedent's property.

The independent administrator's duty of care requires you to insure the estate promptly, typically with property and liability insurance on real property, automobiles, and personal property of significant value. Decedent's contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

If you have not already, please inform each insurance agent of Decedent's date of death and your appointment as independent administrator and ask for the declarations page of each policy in which Decedent has an interest, the tasks and deadlines to keep each policy in force,

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and a list of any coverage changes needed immediately. Please ask to be added as a named insured to Decedent's homeowner's and other insurance policies. Do not remove Decedent's name from any policy. On request, we can contact each agent for you.

If you open bank accounts and certificates of deposit for this estate, you will need an employer identification number. Please let us know if you wish for us to assist you in getting it. Also, be sure that the total estate funds at any one institution do not exceed the amount insured by the FDIC.

To avoid personal liability, you should sign documents on behalf of the estate as "**2.45**, Independent Administrator of the Estate of **6.02**, Deceased."

Several deadlines must be observed.

Within one month from the date the clerk first issued letters, **21.23**, notice to the general creditors of the estate must be published. We will prepare that notice and have it published in an appropriate newspaper.

Within two months from the date the clerk first issued letters, **7.35**, you must send notice to any creditors whose notes are secured by liens on real estate or on automobiles or other personal property. If you will provide names and addresses, we will prepare these notices for your signature and will send them to each of those creditors. We must file your affidavit regarding notices to secured creditors, and we will prepare that for your signature.

Within ninety days after you qualified as independent administrator, **6.85**, we must file an inventory, appraisement, and list of claims, including proper and complete descriptions of the various assets with accurate evaluations. It is possible to obtain an extension of time for filing this inventory. If it is necessary to file so-called death tax returns, we will want to coordinate this inventory with the United States Estate (and Generation-Skipping Transfer) Tax Return, and we will request this extension. Although the inventory must always be prepared, it need not always be filed. Sometimes it is possible to file an affidavit in lieu of the inventory.

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If the value of Decedent's gross estate (all of Decedent's separate property [**include if D was married:** plus half the community property] plus the value of certain lifetime transfers) exceeds $**26.21** on the date of death, a federal estate tax return must be filed and estate taxes paid within nine months after the date of death, **26.28**. [**Include if D was married:** In smaller estates, the surviving spouse may wish to file an estate tax return to elect portability of the deceased spouse's unused exclusion ("DSUE") amount.] For purposes of that return, Decedent's assets are valued as of the date of death. The preparation of that return is not a part of our regular service and is subject to a separate agreement for payment of additional fees and expenses.

Include the following paragraph if disclaimers appear necessary for postmortem tax or other planning.

Nine months after the date of death, **26.28**, is also the deadline to file a qualified disclaimer. The goal of a disclaimer is to pass assets from the named beneficiary into the hands of an alternate beneficiary—for example, the Family Trust—in order to minimize tax or other adverse consequences of the asset's passing to the "wrong" beneficiary. For the disclaimer to qualify, the original beneficiary must not have assumed any aspect of ownership of the disclaimed assets. For example, if the surviving spouse files a claim with the insurance company, receives a check for the insurance proceeds, and places that check in that spouse's personal account, the surviving spouse has accepted that gift and the surviving spouse's disclaimer option is lost. Likewise, if a child is named as the primary beneficiary of a retirement plan or an IRA and, following the parent owner's death, does an "IRA rollover" of the deceased parent's funds into a new IRA in the child's name, the child has effectively accepted that gift and the disclaimer option is again precluded. As these examples illustrate, before you or any other beneficiary collects an asset, changes title on an account, applies for insurance benefits, or makes an IRA rollover, you should contact a qualified advisor to discuss the tax and other issues involved in these decisions.

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Include the following paragraph if D was not married.

Decedent's final federal income tax return (Form 1040), covering the period beginning on January 1 and ending on the date of Decedent's death, must be prepared and filed if Decedent had a certain minimum amount of gross income. If one is due, it must be filed and the taxes must be paid on or before April 15 of the year following Decedent's death.

Include the following paragraph if income tax return is to be filed for D's estate.

A fiduciary income tax return for income of Decedent's estate (Form 1041) will be required in all years in which the income of Decedent's estate exceeds $600. The beginning date of the first year is the date of Decedent's death, and it may end on December 31 or at the end of any other month, provided that it does not extend beyond one year from the date of Decedent's death.

Continue with the following.

You will be responsible for calendaring and for preparing all of Decedent's and the estate's gift and income tax returns. Most clients use a certified public accountant to keep the estate's fiduciary accounts, prepare tax returns, and complete Schedule K-1 (Form 1041) (to report each beneficiary's share of income, deductions, and credits).

With Decedent's death, the beneficiaries receive many assets having a new income tax basis. Generally speaking, the income tax basis for most assets will be adjusted to the values shown on the federal estate tax return or, if no such return, then as shown on the statutory inventory that will be prepared. Most retirement benefits do not receive an adjusted basis. Death benefits from those plans and life insurance are not controlled by the laws of intestacy but are controlled by beneficiary designations. These assets are usually referred to as "nonprobate assets." Taxation of retirement benefits is a matter for you to discuss with the person who prepares income tax returns for the estate.

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If this estate will exceed $**26.21**, PLEASE do not transfer *any* assets to anyone without consulting with us.

After all known debts and taxes of Decedent and of Decedent's estate have been paid, you may then distribute the remaining assets to the legal heirs. It is normal for you to feel a great deal of moral pressure to pay all debts as soon as possible. It will be very helpful to us if you will resist this urge until we have a complete list of those debts and a clear financial picture of the estate. PLEASE cooperate with us about these debts.

By way of a partial summary, the administration of this estate is an essential and very important process. It clears title to real estate. It settles legitimate debts (and wipes out others). It establishes a new income tax basis for Decedent's property [**include if D was married:** as well as for the community property interest of the surviving spouse]. It permits clear title distribution of property to the heirs entitled to receive it.

To the extent that you elect to handle matters directly, it is very important for you to keep us advised and to furnish copies of all outgoing and incoming correspondence and other documents, especially matters dealing with the Internal Revenue Service.

To assist you in properly performing your duties, we will need to obtain a great deal of additional information, and we will need to work together very closely in the coming months. For your records, copies of all documents and correspondence to date are enclosed, and we will send future correspondence and other documents as they are prepared. Please contact me if you have any questions concerning this letter, your duties, or the future procedures.

We look forward to working closely with you. Kindest regards.

Yours very truly,

[**Attorney's name**]

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Enclosures

Letters of administration

[**List copies of other documents and correspondence, e.g., application, proof, order, oath**]

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LETTER 110—FORWARD DISTRIBUTION TO HEIRS AND BENEFICIARIES

Enclose the check and two copies of Receipt and Release (Form 30).
Send a copy of this letter and of the enclosures to each client.

[**Today's date**]

RESTRICTED DELIVERY—SIGNATURE REQUIRED

Select one of the following.

[REGISTERED/CERTIFIED] MAIL NO. [**number**]
RETURN RECEIPT REQUESTED

Or

[**Name of delivery service**] TRACKING NO. [**number**]
PROOF OF DELIVERY REQUESTED

Continue with the following.

3.03 or 3.37 or 3.58 or 3.72
3.04 or 3.40 or 3.59 or 3.73
3.05 or 3.41 or 3.60 or 3.74

Re: Estate of **6.02**, Deceased

Obtain name for salutation from attorney.

Dear [**name**]:

Enclosed with this letter you will find a check in the amount of $[**amount**] representing your share of the distributions from this estate. Also enclosed are two copies of a Receipt and Release. Please sign the original and return it to me in the enclosed envelope for filing with the Court. The other copy is for your file.

I recommend that you promptly cash this check.

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Yours very truly,

[**Attorney's name**]

Enclosures
Receipt and Release
Check

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LETTER 111—UNCLAIMED FUNDS TO COMPTROLLER

Enclose the check and a copy of Application to Withdraw Funds from Registry of Court for Payment to Comptroller of Public Accounts and Order thereon (Form 116). Send a copy of the letter, but not of the enclosures, to each client.

[**Today's date**]

[REGISTERED/CERTIFIED] MAIL NO. [**number**]
RETURN RECEIPT REQUESTED

Comptroller of Public Accounts
P.O. Box 13528
Capitol Station
Austin, Texas 78711-3528

Re: Estate of **6.02**, Deceased
Unclaimed Property

Greetings:

This office represents the **2.85** of the above estate. The Court has approved the Application to Withdraw Funds from Registry of Court for Payment to Comptroller of Public Accounts. A copy of the application and order are attached.

Specifically, the funds being transmitted to the Comptroller belong to heirs to the above estate who cannot be located but are entitled to monies. These heirs and their last known addresses are as follows:

List the persons and the amount to which each is entitled, and show the total amount.

Enclosed is a check for the above total ($[**amount**]). Please provide a receipt to be filed with the Court.

If you have any questions or concerns, please let me hear from you.

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Yours very truly,

[**Attorney's name**]

Enclosures
Application and Order
Check

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LETTER 112—ORDER COPIES OF WILL PREVIOUSLY PROBATED IN ANOTHER STATE OR COUNTRY

Determine the appropriate charge for the copies and enclose a check for that amount. Send a copy of this letter, but not of the enclosure, to each client.

Original signatures are not required for recordation in the Texas deed records (RW).

[**Today's date**]

2.02G
2.02H
2.02I

Re: **2.02E**

Greetings:

Please prepare and send me copies of the following items in connection with the foregoing estate:

1. The will and any codicils

2. The order admitting the will and any codicils to probate

Include item 3 if ancillary letters testamentary are sought.

3. Letters testamentary

Please have these copies attested by [**include if applicable:** and with the original signature of] the official who has custody of the will or who is in charge of probate records. Please include a certificate [**include if applicable:** with the original signature] of the judge or presiding magistrate of the court stating that the attestation is in proper form. Please affix the court seal, if a court seal exists.

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Payment is enclosed. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosure
Check

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LETTER 113—RECORD WILL PREVIOUSLY PROBATED IN ANOTHER STATE OR COUNTRY

Determine the appropriate recording charges and enclose a check for that amount.

Send a copy of this letter, but not of the enclosures, to each client.

[**Today's date**]

County Clerk of **7.11** County
Courthouse
[**City in which courthouse located**], Texas [**zip**]

Re: Estate of **6.02**, Deceased

Greetings:

Enclosed with this letter you will find authenticated copies of documents relating to the above estate to be recorded, pursuant to Section 503.001 of the Texas Estates Code, in the deed or real property records of your county, together with payment for your recording charges. Please return these recorded documents to me. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosures
Check
[**List each document**]

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LETTER 114—CONFIRM REPRESENTATION AND FEE AND OUTLINE ANTICIPATED SERVICES (AP—INDEPENDENT)

Address this letter jointly to all probable independent executors and send two copies, together with a copy of the Texas Lawyer's Creed, to each. Send a copy of the letter to counsel in jurisdiction of foreign probate (6.60 of MIL).

[**Today's date**]

2.45
2.47
2.48

If to a corporate executor, add "Attention: 2.61, 2.63" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased

Dear **2.46**:

Thank you very much for employing this firm to represent you in the ancillary probate of this estate in Texas.

Receipt is hereby acknowledged of a cash payment of $**25.02D**, which will be applied to the payment of expenses incurred or for legal fees due with respect to such representation. As we agreed, the fee will be [$**25.02A**/**25.02B** percent of the gross ancillary estate as determined for federal estate tax purposes/based on time spent on your behalf, with hourly rates of $**25.02C** for attorney's time and $**25.02C** for staff time]. In addition to fees for services, you are to pay or reimburse expenses incurred on your behalf. These expenses include [**specify expenses you expect client to pay, e.g.,** filing fees; recording charges; publication of notices; appraisal fees; long-distance, facsimile, and delivery charges; photocopies; and postage].

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The above fee is for the following services:

1. Preparing the application for ancillary probate of the [will/will and codicil] and independent administration [**include if applicable:** and preparing distributee consents for independent administration]

2. Arranging for the proof necessary to have the [will/will and codicil] admitted to ancillary probate and independent administration authorized

3. Appearing in court to have the [will/will and codicil] so admitted and independent administration authorized

4. Preparing the order to be signed by the judge to admit the [will/will and codicil] to ancillary probate and authorize independent administration

5. Preparing and filing the oath of the executor

6. Preparing and arranging for the publication of notice to creditors

7. Preparing and serving notices to secured creditors

8. Preparing and sending required notices to beneficiaries

9. Preparing and filing the certificate or affidavit of notice to beneficiaries

10. Determining the nature, extent, and valuation of the estate

11. Preparing and filing the statutory inventory, appraisement, and list of claims or affidavit in lieu thereof and obtaining the judge's approval of the same

12. Determining the nature and amount of the liabilities of the estate

13. Assisting in the transfer of title to all of the decedent's assets

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14. Investigating, determining, calculating, allocating, or dealing with asset valuations and tax basis information

15. Coordinating the above matters with you as the [**include if applicable:** independent] executor of the estate and your professional advisors in **2.02J**

Administering estates in multiple jurisdictions: We understand that original probate of Decedent's will was had about **2.02C** in **2.02J** and that you qualified there as [**include if applicable:** independent] executor on **2.02D**. The court there has jurisdiction over all real or personal property physically located there, including cars and household furnishings. Because Decedent was domiciled there at death, that court likely also has original jurisdiction over all of Decedent's intangible assets, such as marketable securities, bank accounts, life insurance, and employee benefits.

Some definitions will help you better understand your duties in Texas and the necessity of coordinating with your responsibilities in other jurisdictions. "Ancillary" indicates that the decedent was not domiciled in Texas and the will was first probated in another state or country. "Ancillary probate" is the Texas proceeding acknowledging the other court's appointment of you as [**include if applicable:** independent] executor, enabling you to administer property here, typically real or personal property physically located in Texas. In contrast, most probate proceedings in Texas are original, because the decedent lived here and the will is first probated here, and most if not all assets are located here.

We will consult your advisors in **2.02J** as they request and as we think necessary. We generally will rely on your **2.02J** advisors' explanations of the law there and not conduct independent research. We will assume the accuracy of any work product your **2.02J** advisors provide us; when practical, we will use it. Finally, we assume that you will continue to serve as [**include if applicable:** independent] executor of the estate in **2.02J** for the duration of our engagement.

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If you cease to serve or someone else qualifies as the personal representative of the estate in **2.02J**, please let us know.

If Decedent left real property in still other jurisdictions, neither the Texas nor the **2.02J** court will have authority over those assets, and neither will you without ancillary probate in those other jurisdictions, too. Ancillary probate is possible in multiple jurisdictions at once. In this letter, though, "ancillary" refers to only ancillary Texas probate. Ancillary probate in other states or countries is outside the scope of this agreement.

Neither Texas nor the Internal Revenue Service imposes fewer duties on you because some or most of Decedent's assets are located elsewhere. Performing those duties may require input from advisors in each jurisdiction. For example, income in a community property state may be split with Decedent's spouse, but not income in other states. Reconciling conflicting laws may be necessary to complete the most basic of tasks, accounting for Decedent's and the estate's income. As another example, if Decedent signed a loan in one state secured by property in another, multiple state laws must be consulted to fully understand the estate's options regarding the debt.

Once Decedent's will is admitted to ancillary probate, in Texas, ancillary administration of Decedent's estate proceeds the same as original probate.

With your prior approval, we may perform other services on your behalf and for additional agreed-upon fees, such as preparing and filing the United States Estate (and Generation-Skipping Transfer) Tax Return.

On appointment, the executor's duty of care will require you to insure the estate, typically with property and liability insurance on real property, automobiles, and personal property of significant value. Decedent's contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

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We are not insurance experts, and you cannot rely on our insurance advice. These suggestions may not be appropriate or adequate in your situation, and we offer them only to help you start a conversation with your insurance agent.

Unless you describe the necessary insurance with great specificity, an insurance agent is not liable for inadequate coverage. It may be wise to have an expert investigate the estate's insurance situation and analyze coverage, cost, insurable risks, and exposures to loss. Before you sign, we can review any insurance analysis contract.

You will be responsible for calendaring and for preparing all of Decedent's and the estate's gift and income tax returns. Most clients use a certified public accountant to keep the estate's fiduciary accounts, prepare tax returns, and complete Schedule K-1 (Form 1041) (to report each beneficiary's share of income, deductions, and credits).

With Decedent's death, the beneficiaries receive many assets having a new income tax basis. Generally speaking, the income tax basis for most assets will be adjusted to the values shown on the federal estate tax return or, if no such return, then as shown on the statutory inventory that will be prepared. Most retirement benefits do not receive an adjusted basis. Death benefits from those plans and life insurance are not controlled by a will but are controlled by beneficiary designations. These assets are usually referred to as "nonprobate assets." Taxation of retirement benefits is a matter for you to discuss with the person who prepares income tax returns for the estate.

Before we begin, we must deal with an important ethical matter to avoid questions of conflicts of interest. As independent executor, only you will be a client of this firm for matters related to the estate. While this may appear obvious, there are many instances in which family members and other beneficiaries believe that a lawyer represents "the estate" directly and thus represents them indirectly. This is not the case. To avoid these conflicts, it is the policy of this

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firm to recommend that they obtain the advice and services of independent attorneys of their own choosing.

As we go along, you will receive copies and information regarding the estate. Please provide affected family members and beneficiaries with updates on a regular basis. In doing so, please make it clear that this firm represents only you.

We are not now aware of any conflicts that exist or any facts that would create a conflict, although that possibility always exists. If you become aware of any conflict relating to this estate, your service as a fiduciary, or anything affecting our representation, you must call it to our attention.

Include the following paragraph if there will be independent co-executors.

As independent co-executors, you have joint responsibility for the proper administration of this estate. For this firm to undertake this joint representation, we must insist on full and free disclosure of all information between each of you. Although there is no reason to anticipate disagreement, you may develop differences of opinion over the course of the administration. If actual conflict occurs so that we cannot represent both of you jointly, we are required to withdraw from further joint representation, and each of you then will need to obtain separate legal counsel. Should this occur, payment will be due for all unbilled services and expenses.

Continue with the following.

Please understand that to protect your interests in the event of my death, disability, or retirement, it may be necessary or appropriate for another lawyer or a staff member of this firm, a personal representative (including someone acting under a power of attorney), or another lawyer who is retained by any such person to have access to your file and records in order to contact you to determine appropriate handling of your matters and of your files and to make an appropriate referral (subject to your approval) to other attorneys for future handling. In that regard,

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you grant permission and waive all privileges solely to the extent necessary or appropriate for those purposes.

Furthermore, in the event of my death, disability, or retirement, if further services are required in connection with this representation and you engage another lawyer to perform those services, you expressly authorize the division of fees based on the proportion of the work done or responsibilities assumed by this firm and by your new attorney. Such division specifically authorizes the payment of fees and expenses to my estate, personal representatives, and heirs.

With respect to documents provided by you as well as original documents generated in connection with this representation, those that are not filed with the court will be returned to you. This firm is entitled to retain copies of all such documents as well as all other materials used in connection with the representation. All other documents, including notes and the remaining contents of your file, are attorney work product and are owned by the firm. Of course, during our representation of you and for as long thereafter as we retain any of such items, we will make your files available to you for inspection and copying.

Please note that we may destroy any of your files at any time with your written consent and, in any event, after one year following written notice to you sent by regular mail to your last known address as reflected in our records. No further notice to you will be required before such destruction.

Enclosed is a copy of the Texas Lawyer's Creed. This mandate for professionalism was promulgated by the Supreme Court of Texas and the Texas Court of Criminal Appeals in 1989. All lawyers and members of our staff do our best to adhere to the high standards it sets for the lawyers of Texas. We invite your questions and comments regarding that creed and your perception of our adherence to its objectives.

We all take seriously our obligation to maintain the highest standards of ethical conduct toward our clients and others. To enforce ethical conduct, the State Bar of Texas investigates

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and prosecutes complaints of professional misconduct. If you have questions about this process or how to file a complaint, you should contact the office of the State Bar of Texas at 1-800-932-1900 toll-free for more information.

If the foregoing letter correctly reflects your understanding of our agreement, please sign both copies of this letter, retain one for your files, and return one copy in the enclosed envelope. If you have any questions about the proposed engagement, please contact me as soon as possible. Certainly, you should feel free to consult with another lawyer about the effect of signing this letter.

Thank you again for the confidence that you have expressed in me and this firm at this very difficult time. Please call me if you have any questions. Kindest regards.

Yours very truly,

[**Attorney's name**]

Enclosures
Texas Lawyer's Creed
Return envelope

The foregoing letter correctly reflects my understanding of our agreement. Dated _____.

_____

2.45

LETTER 115—CONFIRM REPRESENTATION AND FEE AND OUTLINE ANTICIPATED SERVICES (AP—DEPENDENT)

Address this letter jointly to all probable executors and send two copies, together with a copy of the Texas Lawyer's Creed, to each. Send a copy of the letter to counsel in jurisdiction of foreign probate (**6.60** of MIL).

[**Today's date**]

2.45
2.47
2.48

If to a corporate executor, add "Attention: **2.61**, **2.63**" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased

Dear **2.46**:

Thank you very much for employing this firm to represent you in the ancillary probate of this estate in Texas.

Receipt is hereby acknowledged of a cash payment of $**25.02D**, which will be applied to the payment of expenses incurred or for legal fees due with respect to such representation. As we agreed, the fee will be [$**25.02A**/**25.02B** percent of the gross ancillary estate as determined for federal estate tax purposes/based on time spent on your behalf, with hourly rates of $**25.02C** for attorney's time and $**25.02C** for staff time]. In addition to fees for services, you are to pay or reimburse expenses incurred on your behalf. These expenses include [**specify expenses you expect client to pay, e.g.,** filing fees; recording charges; publication of notices; appraisal fees; long-distance, facsimile, and delivery charges; photocopies; and postage].

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The above fee is for the following services:

1. Preparing the application for ancillary probate of the [will/will and codicil]
2. Arranging for the proof necessary to have the [will/will and codicil] admitted to ancillary probate
3. Appearing in court to have the [will/will and codicil] so admitted
4. Preparing the order to be signed by the judge to admit the [will/will and codicil] to ancillary probate
5. Preparing and filing the oath of the executor
6. Preparing and filing any bonds required by the court
7. Preparing and arranging for the publication of notice to creditors
8. Preparing and serving notices to secured creditors
9. Preparing and sending required notices to beneficiaries
10. Preparing and filing the certificate or affidavit of notice to beneficiaries
11. Determining the nature, extent, and valuation of the estate
12. Preparing and filing the statutory inventory, appraisement, and list of claims and obtaining the judge's approval of the same
13. Determining the nature and amount of the liabilities of the estate
14. Preparing and filing the final account and other documents necessary to authorize delivery of the estate to the persons entitled to receive it
15. Assisting in the transfer of title to all of the decedent's assets

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16. Investigating, determining, calculating, allocating, or dealing with asset valuations and tax basis information

17. Coordinating the above matters with you as the executor of the estate and your professional advisors in **2.02J**

Administering estates in multiple jurisdictions: We understand that original probate of Decedent's will was had about **2.02C** in **2.02J** and that you qualified there as executor on **2.02D**. The court there has jurisdiction over all real or personal property physically located there, including cars and household furnishings. Because Decedent was domiciled there at death, that court likely also has original jurisdiction over all of Decedent's intangible assets, such as marketable securities, bank accounts, life insurance, and employee benefits.

Some definitions will help you better understand your duties in Texas and the necessity of coordinating with your responsibilities in other jurisdictions. "Ancillary" indicates that the decedent was not domiciled in Texas and the will was first probated in another state or country. "Ancillary probate" is the Texas proceeding acknowledging the other court's appointment of you as executor, enabling you to administer property here, typically real or personal property physically located in Texas. In contrast, most probate proceedings in Texas are original, because the decedent lived here and the will is first probated here, and most if not all assets are located here.

We will consult your advisors in **2.02J** as they request and as we think necessary. We generally will rely on your **2.02J** advisors' explanations of the law there and not conduct independent research. We will assume the accuracy of any work product your **2.02J** advisors provide us; when practical, we will use it. Finally, we assume that you will continue to serve as executor of the estate in **2.02J** for the duration of our engagement. If you cease to serve or someone else qualifies as the personal representative of the estate in **2.02J**, please let us know.

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If Decedent left real property in still other jurisdictions, neither the Texas nor the **2.02J** court will have authority over those assets, and neither will you without ancillary probate in those other jurisdictions, too. Ancillary probate is possible in multiple jurisdictions at once. In this letter, though, "ancillary" refers to only ancillary Texas probate. Ancillary probate in other states or countries is outside the scope of this agreement.

Neither Texas nor the Internal Revenue Service imposes fewer duties on you because some or most of Decedent's assets are located elsewhere. Performing those duties may require input from advisors in each jurisdiction. For example, income in a community property state may be split with Decedent's spouse, but not income in other states. Reconciling conflicting laws may be necessary to complete the most basic of tasks, accounting for Decedent's and the estate's income. As another example, if Decedent signed a loan in one state secured by property in another, multiple state laws must be consulted to fully understand the estate's options regarding the debt.

Once Decedent's will is admitted to ancillary probate, in Texas, ancillary administration of Decedent's estate proceeds the same as original probate.

With your prior approval, we may perform other services on your behalf and for additional agreed-upon fees, such as preparing and filing the United States Estate (and Generation-Skipping Transfer) Tax Return.

On appointment, the executor's duty of care will require you to insure the estate, typically with property and liability insurance on real property, automobiles, and personal property of significant value. Decedent's contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

We are not insurance experts, and you cannot rely on our insurance advice. These suggestions may not be appropriate or adequate in your situation, and we offer them only to help you start a conversation with your insurance agent.

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Unless you describe the necessary insurance with great specificity, an insurance agent is not liable for inadequate coverage. It may be wise to have an expert investigate the estate's insurance situation and analyze coverage, cost, insurable risks, and exposures to loss. Before you sign, we can review any insurance analysis contract.

You will be responsible for calendaring and for preparing all of Decedent's and the estate's gift and income tax returns. Most clients use a certified public accountant to keep the estate's fiduciary accounts, prepare tax returns, and complete Schedule K-1 (Form 1041) (to report each beneficiary's share of income, deductions, and credits).

If the estate is not closed within one year, it will be necessary to file annual accountings each year that the estate is still open. In some estates, there is a need to apply to the court for permission to dispose of real or personal property or to enter into a mineral lease. Occasionally an estate becomes involved in litigation. When these situations arise, the procedures are quite technical, but we will be in a position to help you with them. However, such matters will be subject to additional charges.

With Decedent's death, the beneficiaries receive many assets having a new income tax basis. Generally speaking, the income tax basis for most assets will be adjusted to the values shown on the federal estate tax return or, if no such return, then as shown on the statutory inventory that will be prepared. Most retirement benefits do not receive an adjusted basis. Death benefits from those plans and life insurance are not controlled by a will but are controlled by beneficiary designations. These assets are usually referred to as "nonprobate assets." Taxation of retirement benefits is a matter for you to discuss with the person who prepares income tax returns for the estate.

Before we begin, we must deal with an important ethical matter to avoid questions of conflicts of interest. As executor, only you will be a client of this firm for matters related to the estate. While this may appear obvious, there are many instances in which family members and

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other beneficiaries believe that a lawyer represents "the estate" directly and thus represents them indirectly. This is not the case. To avoid these conflicts, it is the policy of this firm to recommend that they obtain the advice and services of independent attorneys of their own choosing.

As we go along, you will receive copies and information regarding the estate. Please provide affected family members and beneficiaries with updates on a regular basis. In doing so, please make it clear that this firm represents only you.

We are not now aware of any conflicts that exist or any facts that would create a conflict, although that possibility always exists. If you become aware of any conflict relating to this estate, your service as a fiduciary, or anything affecting our representation, you must call it to our attention.

Include the following paragraph if there will be co-executors.

As co-executors, you have joint responsibility for the proper administration of this estate. For this firm to undertake this joint representation, we must insist on full and free disclosure of all information between each of you. Although there is no reason to anticipate disagreement, you may develop differences of opinion over the course of the administration. If actual conflict occurs so that we cannot represent both of you jointly, we are required to withdraw from further joint representation, and each of you then will need to obtain separate legal counsel. Should this occur, payment will be due for all unbilled services and expenses.

Continue with the following.

Please understand that to protect your interests in the event of my death, disability, or retirement, it may be necessary or appropriate for another lawyer or a staff member of this firm, a personal representative (including someone acting under a power of attorney), or another lawyer who is retained by any such person to have access to your file and records in order to contact you to determine appropriate handling of your matters and of your files and to make an appro-

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priate referral (subject to your approval) to other attorneys for future handling. In that regard, you grant permission and waive all privileges solely to the extent necessary or appropriate for those purposes.

Furthermore, in the event of my death, disability, or retirement, if further services are required in connection with this representation and you engage another lawyer to perform those services, you expressly authorize the division of fees based on the proportion of the work done or responsibilities assumed by this firm and by your new attorney. Such division specifically authorizes the payment of fees and expenses to my estate, personal representatives, and heirs.

With respect to documents provided by you as well as original documents generated in connection with this representation, those that are not filed with the court will be returned to you. This firm is entitled to retain copies of all such documents as well as all other materials used in connection with the representation. All other documents, including notes and the remaining contents of your file, are attorney work product and are owned by the firm. Of course, during our representation of you and for as long thereafter as we retain any of such items, we will make your files available to you for inspection and copying.

Please note that we may destroy any of your files at any time with your written consent and, in any event, after one year following written notice to you sent by regular mail to your last known address as reflected in our records. No further notice to you will be required before such destruction.

Enclosed is a copy of the Texas Lawyer's Creed. This mandate for professionalism was promulgated by the Supreme Court of Texas and the Texas Court of Criminal Appeals in 1989. All lawyers and members of our staff do our best to adhere to the high standards it sets for the lawyers of Texas. We invite your questions and comments regarding that creed and your perception of our adherence to its objectives.

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We all take seriously our obligation to maintain the highest standards of ethical conduct toward our clients and others. To enforce ethical conduct, the State Bar of Texas investigates and prosecutes complaints of professional misconduct. If you have questions about this process or how to file a complaint, you should contact the office of the State Bar of Texas at 1-800-932-1900 toll-free for more information.

If the foregoing letter correctly reflects your understanding of our agreement, please sign both copies of this letter, retain one for your files, and return one copy in the enclosed envelope. If you have any questions about the proposed engagement, please contact me as soon as possible. Certainly, you should feel free to consult with another lawyer about the effect of signing this letter.

Thank you again for the confidence that you have expressed in me and this firm at this very difficult time. Please call me if you have any questions. Kindest regards.

Yours very truly,

[**Attorney's name**]

Enclosures
Texas Lawyer's Creed
Return envelope

The foregoing letter correctly reflects my understanding of our agreement. Dated _____.

_____

2.45

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LETTER 116—ADVISE OF DUTIES AND ACTIONS TO FOLLOW (AP—INDEPENDENT)

Enclose the indicated items. Send a copy of the letter to counsel in jurisdiction of foreign probate (6.60 of MIL).

[**Today's date**]

2.45
2.47
2.48

If to a corporate executor, add "Attention: **2.61**, **2.63**" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased ("Decedent")

Dear **2.46**:

As you know, the order admitting Decedent's [will/will and codicil] to ancillary probate in Texas and authorizing independent administration was signed by the judge on **6.26**. You have qualified as independent executor of this estate by the filing of your oath. This also entitles you to receive ancillary letters testamentary.

These letters represent evidence of your appointment as independent executor and give you the full authority to act for and on behalf of the estate. Original letters are enclosed for your use. All letters show the date on which they were issued and are valid for only sixty days from that date. Do not worry if they expire before they are used since, for a modest charge, we can obtain additional letters at any time during the administration. As you need additional letters, please contact our office.

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The information contained in this letter is designed to enable you to more fully appreciate the office you now hold and to provide you with guidance to assist you in carrying out your responsibilities.

First of all, you should be aware of the meaning of the term "executor." An "executor" is the person appointed in the will of the decedent to carry out the desires of the decedent as expressed in that will and to administer the estate of the decedent.

"Ancillary" indicates that the decedent was not domiciled in Texas and the will was first probated in another state or country. "Ancillary probate" is the Texas proceeding acknowledging the other court's appointment of you as [**include if applicable:** independent] executor, enabling you to administer property here, typically real or personal property physically located in Texas. The word "independent" means that the executor may act independently of control by the court except for the filing of the required inventory, appraisement, and list of claims or an affidavit in lieu of inventory. Without having been categorized as "independent," virtually all your duties and actions would be subject to prior approval by the court, since a mere executor is required to obtain advance approval for virtually every action. This is obviously a cumbersome and expensive process, and since you are an *independent* executor, we will not need to seek court approval for your actions.

In your capacity as independent executor, you are Decedent's representative for the purposes of terminating Decedent's affairs. This is called "administration" and requires you to locate, identify, collect, and assist in the valuation of Decedent's assets; to prepare an inventory listing those assets; to locate and identify creditors and pay debts, expenses of administration, and taxes; and to distribute the remaining assets to the beneficiaries named in Decedent's [will/will and codicil]. In discharging your duties, keep in mind that you are a fiduciary and that you have a duty to deal fairly with the creditors, heirs, and beneficiaries of this estate and to carefully manage the estate for their benefit. Do not commingle Decedent's assets with your own

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without my knowledge and direction. Your first duty should be to take possession of Decedent's assets, valuable papers, and records and safeguard Decedent's property.

Neither Texas nor the Internal Revenue Service imposes fewer duties on you because some or most of Decedent's assets are located elsewhere. It is important that we coordinate the above matters with you as [**include if applicable:** independent] executor of the estate in **2.02J** and your advisors there. We will communicate freely with your other advisors and ask that you do, too. Please take time now to reread our engagement agreement regarding the considerations in administering estates in multiple jurisdictions.

The independent executor's duty of care requires you to insure the estate promptly, typically with property and liability insurance on real property, automobiles, and personal property of significant value. Decedent's contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

If you have not already, please inform each insurance agent of Decedent's date of death and your appointment as independent executor and ask for the declarations page of each policy in which Decedent has an interest, the tasks and deadlines to keep each policy in force, and a list of any coverage changes needed immediately. Please ask to be added as a named insured to Decedent's homeowner's and other insurance policies. Do not remove Decedent's name from any policy. On request, we can contact each agent for you.

If you open bank accounts and certificates of deposit for this estate, you will need an employer identification number. Please let us know if you wish for us to assist you in getting it, and we will coordinate that with your **2.02J** advisors. Also, be sure that the total estate funds at any one institution do not exceed the amount insured by the FDIC.

To avoid personal liability, you should sign documents on behalf of the estate as "**2.45**, Independent Executor of the Estate of **6.02**, Deceased."

Several deadlines must be observed.

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Within sixty days following the date Decedent's will was recorded in the probate docket, **6.69**, you must send notice to each beneficiary named in Decedent's will and provide them with copies of the will and order. We will prepare these notices for your signature and will send them to each of those beneficiaries. Within ninety days after the will was recorded, **6.69A**, we must file an affidavit regarding the notice given to the beneficiaries.

Within one month from the date the clerk issued ancillary letters testamentary, **21.23**, notice to the general creditors of the estate must be published. We will prepare that notice and have it published in an appropriate newspaper.

Within two months after the clerk issued ancillary letters testamentary, **7.35**, you must send notice to any creditors whose notes are secured by liens on real estate or on automobiles or other personal property. If you will provide names and addresses, we will prepare these notices for your signature and will send them to each of those creditors. We must file your affidavit regarding notices to secured creditors, and we will prepare that for your signature.

Within ninety days after you qualified as an ancillary executor, **6.85**, we must file an inventory, appraisement, and list of claims, including proper and complete descriptions of the various assets with accurate evaluations. It is possible to obtain an extension of time for filing this inventory. If it is necessary to file so-called death tax returns, we will want to coordinate this inventory with the United States Estate (and Generation-Skipping Transfer) Tax Return, and we will request this extension. Although the inventory must always be prepared, it need not always be filed. Sometimes it is possible to file an affidavit in lieu of the inventory.

If the value of Decedent's gross estate (all of Decedent's separate property [**include if D was married:** plus half the community property] plus the value of certain lifetime transfers) exceeds $**26.21** on the date of death, a federal estate tax return must be filed and estate taxes paid within nine months after the date of death, **26.28**. [**Include if D was married:** In smaller estates, the surviving spouse may wish to file an estate tax return to elect portability of the

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deceased spouse's unused exclusion ("DSUE") amount.] For purposes of that return, Decedent's assets are valued as of the date of death. The preparation of that return is not a part of our regular service and is subject to a separate agreement for payment of additional fees and expenses.

Include the following paragraph if disclaimers appear necessary for postmortem tax or other planning.

Nine months after the date of death, **26.28**, is also the deadline to file a qualified disclaimer. The goal of a disclaimer is to pass assets from the named beneficiary into the hands of an alternate beneficiary—for example, the Family Trust—in order to minimize tax or other adverse consequences of the asset's passing to the "wrong" beneficiary. For the disclaimer to qualify, the original beneficiary must not have assumed any aspect of ownership of the disclaimed assets. For example, if the surviving spouse files a claim with the insurance company, receives a check for the insurance proceeds, and places that check in that spouse's personal account, the surviving spouse has accepted that gift and the surviving spouse's disclaimer option is lost. Likewise, if a child is named as the primary beneficiary of a retirement plan or an IRA and, following the parent owner's death, does an "IRA rollover" of the deceased parent's funds into a new IRA in the child's name, the child has effectively accepted that gift and the disclaimer option is again precluded. As these examples illustrate, before you or any other beneficiary collects an asset, changes title on an account, applies for insurance benefits, or makes an IRA rollover, you should contact a qualified advisor to discuss the tax and other issues involved in these decisions.

Include the following paragraph if D was not married.

Decedent's final federal income tax return (Form 1040), covering the period beginning on January 1 and ending on the date of Decedent's death, must be prepared and filed if Decedent had a certain minimum amount of gross income. If one is due, it must be filed and the taxes must be paid on or before April 15 of the year following Decedent's death.

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Include the following paragraph if income tax return is to be filed for D's estate.

A fiduciary income tax return for income of Decedent's estate (Form 1041) will be required in all years in which the income of Decedent's estate exceeds $600. The beginning date of the first year is the date of Decedent's death, and it may end on December 31 or at the end of any other month, provided that it does not extend beyond one year from the date of Decedent's death.

Continue with the following.

You will be responsible for calendaring and for preparing all of Decedent's and the estate's gift and income tax returns. Most clients use a certified public accountant to keep the estate's fiduciary accounts, prepare tax returns, and complete Schedule K-1 (Form 1041) (to report each beneficiary's share of income, deductions, and credits).

With Decedent's death, the beneficiaries receive many assets having a new income tax basis. Generally speaking, the income tax basis for most assets will be adjusted to the values shown on the federal estate tax return or, if no such return, then as shown on the statutory inventory that will be prepared. Most retirement benefits do not receive an adjusted basis. Death benefits from those plans and life insurance are not controlled by a will but are controlled by beneficiary designations. These assets are usually referred to as "nonprobate assets." Taxation of retirement benefits is a matter for you to discuss with the person who prepares income tax returns for the estate.

If this estate will exceed $**26.21**, PLEASE do not transfer *any* assets to anyone without consulting with us.

After all known debts and taxes of Decedent and of Decedent's estate have been paid, you may then distribute the remaining assets to the appropriate beneficiaries. It is normal for you to feel a great deal of moral pressure to pay all debts as soon as possible. It will be very

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helpful to us if you will resist this urge until we have a complete list of those debts and a clear financial picture of the estate. PLEASE cooperate with us about these debts.

By way of a partial summary, the administration of this estate is an essential and very important process. It clears title to real estate. It settles legitimate debts (and wipes out others). It establishes a new income tax basis for Decedent's property [**include if D was married:** as well as for the community property interest of the surviving spouse]. It permits clear title distribution of property to the persons entitled to receive it under the terms of the will.

To the extent that you elect to handle matters directly, it is very important for you to keep us advised and to furnish copies of all outgoing and incoming correspondence and other documents, especially matters dealing with the Internal Revenue Service.

To assist you in properly performing your duties, we will need to obtain a great deal of additional information, and we will need to work together very closely in the coming months. For your records, copies of all documents and correspondence to date are enclosed, and we will send future correspondence and other documents as they are prepared. Please contact me if you have any questions concerning this letter, your duties, or the future procedures.

We look forward to working closely with you. Kindest regards.

Yours very truly,

[**Attorney's name**]

Enclosures
Ancillary letters testamentary
[**List copies of other documents and correspondence, e.g., application, proof, order, oath**]

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LETTER 117—ADVISE OF DUTIES AND ACTIONS TO FOLLOW (AP—DEPENDENT)

Enclose the indicated items. Send a copy of the letter to counsel in jurisdiction of foreign probate (6.60 of MIL).

[**Today's date**]

2.45
2.47
2.48

If to a corporate executor, add "Attention: **2.61**, **2.63**" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased ("Decedent")

Dear **2.46**:

As you know, the order admitting Decedent's [will/will and codicil] to ancillary probate in Texas was signed by the judge on **6.26**. You have qualified as executor of this estate by the filing of your oath. This also entitles you to receive ancillary letters testamentary.

These letters represent evidence of your appointment as executor and give you authority, subject to appropriate orders of the court, to act for and on behalf of the estate. Original letters are enclosed for your use. All letters show the date on which they were issued and are valid for only sixty days from that date. Do not worry if they expire before they are used since, for a modest charge, we can obtain additional letters at any time during the administration. As you need additional letters, please contact our office.

The information contained in this letter is designed to enable you to more fully appreciate the office you now hold and to provide you with guidance to assist you in carrying out your responsibilities.

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First of all, you should be aware of the meaning of the term "executor." An "executor" is the person appointed in the will of the decedent to carry out the desires of the decedent as expressed in that will and to administer the estate of the decedent.

"Ancillary" indicates that the decedent was not domiciled in Texas and the will was first probated in another state or country. "Ancillary probate" is the Texas proceeding acknowledging the other court's appointment of you as executor, enabling you to administer property here, typically real or personal property physically located in Texas.

In your capacity as executor, you are Decedent's representative for the purposes of terminating Decedent's affairs. This is called "administration" and requires you to locate, identify, collect, and assist in the valuation of Decedent's assets; to prepare an inventory listing those assets; to locate and identify creditors and pay debts, expenses of administration, and taxes; and to distribute the remaining assets to the beneficiaries named in Decedent's [will/will and codicil]. In discharging your duties, keep in mind that you are a fiduciary and that you have a duty to deal fairly with the creditors, heirs, and beneficiaries of this estate and to carefully manage the estate for their benefit. Do not commingle Decedent's assets with your own without my knowledge and direction. Your first duty should be to take possession of Decedent's assets, valuable papers, and records and safeguard Decedent's property.

Neither Texas nor the Internal Revenue Service imposes fewer duties on you because some or most of Decedent's assets are located elsewhere. It is important that we coordinate the above matters with you as executor of the estate in **2.02J** and your advisors there. We will communicate freely with your other advisors and ask that you do, too. Please take time now to reread our engagement agreement regarding the considerations in administering estates in multiple jurisdictions.

The executor's duty of care requires you to insure the estate promptly, typically with property and liability insurance on real property, automobiles, and personal property of signif-

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icant value. Decedent's contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

If you have not already, please inform each insurance agent of Decedent's date of death and your appointment as executor and ask for the declarations page of each policy in which Decedent has an interest, the tasks and deadlines to keep each policy in force, and a list of any coverage changes needed immediately. Please ask to be added as a named insured to Decedent's homeowner's and other insurance policies. Do not remove Decedent's name from any policy. On request, we can contact each agent for you.

If you open bank accounts and certificates of deposit for this estate, you will need an employer identification number. Please let us know if you wish for us to assist you in getting it, and we will coordinate that with your **2.02J** advisors. Also, be sure that the total estate funds at any one institution do not exceed the amount insured by the FDIC.

To avoid personal liability, you should sign documents on behalf of the estate as "**2.45**, Independent Executor of the Estate of **6.02**, Deceased."

Several deadlines must be observed.

Within sixty days following the date Decedent's will was recorded in the probate docket, **6.69**, you must send notice to each beneficiary named in Decedent's will and provide them with copies of the will and order. We will prepare these notices for your signature and will send them to each of those beneficiaries. Within ninety days after the will was recorded, **6.69A**, we must file an affidavit regarding the notice given to the beneficiaries.

Within one month from the date the clerk issued ancillary letters testamentary, **21.23**, notice to the general creditors of the estate must be published. We will prepare that notice and have it published in an appropriate newspaper.

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Within two months after the clerk issued ancillary letters testamentary, **7.35**, you must send notice to any creditors whose notes are secured by liens on real estate or on automobiles or other personal property. If you will provide names and addresses, we will prepare these notices for your signature and will send them to each of those creditors. We must file your affidavit regarding notices to secured creditors, and we will prepare that for your signature.

Within ninety days after you qualified as ancillary executor, **6.85**, we must file an inventory, appraisement, and list of claims, including proper and complete descriptions of the various assets with accurate evaluations. It is possible to obtain an extension of time for filing this inventory. If it is necessary to file so-called death tax returns, we will want to coordinate this inventory with the United States Estate (and Generation-Skipping Transfer) Tax Return, and we will request this extension.

If the value of Decedent's gross estate (all of Decedent's separate property [**include if D was married:** plus half the community property] plus the value of certain lifetime transfers) exceeds $**26.21** on the date of death, a federal estate tax return must be filed and estate taxes paid within nine months after the date of death, **26.28**. [**Include if D was married:** In smaller estates, the surviving spouse may wish to file an estate tax return to elect portability of the deceased spouse's unused exclusion ("DSUE") amount.] For purposes of that return, Decedent's assets are valued as of the date of death. The preparation of that return is not a part of our regular service and is subject to a separate agreement for payment of additional fees and expenses.

Include the following paragraph if disclaimers appear necessary for postmortem tax or other planning.

Nine months after the date of death, **26.28**, is also the deadline to file a qualified disclaimer. The goal of a disclaimer is to pass assets from the named beneficiary into the hands of an alternate beneficiary—for example, the Family Trust—in order to minimize tax or other adverse consequences of the asset's passing to the "wrong" beneficiary. For the disclaimer to

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qualify, the original beneficiary must not have assumed any aspect of ownership of the disclaimed assets. For example, if the surviving spouse files a claim with the insurance company, receives a check for the insurance proceeds, and places that check in that spouse's personal account, the surviving spouse has accepted that gift and the surviving spouse's disclaimer option is lost. Likewise, if a child is named as the primary beneficiary of a retirement plan or an IRA and, following the parent owner's death, does an "IRA rollover" of the deceased parent's funds into a new IRA in the child's name, the child has effectively accepted that gift and the disclaimer option is again precluded. As these examples illustrate, before you or any other beneficiary collects an asset, changes title on an account, applies for insurance benefits, or makes an IRA rollover, you should contact a qualified advisor to discuss the tax and other issues involved in these decisions.

Include the following paragraph if D was not married.

Decedent's final federal income tax return (Form 1040), covering the period beginning on January 1 and ending on the date of Decedent's death, must be prepared and filed if Decedent had a certain minimum amount of gross income. If one is due, it must be filed and the taxes must be paid on or before April 15 of the year following Decedent's death.

Include the following paragraph if income tax return is to be filed for D's estate.

A fiduciary income tax return for income of Decedent's estate (Form 1041) will be required in all years in which the income of Decedent's estate exceeds $600. The beginning date of the first year is the date of Decedent's death, and it may end on December 31 or at the end of any other month, provided that it does not extend beyond one year from the date of Decedent's death.

Continue with the following.

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You will be responsible for calendaring and for preparing all of Decedent's and the estate's gift and income tax returns. Most clients use a certified public accountant to keep the estate's fiduciary accounts, prepare tax returns, and complete Schedule K-1 (Form 1041) (to report each beneficiary's share of income, deductions, and credits).

With Decedent's death, the beneficiaries receive many assets having a new income tax basis. Generally speaking, the income tax basis for most assets will be adjusted to the values shown on the federal estate tax return or, if no such return, then as shown on the statutory inventory that will be prepared. Most retirement benefits do not receive an adjusted basis. Death benefits from those plans and life insurance are not controlled by a will but are controlled by beneficiary designations. These assets are usually referred to as "nonprobate assets." Taxation of retirement benefits is a matter for you to discuss with the person who prepares income tax returns for the estate.

If this estate will exceed $**26.21**, PLEASE do not transfer *any* assets to anyone without consulting with us.

Claims of creditors may be presented at any time while the estate is open. For a debt to be paid, it must go through the claim process. If a claim is presented to you, you must allow it within thirty days or it will be automatically disallowed. Even when you allow a claim, it still must be presented to the court for approval before it can be paid. Please remember that you are *not* to write any checks on the estate's account without court authority.

After all known debts and taxes of Decedent and of Decedent's estate have been paid, it is necessary to properly identify the rightful heirs and beneficiaries who will receive the balance of the estate. Following this determination, a final accounting must be prepared and filed to show all receipts and disbursements during the administration. If the estate is not closed within one year, annual accountings will be required while the estate remains open. When the court has approved the final accounting, you may deliver the assets of the estate to the heirs and

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beneficiaries and, upon doing so, you will be discharged. You must not make any transfers to anyone without approval by the court.

By way of a partial summary, the administration of this estate is an essential and very important process. It clears title to real estate. It settles legitimate debts (and wipes out others). It establishes a new income tax basis for Decedent's property [**include if D was married:** as well as for the community property interest of the surviving spouse]. It permits clear title distribution of property to the persons entitled to receive it under the terms of the will.

To the extent that you elect to handle matters directly, it is very important for you to keep us advised and to furnish copies of all outgoing and incoming correspondence and other documents, especially matters dealing with the Internal Revenue Service.

To assist you in properly performing your duties, we will need to obtain a great deal of additional information, and we will need to work together very closely in the coming months. For your records, copies of all documents and correspondence to date are enclosed, and we will send future correspondence and other documents as they are prepared. Please contact me if you have any questions concerning this letter, your duties, or the future procedures.

We look forward to working closely with you. Kindest regards.

Yours very truly,

[**Attorney's name**]

Enclosures
Ancillary letters testamentary
[**List copies of other documents and correspondence, e.g., application, proof, order, oath**]

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LETTER 118—CONFIRM REPRESENTATION AND FEE AND OUTLINE ANTICIPATED SERVICES (RW)

Address this letter jointly to all executors or administrators and send two copies, together with a copy of the Texas Lawyer's Creed, to each. Send a copy of the letter to counsel in jurisdiction of foreign probate (**6.60** of MIL).

Anyone may use the Estates Code, Chapter 503, procedure to record a foreign will. However, this letter assumes that the client is a personal representative of the estate by order of a foreign court and has duties by virtue of that appointment that are not imposed by Chapter 503.

[**Today's date**]

6.49
6.51
6.52

Re: Estate of **6.02**, Deceased

Dear **6.50**:

Thank you very much for employing this firm to represent you in the recording of Decedent's will in Texas and administration of Decedent's Texas real estate.

We understand that original probate of Decedent's will was had about **2.02C** in **2.02J** and that you qualified there as [**include if applicable:** independent] [executor/administrator] on **2.02D**. We look to your advisors there to represent you regarding all the usual estate administration duties, except for those specifically enumerated in this letter. We assume no responsibility for transfer or income taxes, for real property outside Texas, or for personal property or intangible property located anywhere.

Receipt is hereby acknowledged of a cash payment of $**25.02D**, which will be applied to the payment of expenses incurred or for legal fees due with respect to such representation. As

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we agreed, the fee will be [$**25.02A**/**25.02B** percent of the gross ancillary estate as determined for federal estate tax purposes/based on time spent on your behalf, with hourly rates of $**25.02C** for attorney's time and $**25.02C** for staff time]. In addition to fees for services, you are to pay or reimburse expenses incurred on your behalf. These expenses include [**specify expenses you expect client to pay, e.g.,** filing fees; recording charges; publication of notices; appraisal fees; long-distance, facsimile, and delivery charges; photocopies; and postage].

The above fee is for the following services:

1. Obtaining an attested copy of Decedent's will and a copy of the judgment, order, or decree by which it was admitted to probate

2. Recording Decedent's will and the judgment, order, or decree admitting it to probate in the deed records in any county in Texas where land conveyed or disposed of by Decedent's will is located

3. Assisting in the transfer of title to all of Decedent's Texas real estate and related assets—for example, if a mineral estate is subject to existing production or an existing lease, the production, the lease, and royalties from it

4. Investigating, determining, calculating, allocating, or dealing with Texas real property valuations and tax basis information

5. Coordinating the above matters with you as the [**include if applicable:** independent] [executor/administrator] of the estate and your professional advisors in **2.02J**

Administering estates in multiple jurisdictions: The **2.02J** court has jurisdiction over all real or personal property physically located there, including cars and household furnishings. If Decedent was domiciled there at death, that court likely also has jurisdiction over all of Decedent's intangible assets, such as marketable securities, bank accounts, life insurance, and employee benefits.

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Recording of Decedent's will and the order admitting it to probate will operate as a deed of conveyance of all real property covered by the will as to each Texas county where recorded. If the will grants you the power to sell real property, in theory you may sell it without further formalities. However, title companies, banks, insurance underwriters, and others may have commercial requirements not met by this recording procedure. Recording the will grants you no other powers in Texas. We assume you will need no other powers and that letters of administration in Texas are not necessary. If that proves incorrect, ancillary or original probate of Decedent's will in Texas may be needed but is outside the scope of this agreement.

We will consult your advisors in **2.02J** as they request and as we think necessary. We generally will rely on your **2.02J** advisors' explanations of the law there and not conduct independent research. We will assume the accuracy of any work product your **2.02J** advisors provide us; when practical, we will use it. Finally, we assume that you will continue to serve as [**include if applicable:** independent] [executor/administrator] of the estate in **2.02J** for the duration of our engagement. If you cease to serve or someone else qualifies as the personal representative of the estate in **2.02J**, please let us know.

If Decedent left real property in still other jurisdictions, neither the Texas nor the **2.02J** court will have authority over those assets, and neither will you without ancillary probate in those other jurisdictions, too.

An executor's duty of care requires property and liability insurance on real property, automobiles, and personal property of significant value. Decedent's contracts and support obligations might require other insurance. Construction and unusual activities may require specialized insurance.

You will not have the authority of an executor, but you may have the liability of one. Instead of an administration, we will use a different procedure, and you will not receive letters

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testamentary. You may be held responsible for your management of the estate as an informal fiduciary.

Ask Decedent's insurance agent whether the estate's insurance needs can be managed without appointment of an executor or administrator and without issuance of letters to a personal representative. If insurance has lapsed or is inadequate, who can request coverage?

If the estate's insurance needs cannot be met without appointment of a personal representative, let us know immediately, so we can discuss whether a different probate procedure is warranted.

We are not insurance experts, and you cannot rely on our insurance advice. These suggestions may not be appropriate or adequate in your situation, and we offer them only to help you start a conversation with your insurance agent.

Unless you describe the necessary insurance with great specificity, an insurance agent is not liable for inadequate coverage. It may be wise to have an expert investigate the estate's insurance situation and analyze coverage, cost, insurable risks, and exposures to loss. Before you sign, we can review any insurance analysis contract.

Before we begin, we must deal with an important ethical matter to avoid questions of conflicts of interest. Only you will be a client of this firm for matters related to the estate. While this may appear obvious, there are many instances in which family members and other beneficiaries believe that a lawyer represents "the estate" directly and thus represents them indirectly. This is not the case. To avoid these conflicts, it is the policy of this firm to recommend that they obtain the advice and services of independent attorneys of their own choosing.

As we go along, you will receive copies and information regarding the estate. Please provide affected family members and beneficiaries with updates on a regular basis. In doing so, please make it clear that this firm represents only you.

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We are not now aware of any conflicts that exist or any facts that would create a conflict, although that possibility always exists. If you become aware of any conflict relating to this estate or anything affecting our representation, you must call it to our attention.

Please understand that to protect your interests in the event of my death, disability, or retirement, it may be necessary or appropriate for another lawyer or a staff member of this firm, a personal representative (including someone acting under a power of attorney), or another lawyer who is retained by any such person to have access to your file and records in order to contact you to determine appropriate handling of your matters and of your files and to make an appropriate referral (subject to your approval) to other attorneys for future handling. In that regard, you grant permission and waive all privileges solely to the extent necessary or appropriate for those purposes.

Furthermore, in the event of my death, disability, or retirement, if further services are required in connection with this representation and you engage another lawyer to perform those services, you expressly authorize the division of fees based on the proportion of the work done or responsibilities assumed by this firm and by your new attorney. Such division specifically authorizes the payment of fees and expenses to my estate, personal representatives, and heirs.

With respect to documents provided by you as well as original documents generated in connection with this representation, those that are not filed or recorded will be returned to you. This firm is entitled to retain copies of all such documents as well as all other materials used in connection with the representation. All other documents, including notes and the remaining contents of your file, are attorney work product and are owned by the firm. Of course, during our representation of you and for as long thereafter as we retain any of such items, we will make your files available to you for inspection and copying.

Please note that we may destroy any of your files at any time with your written consent and, in any event, after one year following written notice to you sent by regular mail to your

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last known address as reflected in our records. No further notice to you will be required before such destruction.

Enclosed is a copy of the Texas Lawyer's Creed. This mandate for professionalism was promulgated by the Supreme Court of Texas and the Texas Court of Criminal Appeals in 1989. All lawyers and members of our staff do our best to adhere to the high standards it sets for the lawyers of Texas. We invite your questions and comments regarding that creed and your perception of our adherence to its objectives.

We all take seriously our obligation to maintain the highest standards of ethical conduct toward our clients and others. To enforce ethical conduct, the State Bar of Texas investigates and prosecutes complaints of professional misconduct. If you have questions about this process or how to file a complaint, you should contact the office of the State Bar of Texas at 1-800-932-1900 toll-free for more information.

If the foregoing letter correctly reflects your understanding of our agreement, please sign both copies of this letter, retain one for your files, and return one copy in the enclosed envelope. If you have any questions about the proposed engagement, please contact me as soon as possible. Certainly, you should feel free to consult with another lawyer about the effect of signing this letter.

Thank you again for the confidence that you have expressed in me and this firm at this very difficult time. Please call me if you have any questions. Kindest regards.

Yours very truly,

[**Attorney's name**]

Enclosures
Texas Lawyer's Creed
Return envelope

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The foregoing letter correctly reflects my understanding of our agreement. Dated _____.

_____

6.49

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LETTER 119—RECORD DISTRIBUTION DEED

Determine the appropriate recording charges and enclose a check for that amount.

Send a copy of this letter, but not of the enclosures, to each client.

[**Today's date**]

County Clerk of **7.11** County
Courthouse
[**City in which courthouse located**], Texas [**zip**]

Greetings:

Enclosed with this letter you will find a Distribution Deed to be recorded in the deed or real property records of your county, together with payment for your recording charges. Please return this recorded deed to me. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosures
Check
Distribution Deed

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LETTER 120—MERP FORM TO HEIR FOR SIGNATURE

Send a copy of this letter and of the enclosed document to each client.

[**Today's date**]

Obtain names of heirs or beneficiaries from attorney.

[**Name of heir or beneficiary**]
[**Address of heir or beneficiary**]
[**City, state, zip of heir or beneficiary**]

Re: Estate of **6.02**, Deceased

Dear [**name of heir or beneficiary**]:

Enclosed are an original and one copy of the Texas Medicaid Estate Recovery Program (MERP) Authorization and MERP Certification form concerning this estate. We must submit this form to determine whether a MERP claim will be filed against the estate. Please review this form for completeness and accuracy and, if it appears to be in order, sign the authorization (Section 1) and return the signed copy of the form to me in the enclosed self-addressed, stamped envelope. The copy is for your files.

If you have any questions or suggestions or desire additional information, please call me.

Yours very truly,

[**Attorney's name**]

Enclosures
MERP form—2 copies
Return envelope

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LETTER 121—MERP AUTHORIZATION TO AGENCY

Send a copy of this letter, but not of the enclosure, to each client.

[**Today's date**]

HMS—The Texas Medicaid Estate Recovery Contractor
5615 High Point Drive, Suite 100
Irving, Texas 75038

Re: Estate of **6.02**, Deceased

Greetings:

Enclosed is a Texas Medicaid Estate Recovery Program (MERP) Authorization and MERP Certification form regarding this estate. The authorization to obtain information (Section 1) has been signed as required. Please complete and sign the certification (Section 2) and return the completed form to me. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosure
MERP Authorization and Certification form

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LETTER 122—ADVISE EXECUTOR OR ADMINISTRATOR OF PORTABILITY ELECTION (SURVIVING SPOUSE)

[**Today's date**]

2.45 or 2.76
2.47 or 2.78
2.48 or 2.79

Re: Estate of **6.02**, Deceased

Dear **2.46 or 2.77**:

In our letter to you dated [**date**] addressing your duties as [executor/administrator], we discussed that one of your duties includes the preparation and filing of a federal estate (and generation-skipping transfer) tax return, also known as a "Form 706," for your [husband's/wife's] estate. You are not required to file a Form 706 unless the value of your [husband's/wife's] gross estate is greater than $**26.21**. Based on the information we have at this point, it does not appear that the gross estate exceeded $**26.21** (this includes any prior taxable gifts made by the decedent); therefore, no Form 706 is required. **If this is not the case, please notify us immediately.** Please note that only half of the value of any community property assets is counted in your [husband's/wife's] gross estate; the other half belongs to you.

Although a Form 706 may not be required, you may still consider filing a Form 706 to make a "portability" election. Portability is designed to allow your [husband's/wife's] unused federal estate tax exemption to be added to your exemption for federal gift and estate tax purposes. If you file a Form 706 in a timely manner, you will be able to add your [husband's/wife's] $**26.21** exemption to your exemption, which can be applied at your death or to taxable gifts made during your lifetime.

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While making the portability election can be beneficial, you should be aware of some limits. A taxpayer is allowed to use the exemption of only the "last deceased spouse." If you remarry, and if your new spouse predeceases you, you will lose your [husband's/wife's] excess exemption (although you may use it for gifts during your lifetime).

To take advantage of portability, a Form 706 must be filed within nine months after the decedent's death (due date is **26.28**), which may be extended an additional six months. In many cases, a complete Form 706 is required (although you are allowed to estimate values of assets passing directly to the surviving spouse). Because of the complexity and time required, the cost of preparing a Form 706 can be difficult to estimate and will depend on the nature and extent of the estate's particular assets and complexity of the return. Please consult with the estate's accountant to determine whether he or she is able to assist you with the preparation of the Form 706. The preparation of that return is not a part of our regular service and is subject to a separate agreement for payment of additional fees and expenses.

Once you have made your decision, we ask that you acknowledge your choice by initialing the option below on the enclosed copy of this letter and sending it to us in the enclosed self-addressed envelope.

We realize this is a complex matter, and we would be happy to answer any questions you may have. Please contact me at your earliest convenience.

Yours very truly,

[**Attorney's name**]

Enclosure
Return envelope

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AFTER READING THIS LETTER, PLEASE INITIAL ONE OF THE FOLLOWING AND RETURN A COPY TO US:

_____ Yes, I intend to prepare and file a United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706) for the purpose of making the portability election.

_____ No, I do not intend to prepare or file a United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706) for the purpose of making the portability election.

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LETTER 123—ADVISE EXECUTOR OR ADMINISTRATOR OF PORTABILITY ELECTION (*NOT* SURVIVING SPOUSE)

[**Today's date**]

2.45 or 2.76
2.47 or 2.78
2.48 or 2.79

Re: Estate of **6.02**, Deceased

Dear **2.46 or 2.77**:

In our letter to you dated [**date**] addressing your duties as [executor/administrator], we discussed that one of your duties includes the preparation and filing of a federal estate (and generation-skipping transfer) tax return, also known as a "Form 706," for the decedent's estate. You are not required to file a Form 706 unless the value of the decedent's gross estate is greater than $**26.21**. Based on the information we have at this point, it does not appear that the gross estate exceeded $**26.21** (this includes any prior taxable gifts made by the decedent); therefore, no Form 706 is required. **If this is not the case, please notify us immediately.**

Although a Form 706 may not be required, you may still consider filing a Form 706 to make a "portability" election. Portability is designed to allow the decedent's unused federal estate tax exemption to be added to the exemption available to the surviving spouse for federal gift and estate tax purposes. If you file a Form 706 in a timely manner, the surviving spouse will be able to add the decedent's $**26.21** exemption to [his/her] exemption, which can be applied at the surviving spouse's death or to taxable gifts made during [his/her] lifetime.

To take advantage of portability, a Form 706 must be filed within nine months after the decedent's death (due date is **26.28**), which may be extended an additional six months. In many cases, a complete Form 706 is required (although you are allowed to estimate values of assets

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passing directly to the surviving spouse). Because of the complexity and time required, the cost of preparing a Form 706 can be difficult to estimate and will depend on the nature and extent of the estate's particular assets and complexity of the return. Please consult with the estate's accountant to determine whether he or she is able to assist you with the preparation of the Form 706. The preparation of that return is not a part of our regular service and is subject to a separate agreement for payment of additional fees and expenses.

Once you have made your decision, we ask that you acknowledge your choice by initialing the option below on the enclosed copy of this letter and sending it to us in the enclosed self-addressed envelope.

We realize this is a complex matter, and we would be happy to answer any questions you may have. Please contact me at your earliest convenience.

Yours very truly,

[**Attorney's name**]

Enclosure
Return envelope

AFTER READING THIS LETTER, PLEASE INITIAL ONE OF THE FOLLOWING AND RETURN A COPY TO US:

_____ Yes, I intend to prepare and file a United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706) for the purpose of making the portability election.

_____ No, I do not intend to prepare or file a United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706) for the purpose of making the portability election.

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LETTER 124—ORDER CERTIFIED COPIES (AP)

Determine the appropriate charge for the copies and enclose a check for that amount. Send a copy of this letter, but not of the enclosure, to each client.

[**Today's date**]

6.16
6.17
6.18

Re: No. **6.01**, Estate of **6.02**, Deceased
6.03 Court of **6.04** County, Texas

Greetings:

Please prepare and send me certified copies of the following items previously filed in connection with the foregoing estate:

1. Application for Ancillary Probate of Foreign Will

2. [Will/Will and codicil]

3. Order Admitting Foreign [Will/Will and Codicil] to Ancillary Probate

Include item 4 if power of sale is based on distributee agreement rather than contained in will.

4. [[Distributee's/Distributees'] Agreement[s] to Power of Sale/[Distributee's/Distributees'] Agreement[s] to Independent Administration and Power of Sale]

Include item 5 if IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, was filed.

5. Internal Revenue Service closing letter

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Payment is enclosed. Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosure
Check

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LETTER 125—RESPONSE TO PREFERRED DEBT AND LIEN HOLDER'S ATTEMPT TO COLLECT DEFICIENCY

For use only after the claim holder has foreclosed on or repossessed the collateral.

Obtain the name of the addressee collection agency or law firm from the attorney. If the referenced correspondence was sent by the creditor rather than a collection agency or law firm, address this letter to the creditor, reword it appropriately, and omit the cc.

Send a copy of the letter and of the enclosure to each client.

[**Today's date**]

[**Addressee's name**]
[**Address**]
[**City, state, zip**]

Re: Estate of **6.02**, Deceased

Greetings:

We received the enclosed correspondence from your office regarding a deficiency owed on [**D's creditor account number**] following your repossession of [**collateral**]. As discussed below, [**name of creditor—see 21.06–21.14**] is prohibited under Texas law from pursuing collection of that deficiency against the Estate of **6.02**, Deceased.

[**Name of creditor**] presented a secured claim in the amount of $[**amount**] (the "Claim") to the **2.85** of the estate on [**date**], whereby [**name of creditor**] did not elect to have its claim treated as a matured secured claim. Accordingly, under Section 355.152 of the Texas Estates Code, the Claim is a preferred debt and lien against the [**collateral**].

After presentment of the Claim, [**name of creditor**] repossessed the [**collateral**] and sold it at a private sale for $[**sale amount**], leaving a $[**remaining amount**] deficiency on the original

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debt. Based on the enclosed letter, it appears that [**name of creditor**] is now trying to collect that deficiency from the estate.

Because the Claim is treated as a preferred debt and lien, [**name of creditor**] is limited to satisfying the Claim with the property securing the debt—that is, the [**collateral**]—and, as provided in Section 355.154 of the Texas Estates Code, [**name of creditor**] cannot assert a claim for any deficiency against the other assets of the estate. Therefore, any attempts to assert a claim against the estate for the balance owed on the note will be rejected by the **2.85**.

Yours very truly,

[**Attorney's name**]

[**Name of creditor**]

Enclosure
[**Correspondence regarding deficiency**]

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LETTER 126—TO INSTITUTION HOLDING DECEDENT'S TRUST OR ESCROW ACCOUNT

Enclose a signed copy of the Statement (Form 129) or Agreement (Form 130); Estates Code, Chapter 456 (Form 131); certified death certificate; original letters testamentary or letters of administration; and proof that the personal representative or designee is a lawyer in good standing. Send a copy of this letter, but not of the enclosures, to each client.

[**Today's date**]

11.43
11.44
11.45

Re: Estate of **6.02**, Deceased ("Decedent")
Your account number[s] **11.47**

Greetings:

You hold funds of Decedent in the [trust/escrow/trust and escrow] account[s] referenced above, styled **11.48**. In accordance with Chapter 456 of the Texas Estates Code, relating to disbursement and closing of lawyer trust or escrow accounts ("Chapter 456"), I am providing you with a copy of the [Statement/Agreement] concerning Decedent's trust and escrow accounts. I further instruct you to close the account[s] and to disburse the entirety of the funds to me.

As provided in Chapter 456, you are not liable for any act respecting an account taken in compliance with Chapter 456.

Yours very truly,

[**2.45 or 2.76**, Personal Representative/**2.141**, Designee]

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Enclosures

[Statement/Agreement] Pursuant to Chapter 456 of the Texas Estates Code
Texas Estates Code, Chapter 456
Certified death certificate
Original letters [testamentary/of administration]
Attorney's proof of good standing

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LETTER 127—FILE WILL WITHOUT APPLICATION

[**Today's date**]

6.16
6.17
6.18

Re: Estate of **6.02**, Deceased

Greetings:

Enclosed please find the will of **6.02** dated **2.02**.

I am custodian of this will and am delivering it to the clerk pursuant to Section 252.201, Texas Estates Code

6.02 died on **1.07**. At [his/her] death [he/she] was a resident of [**county**] County. [His/Her] last known address was **1.11**.

The name and address of each executor named in the will, including any alternate executors, are—

2.45, **2.47**, **2.48**

2.43, [[**address**]/address unknown]

Repeat for each executor.

The name and address of each devisee named in the will are—

[**name**], [[**address**]/address unknown]

Repeat for each devisee.

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Please accept this will, index it, and otherwise handle it according to Chapter 252, Subchapter E, of the Texas Estates Code. No application is anticipated at this time. According to Section 252.201(b), there should be no fee.

Thank you for your help.

Yours very truly,

[**Attorney's name**]

Enclosure
[**Name or description of testator's will**]

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LETTER 128—FILE WILL FOLLOWING APPLICATION

[**Today's date**]

6.16
6.17
6.18

Re: **6.01**, Estate of **6.02**, Deceased

Greetings:

I represent **2.45**, who electronically filed an application to probate the testator's [will/will and codicil].

The application was filed on **6.23** under envelope no. **6.23A**.

The original [will is/will and codicil are] enclosed, pursuant to Rule 21(f)(12), (13) of the Texas Rules of Civil Procedure.

Yours very truly,

[**Attorney's name**]

Enclosures
[**List each will and codicil**]

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LETTER 129—CONFIRM NONENGAGEMENT

[**Today's date**]

CERTIFIED MAIL NO. [**number**]
RETURN RECEIPT REQUESTED

[**Addressee name and address**]

Re: [**style or description of case**]

Dear [**name**]:

Thank you for [visiting our office/your call/your letter] regarding administration of the estate of your [**relationship, name**].

This letter confirms our conversation of [**date**], in which [you decided not to engage our firm/we decided it is premature to engage counsel/I concluded our firm will not be able to represent you]. [**Include if applicable:** I have [enclosed/previously returned] your documents [**include if applicable:** , including the original will].]

Probate may become necessary later. Please be aware that four years from the date of death is the usual deadline to probate a will.

Include the following paragraph if the prospective client has the will.

If you do not probate the will now, Section 252.201 of the Texas Estates Code requires you to file it anyway with the clerk of court with jurisdiction, typically in the county where the decedent resided.

Continue with the following.

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Nine months following death is the tax deadline for a qualified disclaimer or an estate tax return. September 30 of the year following death is the deadline to determine IRA or other plan beneficiaries. These techniques can fix broken estate plans but are lost if not timely used.

Thank you for considering our firm, and we wish you the best. [**Include if unable to represent prospective client:** I urge you to contact another attorney as soon as possible.] [**Include if willing to represent prospective client:** If circumstances change and you think we can help, please contact us promptly.] Unless we exchange a written engagement, our firm does not represent you and will not remind you of any deadlines.

Yours very truly,

[**Attorney's name**]

Enclosures
[**Itemize enclosures, especially an original will**]

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LETTER 130—INSURANCE AGENT

[**Today's date**]

15.02
15.06
15.03
15.04

Re: Your policy number(s) **15.08**
Insured: **1.02**
Date of death: **1.07**

Greetings:

This office represents **2.45** **or** **2.29** **or** **2.76** **or** **2.101** **or** **2.116** **or** **6.49**, [the prospective **2.85** of the estate of **6.02** ("Decedent")/[**other relationship of client to estate**]].

This letter is to advise you of the fact and date of death of the above-named insured. A death certificate is enclosed.

As appropriate, please add **2.45** **or** **2.29** **or** **2.76** **or** **2.101** **or** **2.116** **or** **6.49** as a named insured to Decedent's homeowner's and other insurance policies. Do not remove Decedent's name from any policy until informed that Decedent's interest has been transferred out of the estate.

Please provide me the declarations pages of each insurance policy in which Decedent had an interest, the tasks and deadlines to keep each policy in force, and a list of any coverage changes needed immediately.

Please also advise me of your requirements to make a thorough investigation of the estate's insurance situation and to analyze coverage, cost, insurable risks, and exposures to loss.

Include the following paragraph if applicable.

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The estate may have individual employees. Please call **2.45 or 2.29 or 2.76 or 2.101 or 2.116 or 6.49** at **2.49 or 2.34 or 2.80 or 2.105 or 2.120 or 6.53** regarding workers' compensation and similar insurance.

Continue with the following.

Thank you very much.

Yours very truly,

[**Attorney's name**]

Enclosures
Death certificate

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LETTER 131—REQUEST CONCERNING DIGITAL ASSETS

This request may be made in physical or electronic form.

[**Today's date**]

18.170
18.171
18.172

Re: Estate of **6.02**, Deceased
18.150 of **6.02**, Deceased (**18.151**)

Greetings:

I am the personal representative of the Estate of **6.02** (Decedent), who died on **1.07**. It has come to my attention that Decedent had an account with you briefly described as **18.150**.

Select one of the following.

I would like to receive full access to the user's account.

Or

I would like to receive a catalog of electronic communications sent or received by Decedent and digital assets, other than the content of an electronic communication, of Decedent.

Or

I would like to terminate this account.

Continue with the following.

Enclosed are the following:

1. Certified copy of death certificate

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2. Original [letters testamentary/letters of [independent] administration/small estate affidavit/[**description of other court order**]]

Include item 3 only if requesting full access.

3. Copy of Decedent's [will/trust/[**description of other record**]] evidencing consent to disclose content of electronic communication

Continue with the following.

Please advise me of any additional requirements. Thank you in advance for your prompt attention.

Yours very truly,

2.45 or 2.76, Personal Representative

Enclosures
Death certificate
Original [letters testamentary/letters of [independent] administration/small estate affidavit/[**description of other court order**]]
[Will/trust/[**description of other record**]]

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LETTER 132—EXPLAIN CREDIT REPORT REQUEST

[**Today's date**]

2.45 or 2.76
2.47 or 2.78
2.48 or 2.79

Re: Estate of **6.02**, Deceased ("Decedent")

Dear **2.46 or 2.77**:

Decedent's credit reports should be reviewed for the amount and nature of Decedent's debts, including creditor names, amounts due, and whether secured (for example, a mortgage, home equity loan, or car note) or unsecured (for example, credit cards, student loans, or a signature line of credit).

Credit reports may be requested from each of the three major credit reporting agencies. [A model letter for you to send is enclosed./I will request these credit reports concerning Decedent.]

When institutions are informed of Decedent's death, they may close or freeze Decedent's credit cards and bank accounts, an inconvenience or worse to a surviving spouse or dependents who relied on Decedent to pay utilities, medical insurance premiums, or prescription drug co-payments. Promptly make other arrangements for those payments.

Policies differ, but some credit card issuers will transfer Decedent's miles and points to the surviving spouse, less often to children or other heirs.

Survivors, especially the elderly and vulnerable, are often advised to freeze their own credit reports. New bank account and credit card applications should be completed first.

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[Please provide me with a copy of each credit report you receive.] [Please [also] request and provide me with a copy of the surviving spouse's credit report for comparison.]

Yours very truly,

[**Attorney's name**]

Include the following as applicable.

Enclosure[s]
Model letter to credit reporting agencies
Return envelope

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LETTER 133—CLIENT CREDIT REPORT REQUEST

[**Today's date**]

Equifax
P.O. Box 105139
Atlanta, GA 30348-5139

Experian
P.O. Box 4500
Allen, TX 75013

TransUnion
P.O. Box 2000
Chester, PA 19016

Re: **6.02**, Deceased ("Decedent")

Greetings:

Decedent died on **1.07**. I was appointed **2.85** of Decedent's estate on **6.26**. Decedent's death certificate and my letters [testamentary/of administration] are enclosed.

Please update Decedent's credit file to reflect Decedent's death and send me a copy of Decedent's credit report.

Decedent's Social Security number was **1.19**. Decedent was born **1.05**. Decedent's last known address was **1.11**. [**Include if applicable:** Decedent had no middle name.]

Please return the credit report to—

2.45 or 2.76
2.47 or 2.78
2.48 or 2.79

Thank you very much for your help.

Yours very truly,

2.45 or 2.76

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Enclosures
Death certificate
Letters [testamentary/of administration]

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LETTER 134—CLOSING LETTER (IA, AWA, ADE, RDA, TBA, IBA, AP)

IRS Form 8971, Information Regarding Beneficiaries Acquiring Property From a Decedent, generally has been required of executors of taxable estates and other persons required to file estate tax returns since July 2015. Form 8971 discloses the basis reported to each distributee. The person required to file the estate tax return must also furnish a correct Schedule A to each distributee. Further coverage is beyond the scope of this System.

[**Today's date**]

2.45 or 2.76
2.47 or 2.78
2.48 or 2.79

If to a corporate fiduciary, add "Attention: 2.61, 2.63" and change salutation to "Greetings."

Re: Estate of **6.02**, Deceased

Dear **2.46 or 2.77**:

Administration of this estate is complete, and we are closing our file.

Enclosed with this letter I am returning any remaining original documents. These items are as follows:

List all items separately, e.g., a copy of the will, the original application for probate, the signed order admitting the will to probate and appointing the independent executor, the estate inventory, creditor claim letters, and other original documents furnished by the client.

Please acknowledge receipt of these enclosures by signing and returning the copy of this letter in the enclosed self-addressed, stamped envelope.

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Include the following paragraph if applicable.

I am also returning a check in the amount of $[**amount**] for the unused portion of your retainer.

In time, we will destroy our file, and without further notice. Please let us know immediately if you believe we have any documents you or Decedent's [beneficiaries/heirs] may ever need. Copies are available on request anytime until we destroy the file, but we will charge for our time and expense in responding. The usual rules concerning confidentiality may prohibit us from responding to anyone but you or the estate's successor representative.

Include the following paragraph if the estate received creditor claims subject to the statutory bar.

Among the enclosures are copies of claim letters sent by alleged unsecured creditors of this estate. We sent letters to each of these creditors requiring them to present their claims in the manner and form required by the Texas Estates Code, with a deadline of [**date**]. After this deadline, these claims are barred, and the estate is not required to pay them.

When heirs and beneficiaries inherit property from a decedent, they receive an income tax basis in most assets (excluding IRAs and other qualified plans) equal to the federal estate tax value as finally determined by the Internal Revenue Service, or the fair market value on the date of Decedent's death if no federal estate tax return was due.

The probate assets of this estate and the date-of-death value of those items is documented by the inventory [**include if applicable:** and IRS Form 706]. [A copy of the Inventory, Appraisement, and List of Claims [;/and] a certified copy of the Affidavit in Lieu of Inventory, Appraisement, and List of Claims [; and IRS Form 706] are enclosed./A certified copy of the approved Inventory, Appraisement, and List of Claims [and IRS Form 706] [is/are] enclosed.]

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Although the holding period of these assets begins on the date of Decedent's death, **1.07**, the one-year holding period of an asset for purposes of determining if any gain is long-term or short-term is automatically considered to be met regardless of when you sell that asset.

Select one of the following.

Nonprobate assets—for example, assets passed through a living trust or by beneficiary designation or to a joint owner under a survivorship agreement—may also receive a new basis. The probate inventory omits nonprobate assets and thus offers no evidence of their new date-of-death value. Please let me know promptly if you would like us to calculate the date-of-death value for any other assets.

Or

Nonprobate assets—for example, assets passed through a living trust or by beneficiary designation or to a joint owner under a survivorship agreement—may also receive a new basis. The probate inventory [**include if applicable:** and IRS Form 706] we prepared for this estate also [values/value] nonprobate assets and may be shared with those beneficiaries to evidence their new basis, if any.

Include the following paragraph if the client also served as trustee.

Although we assisted with coordination between the probate estate and the revocable trust, our representation did not include trust administration. Trust administration may or may not be complete; that determination is between you and your trust counsel (if any). This closing letter addresses only the probate estate.

Continue with the following.

Each time [a beneficiary/an heir] sells one of these assets, the income tax return preparer should refer to this letter and enclosures. The date-of-death value of assets in qualified plans does not reflect their basis, which does not change on death.

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Include the following paragraph if a federal estate tax return was filed.

If a federal estate tax return was filed for this estate, beneficiaries should be aware that the income tax basis of inherited property must be consistent with the value reported on that return; an accuracy-related penalty may apply for inconsistent basis reporting. Additionally, beneficiaries who receive income in respect of a decedent—such as distributions from retirement accounts, deferred compensation, or accrued income items—may be entitled to an income tax deduction for federal estate taxes attributable to those items. Beneficiaries who receive property from the estate may also bear personal liability for unpaid estate taxes to the extent of assets received. Your income tax return preparer should be informed of these matters and can advise you accordingly.

On request, we can forward this letter to other [beneficiaries/heirs]. We represent only you, though, and cannot advise other [beneficiaries/heirs].

Thank you very much for letting us have the opportunity to help you during this very trying time. I appreciate your confidence and your cooperation. Kindest regards.

Please let me know if you have any questions.

Yours very truly,

[**Attorney's name**]

Enclosures

[**List all enclosures**]

Return envelope

Receipt of the original copy of this letter and of the enclosures therein described is acknowledged on _____.

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_____

[**Name of addressee**]

Copy other beneficiaries as requested by the client.

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LETTER 135—CLOSING LETTER (MT, PDH)

IRS Form 8971, Information Regarding Beneficiaries Acquiring Property From a Decedent, generally has been required of persons required to file estate tax returns since July 2015. Form 8971 discloses the basis reported to each distributee. The person required to file the estate tax return must also furnish a correct Schedule A to each distributee. Further coverage is beyond the scope of this System.

[**Today's date**]

2.29 or 2.101
2.31 or 2.103
2.32 or 2.104

Re: Estate of **6.02**, Deceased

Dear **2.30 or 2.102**:

We have completed the tasks set out in our engagement agreement, and we are closing our file.

Enclosed with this letter I am returning any remaining original documents. These items are as follows:

List all items separately, e.g., a copy of the will; if MT, the original application to probate the will as a muniment of title, the order admitting the will as a muniment of title, and the affidavit regarding fulfillment; if PDH, the application to declare heirship and the judgment declaring heirship; and other original documents furnished by the client.

Please acknowledge receipt of these enclosures by signing and returning the copy of this letter in the enclosed self-addressed, stamped envelope.

Include the following paragraph if applicable.

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I am also returning a check in the amount of $[**amount**] for the unused portion of your retainer.

In time, we will destroy our file, and without further notice. Please let us know immediately if you believe we have any documents you or Decedent's [beneficiaries/heirs] may ever need. Copies are available on request anytime until we destroy the file, but we will charge for our time and expense in responding. The usual rules concerning confidentiality may prohibit us from responding to anyone but you.

When heirs and beneficiaries inherit property from a decedent, they receive an income tax basis in most assets (excluding IRAs and other qualified plans) equal to the federal estate tax value as finally determined by the Internal Revenue Service, or the fair market value on the date of Decedent's death if no federal estate tax return was due.

The probate assets of this estate and the date-of-death value of those items is documented by the inventory [**include if applicable:** and IRS Form 706]. [A certified copy of the approved Inventory, Appraisement, and List of Claims/A copy of the inventory] [**include if applicable:** and IRS Form 706] [is/are] enclosed.]

Although the holding period of these assets begins on the date of Decedent's death, **1.07**, the one-year holding period of an asset for purposes of determining if any gain is long-term or short-term is automatically considered to be met regardless of when you sell that asset.

Select one of the following.

Nonprobate assets—for example, assets passed through a living trust or by beneficiary designation or to a joint owner under a survivorship agreement—may also receive a new basis. The probate inventory omits nonprobate assets and thus offers no evidence of their new date-of-death value. Please let me know promptly if you would like us to calculate the date-of-death value for any other assets.

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Or

Nonprobate assets—for example, assets passed through a living trust or by beneficiary designation or to a joint owner under a survivorship agreement—may also receive a new basis. The probate inventory [**include if applicable:** and IRS Form 706] we prepared for this estate also [values/value] nonprobate assets and may be shared with those beneficiaries to evidence their new basis, if any.

Include the following paragraph if the client also served as trustee.

Although we assisted with coordination between the probate estate and the revocable trust, our representation did not include trust administration. Trust administration may or may not be complete; that determination is between you and your trust counsel (if any). This closing letter addresses only the probate estate.

Continue with the following.

Each time [a beneficiary/an heir] sells one of these assets, the income tax return preparer should refer to this letter and enclosures. The date-of-death value of assets in qualified plans does not reflect their basis, which does not change on death.

Include the following paragraph if a federal estate tax return was filed.

If a federal estate tax return was filed for this estate, beneficiaries should be aware that the income tax basis of inherited property must be consistent with the value reported on that return; an accuracy-related penalty may apply for inconsistent basis reporting. Additionally, beneficiaries who receive income in respect of a decedent—such as distributions from retirement accounts, deferred compensation, or accrued income items—may be entitled to an income tax deduction for federal estate taxes attributable to those items. Beneficiaries who receive property from the estate may also bear personal liability for unpaid estate taxes to the extent of

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assets received. Your income tax return preparer should be informed of these matters and can advise you accordingly.

On request, we can forward this letter to other [beneficiaries/heirs]. We represent only you, though, and cannot advise other [beneficiaries/heirs].

Thank you very much for letting us have the opportunity to help you during this very trying time. I appreciate your confidence and your cooperation. Kindest regards.

Please let me know if you have any questions.

Yours very truly,

[**Attorney's name**]

Enclosures

[**List all enclosures**]

Return envelope

Receipt of the original copy of this letter and of the enclosures therein described is acknowledged on _____.

_____

[**Name of addressee**]

Copy other beneficiaries as requested by the client.

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LETTER 136—CLOSING LETTER (SE)

If an IRS Form 706 was filed, adapt appropriate wording from Letter 134.

[**Today's date**]

2.116
2.118
2.119

Re: Estate of **6.02**, Deceased

Dear **2.117**:

We have completed the tasks set out in our engagement agreement, and we are closing our file.

Enclosed with this letter I am returning any remaining original documents. These items are as follows:

List all items separately.

Please acknowledge receipt of these enclosures by signing and returning the copy of this letter in the enclosed self-addressed, stamped envelope.

In time, we will destroy our file, and without further notice. Please let us know immediately if you believe we have any documents you or Decedent's [heirs/beneficiaries] may ever need. Copies are available on request anytime until we destroy the file, but we will charge for our time and expense in responding. The usual rules concerning confidentiality may prohibit us from responding to anyone but you.

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When heirs and beneficiaries inherit property from a decedent, they receive an income tax basis in most assets (excluding IRAs and other qualified plans) equal to the fair market value on the date of Decedent's death.

Although the holding period of these assets begins on the date of Decedent's death, **1.07**, the one-year holding period of an asset for purposes of determining if any gain is long-term or short-term is automatically considered to be met regardless of when you sell that asset.

Nonprobate assets—for example, assets passed through a living trust or by beneficiary designation or to a joint owner under a survivorship agreement—may also receive a new basis. The date-of-death value of assets in qualified plans does not reflect their basis, which does not change on death.

On request, we can forward this letter to other [heirs/beneficiaries]. We represent only you, though, and cannot advise other [heirs/beneficiaries].

Thank you very much for letting us have the opportunity to help you during this very trying time. I appreciate your confidence and your cooperation. Kindest regards.

Please let me know if you have any questions.

Yours very truly,

[**Attorney's name**]

Enclosures

[**List all enclosures**]

Return envelope

Receipt of the original copy of this letter and of the enclosures therein described is acknowledged on _____.

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_____

[**Name of addressee**]

Copy other beneficiaries as requested by the client.

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LETTER 137—ATTORNEY CREDIT REPORT REQUEST

[**Today's date**]

Equifax
P.O. Box 105139
Atlanta, GA 30348-5139

Experian
P.O. Box 4500
Allen, TX 75013

TransUnion
P.O. Box 2000
Chester, PA 19016

Re: **6.02**, Deceased ("Decedent")

Greetings:

Decedent died on **1.07**. We represent **2.45 or 2.76**, who was appointed **2.85** of Decedent's estate on **6.26**. Decedent's death certificate and our client's letters [testamentary/of administration] are enclosed.

Please update Decedent's credit file to reflect Decedent's death and send me a copy of Decedent's credit report.

Decedent's Social Security number was **1.19**. Decedent was born **1.05**. Decedent's last known address was **1.11**. [**Include if applicable:** Decedent had no middle name.]

Please return the credit report to—

5.02
5.05
5.06

Thank you very much for your help.

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Yours very truly,

[**Attorney's name**]

Enclosures
Death Certificate
Letters [testamentary/of administration]

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LETTER 138—DEMAND LETTER FOR WILL, PAPERS, ESTATE PROPERTY

This letter should be directed to the person or entity believed to be holding D's original will, papers of the estate, or other personal property of the estate.

[**Today's date**]

[**Name**]
[**Address**]
[**City, state, zip**]

Re: Estate of **6.02**, Deceased

Greetings:

I represent **2.45 or 2.76**, **2.85** of this estate/[**name of interested person**].

Enclosed please find my proposed [application/motion] and order[s] concerning [the last will of **6.02**/papers belonging to this estate/personal property belonging to this estate].

I may file these items with the appropriate court of **6.04** County, Texas, any time after [**date**], and without further notice.

Please accept this letter as an attempt to conference and to resolve these matters without litigation.

Yours very truly,

[**Attorney's name**]

Enclosures

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Select one of the following.

Application for Order to Show Cause Why [**name**] Should Not Deliver [Will/Papers/ Will and Papers], proposed Order to Show Cause, and proposed Order to Deliver [Will/Papers/ Will and Papers]

Or

Motion for Order to Deliver Personal Property of Estate and proposed Order to Deliver Personal Property of Estate

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LETTER 139—EXECUTOR TO TRUSTEE (IRS FORM 706 COORDINATION)

This letter is used when the executor needs trust asset information for preparing IRS Form 706. It is appropriate when (1) Form 706 is required or the filing obligation is being evaluated; (2) D's revocable trust holds assets included in the gross estate under IRC, Section 2036 or 2038; and (3) the executor and trustee are different persons, or the same person is acting in both capacities and needs a formal record of coordination.

If the executor and trustee are the same person (dual-role client), this letter creates a paper trail documenting the client's coordination between capacities. See Special Instruction 102—Revocable Trusts.

[**Today's date**]

20.36A
[As Trustee of **20.36G**]
20.36B
20.36C

Re: No. **6.01**, Estate of **6.02**, Deceased—trust coordination for IRS Form 706

Dear **20.36A**:

This firm represents **2.45 or 2.76** as independent executor of the estate of **6.02**, Deceased (the "Estate"). We write concerning assets held in **20.36G** (the "Trust") that are or may be included in Decedent's gross estate for federal estate tax purposes.

As you may know, the executor is personally liable for estate taxes under Internal Revenue Code, Section 2002. Assets held in a revocable trust at the time of the grantor's death are generally included in the grantor's gross estate under Internal Revenue Code, Sections 2036 and 2038, even though those assets are not part of the probate estate. Accordingly, the executor must identify and value all such assets in order to fulfill the executor's obligation to file a com-

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plete and accurate IRS Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

Include the following paragraph if coordination provisions exist in the will or the trust.

We further note that [Decedent's will contains/the Trust instrument contains/Decedent's will and the Trust instrument contain] provisions authorizing the executor and trustee to coordinate regarding [**specify, e.g.,** all assets within Decedent's gross estate for state or federal income, gift, estate, or generation-skipping transfer tax purposes]. These coordination provisions contemplate the exchange of information necessary for proper tax reporting and elections.

We respectfully request that you provide the following information regarding the Trust:

1. **Trust Asset Schedule.** A complete schedule of assets held in the Trust as of Decedent's date of death, **1.07**, including for each asset: description, title holder, Committee on Uniform Security Identification Procedures (CUSIP) or account number (as applicable), and date-of-death fair market value. If formal appraisals have been obtained, please include copies.

2. **Trust Instrument.** A complete copy of the Trust instrument, including all amendments, restatements, and schedules, if not previously provided.

3. **Beneficiary Designations.** Information regarding any assets held in the Trust that are themselves subject to beneficiary designations (for example, retirement accounts, life insurance policies), including copies of current beneficiary designation forms.

4. **Postdeath Transactions.** A description of any trust assets sold, distributed, or otherwise disposed of since Decedent's date of death, including dates, amounts, and recipients.

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5. **Income and Expenses.** A summary of trust income received and expenses paid from Decedent's date of death through the date of your response, to assist in evaluating an Internal Revenue Code Section 645 election and in proper apportionment of administration expenses between the Estate and the Trust.

6. **GST Allocation Information.** Identification of any trust provisions that may create generation-skipping transfers (GSTs), including any provisions creating interests in or distributions to persons who may be skip persons, to assist in proper allocation of Decedent's GST exemption on Schedule R of Form 706.

7. **Community Property Information.** If Decedent was married at the time of death, identification of any trust assets that are or may be community property, including the basis for the characterization and any marital property agreements affecting the characterization.

We also wish to discuss whether a joint election under Internal Revenue Code, Section 645, to treat the Trust as part of the Estate for income tax purposes would be beneficial. If made, this election (filed on IRS Form 8855) would allow the Trust to use the Estate's taxpayer identification number during the election period and would eliminate the need for a separate Form 1041 for the Trust during that period. The election must be filed by the due date (including extensions) of the Estate's first Form 1041. We would appreciate the opportunity to discuss the advantages and considerations of this election with you and your tax advisors at your earliest convenience.

Finally, we anticipate that the administration of the Estate may involve expenses that benefit both the Estate and the Trust, or that require apportionment between them. We look forward to coordinating with you regarding the proper allocation of such expenses, including but not limited to appraisal fees, tax return preparation costs, and any legal fees incurred in connection with tax coordination matters.

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We would appreciate receiving the requested information within thirty days, if practicable, so that we may proceed with Form 706 preparation in a timely manner. Form 706 is due nine months after the date of Decedent's death, and extensions, while available, do not extend the time for payment of estate taxes. Prompt cooperation will assist in avoiding unnecessary interest and penalties.

Include the following paragraph if the executor and the trustee are the same person.

We understand that you also serve as independent executor of the Estate. This letter is addressed to you in your capacity as trustee and is intended to create a record of coordination between your two fiduciary roles. Although you are the same person, the Estate and the Trust are separate legal entities with distinct assets, obligations, and fiduciary duties. Maintaining a clear record of coordination between these capacities protects you in both roles.

We look forward to working with you on these matters. Please do not hesitate to contact us if you have questions or if you would prefer to schedule a meeting to discuss these items.

Yours very truly,

[**Name of firm**]

By _____
[**Attorney's name**]

Enclosures
[**List all enclosures**]
cc: [**Name of client, if the executor and trustee are different persons**]
[**Name of trust counsel, if known**]

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