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Hays COUNTY
County Court at Law No. 3
712 S. Stagecoach Trail, Ste. 2292
San Marcos, Texas 78666



FOR: _____

A Guide for the Texas Dependent Executor

CAUSE NO. ____-____-____

Introduction:

You are required to have the services of an attorney throughout the duration of this administration. This Court has appointed you to a position of great trust and confidence. It is a position that carries with it a considerable amount of responsibility. You should contact your attorney at any time you have questions concerning the handling of this estate. You should never attempt to handle the affairs of this estate without the guidance of your attorney. The following guide has been prepared by my office as a supplement to the information given to you by your attorney. It is only a supplement and not a substitute for his or her advice.

The attorney's fees will be

- paid by the estate
- must be approved by you, and
- ordered paid by the court.

Do not file anything without your attorney's signature.

Elaine S. Brown
Jimmy Alan Hall
Chris Johnson
Judge, County Court at Law
Hays County, Texas

Qualifying as Administrator:

- ❖ Within 20 days of receiving order appointing you as Administrator you must file both of the following:
 - Oath.
 - Bond (in the amount set by Judge).

If you fail to file a bond within 20 days of the appointment, you may be removed as Administrator without a hearing.

Expending funds:

- ❖ Do not expend funds without court approval
 - unless it is for insurance on estate property to protect against fire, theft, or hazards.
- ❖ Application must be filed and approved by court.
 - Before funds are to be spent on maintaining estate property.
- ❖ Court Approval: Here is how the Dependent Administrator obtains such approval:
 - **Petition to Court**: The Dependent Administrator files a petition with the court outlining the proposed action and justification.
 - Signed by you and your attorney.
 - **Hearing**: The court holds a hearing to consider the petition. Notice may need to be provided to interested parties like heirs.
 - **Order**: If the court approves the petition, it issues an order authorizing the specific action.

Administration:

General Duties of a Dependent Administrator:

- ❖ **Gather Estate Assets**: Locate and inventory all assets owned by the decedent at the time of death. This includes bank accounts, real estate, vehicles, investments, and personal property.
- ❖ **Take Possession of Assets**: Secure and manage the decedent's assets to prevent loss or damage. This might involve opening safe deposit boxes, changing account titles, and safeguarding physical property.
- ❖ **Pay Debts and Taxes**: Settle all outstanding debts of the estate, including funeral expenses, medical bills, and taxes.
- ❖ **Locate and Notify Heirs**: Identify all beneficiaries named in the will (if there is one) and determine their legal entitlement to the estate. Notify them of their inheritance rights. If there is no will, follow Texas intestacy laws to determine heirs.

Manage Estate Finances: The Dependent Administrator manages the estate's finances,

- opening an estate bank account,
 - deposit estate funds and
 - keep detailed records of all income and expenses.
- paying ordinary bills, and
- collecting income.
- ❖ **Accounting and Reporting**:
 - The Dependent Administrator is required to maintain detailed records of all income and expenses, and
 - file periodic accountings with the court. The frequency and detail of these accountings might be specified in the court order appointing the Dependent Administrator.
- ❖ **File Inventory and Appraisal**: Prepare and file an inventory with the court listing all estate assets and their estimated values.

- ❖ **File Tax Returns:** File federal and state income tax returns for the decedent and the estate, as required.
- ❖ **Distribute Assets:** Once all debts and taxes are paid, and after court approval, distribute the remaining assets to the beneficiaries according to the will or Texas intestacy laws.
- ❖ **Close the Estate:** Once all debts and taxes are paid, and assets are distributed according to the will or intestacy laws, the Dependent Administrator files a final account with the court and petitions for the closure of the estate.
- ❖ **Additional Court Instructions:**
 - ❖ **Bond Requirement:** Pay the amount of the bond required for the Dependent Administrator.
 - ❖ **Filing Deadlines:** Follow the deadlines for the Dependent Administrator to file required documents with the court, such as the inventory and appraisal.
 - **Examples of Actions Requiring Court Approval:**
 - Selling estate assets (real estate, vehicles, etc.)
 - Obtain court approval before finding a buyer.
 - Application for order of sale must be on file for 10 days before Judge can approve it
 - Paying expenses or legal fees from the estate
 - Borrowing money on behalf of the estate
 - Entering contracts on behalf of the estate
 - Making distributions to beneficiaries (typically after all debts and taxes are settled)
 - Attorney Representation: Determine whether the Dependent Administrator is authorized to hire legal counsel at the estate's expense.

Your Qualification:

You have been appointed to act on behalf of this estate. However, you are not qualified to act for this estate until you have taken and filed the oath of office and filed any required bond. Your oath, if not taken at the hearing, should be taken no later than 20 days from the date the Court signed the order appointing you as Dependent Executor. Generally, a bond is required for a Dependent Executor named in a Will. (A bond is an insurance policy that insures you meet your responsibilities under the Will and the Estates Code.) In the event either the Will or the Court requires a bond, the Court must approve the bond no later than 20 days from the date of the order appointing you. Your bond, if required, will have to be executed by an authorized corporate surety, and the amount of the bond will be that specified in the order making the appointment.

Letters Testamentary / Administration:

You may order your letters testamentary / administration after you have taken and filed the oath and have had your bond approved, if a bond is required. These letters will serve as the evidence of your appointment when dealing with third persons concerning the affairs of the estate.

Notice to Creditors of the Estate:

Within 30 days after you have qualified (taken and filed the oath and given any required bond), you must publish your notice to creditors in a newspaper of general circulation in this county, advising all creditors of your appointment. Within two months after your qualification, you must mail a registered or certified letter, return receipt requested, to each secured creditor of the estate. A secured creditor is one who holds a claim secured by a deed of trust, a mortgage, or some other lien upon property. You must file proof of the above two notices with the clerk's office. Although the Texas Estates Code does not require that you send notice to any other type of creditor, you may want to do so; your attorney should advise you accordingly.

Notice to Beneficiaries:

Within 60 days of the date the will is probated, you must give a statutorily required notice to the beneficiaries named in the will. The basic requirements are set out below.

You are not required to send notice to certain beneficiaries such as (1) a beneficiary who has received all gifts under the will within 60 days after the will is admitted to probate or (2) a beneficiary who is entitled to receive aggregate gifts with an estimated value of \$2,000 or less.

Each notice must include – in addition to other requirements outlined in the statute – either (1) a copy of the will admitted to probate and a copy of the order admitting the will to probate or (2) a summary of the gifts to the beneficiary under the will along with the name of the court that admitted the will to probate, the docket number assigned to the estate, the date the will was admitted to probate, and, if different, the date the court appointed the personal representative.

You are not required to give notice to either (1) beneficiaries who “made an appearance” in the probate proceeding before the will was admitted to probate or (2) beneficiaries who waived the right to notice *in a waiver that meets the statutory requirements and is filed with the Court*. The requirements of what must be included with that waiver depend on the date of decedent's death; your attorney will advise you about what must be included.

All notices must be sent by registered or certified mail, return receipt requested.

Your attorney will advise you about who must receive notice or sign a waiver and about what must be included in the notices or waivers.

Within 90 days, you must file an affidavit or certificate with the Court that confirms that notice was given or explains why it was not given. The Texas Estates Code sets out what must be included in your sworn affidavit or your attorney's certificate. Your attorney will help you decide whether to file an affidavit or a certificate and will advise you about what must be included in whichever one you file. ***The Court strongly prefers that you file the affidavit or certificate separately from any other document.*** However, if you combine the affidavit or certificate with the Inventory of the Affidavit in Lieu of Inventory (see below) or any other filing, the title of the document must include both “Notice to Beneficiaries” as well as a reference to whatever else you have included in the same document.

Note that a court may remove an executor or administrator who fails to timely file the affidavit or certificate described above, following certified-mail notice.

Inventory or Affidavit in Lieu of Inventory:

Within 90 days after your qualification, you must submit to the Court either a complete inventory of the estate or – if allowable – an affidavit in lieu of inventory.

You, your attorney, and any co-executor must all sign the inventory or the affidavit, and the attorney must include a signature block with his or her State Bar number and email address.

If you file an inventory, the inventory must be a complete inventory of the estate, with an attached list of claims owing *to* the estate (but not debts owed *by* the estate). The inventory must contain a list of all the real estate located within the State of Texas and a list of all personal property, regardless of where that property is located. In compiling the inventory, you must distinguish between separate and community property belonging to the estate. Your attorney will advise you as to the legal meaning of these two property classifications. The inventory must be verified by a sworn affidavit. If the order appointing you requires appraisers for the estate, then the appraisers must also sign a sworn affidavit to be attached to the inventory. If at any time during the pendency of this estate you discover additional property, you must file a supplemental inventory reflecting the newly acquired assets.

You may file an affidavit in lieu of an inventory instead of an inventory *only if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions.*

If you are eligible to file an affidavit in lieu of inventory and choose to do so, the affidavit must:

- State that all debts, except for secured debts, taxes, and administration expenses, are paid.
- State that all beneficiaries have received a verified, full, and detailed inventory – as described above.
- Be filed with the clerk within the prescribed time.

If you file an affidavit in lieu of inventory in the estate of a decedent who died on or after September 1, 2017, note that a court can fine a Dependent executor up if the court finds the executor misrepresented in an affidavit in lieu of inventory that beneficiaries received a verified, full, and detailed inventory and appraisal as required by the Estates Code. The Dependent executor could also be liable for damages and costs sustained by the executor's misrepresentation.

Your Powers and Duties:

Upon qualification, it is your duty to take possession of all property belonging to the decedent. Any cash that you receive should be maintained in a bank account separate from your personal funds. You should never co-mingle property belonging to the estate with your personal assets. You must use ordinary diligence in the collection of all claims and debts owed to the estate. If necessary, you may employ an attorney to recover property belonging to the decedent. Your powers to administer the estate are set out in the Will and the Texas Estates Code. Generally, all powers afforded to a dependent administrator under the Texas Estates Code are subject to the court's approval, including the sale of real estate under Estates Code Section 356.251 et seq.

Claims:

Claims of creditors against the estate may be presented to you at any time while the estate remains open. You may allow any claim you believe to be a just debt of the estate that is properly presented to you and authenticated, provided such claim is not barred by an applicable statute of limitation. Once a claim is presented to you, you should either allow or disallow it. If you reject a claim, the creditor will have to file suit to secure payment of the claim.

Closing the Estate:

You are ready to close the estate after (1) you have gathered the assets of the estate, (2) the inventory has been approved, (3) you have paid the debts and taxes, and (4) you have determined who is entitled to the remaining property. You should begin the procedure to close the estate only upon the advice of your attorney. You may then deliver the assets of the estate to the beneficiaries who are entitled to receive the property under the Will. This distribution concludes your responsibility as the Dependent Executor of this estate.