

# Alternatives to Probate



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# Family Dynamics in Probate

We can do this the easy way



.....or the hard way



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# Alternatives to Probate

Question 1:

A muniment of title can only be used when a deceased leaves a Will?

- a. True
- b. False



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# With a Will

## Muniment of Title

- Court may probate will as muniment of title when:
  - Court determines that the will should be admitted to probate; and
  - The court is satisfied that:
    - (1)there are no unpaid debts, excluding debts secured by liens on real property; and
    - (2)there is no need for administration (Tex. Estates Code Sec. 257.001)



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# Muniment of Title

Question 2:

The order admitting a Will to probate as a muniment of title acts as \_\_\_\_\_ to pay or transfer assets/debts of the estate.

- a. ultimate authority
- b. legal authority
- c. a request
- d. signatory permission



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# Muniment of Title

Question 3:

A muniment of title cannot be filed after 4 years has elapsed since death.

- a. True
- b. False



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# Muniment of Title

Application (Tex. Estates Code Sec. 257.051)

- a. will and any codicils must be attached
- b. if more than 4 years has elapsed since death, must indicate notice has been served on each heir whose address can be reasonably ascertained



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# Muniment of Title

Question 4:

An applicant must prove:

- a. The person is dead
- b. The court has jurisdiction and venue
- c. There are no unpaid debts
- d. There are no unpaid debts owed by the estate, excluding debts secured by liens on real estate
- e. All of the above



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# Muniment of Title

## The Hearing (Tex. Estates Code Sec. 257.054)

a. Applicant must state that:

1. The person is dead
2. 4 years has not elapsed
3. Court has jurisdiction and venue
4. Citation has been served and returned
5. There are no unpaid debts owing by the estate, excluding debts secured by liens on real estate
6. Will was not revoked by testator



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# Muniment of Title

Question 5:

If the will is not self-proven, an applicant must prove:

- a. The testator was at least 18 when executing the will, was lawfully married, or was a member of the armed forces
- b. Testator was of sound mind
- c. Testator could read and write the language the will was written in
- d. Testator executed the will with the formalities and solemnities required by law to make it valid
- e. All of the above
- f. All of the above except c
- g. All of the above except d



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# Muniment of Title

## The Hearing (Tex. Estates Code Sec. 257.054)

If will is not self-proved

- The testator was at least 18 when executing will, was lawfully married, or was a member of the armed forces;
- Testator was of sound mind; and
- Testator executed the will with the formalities and solemnities required by law to make it valid.



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# Muniment of Title

Question 6:

How is a muniment of title closed?

- a. The case is closed after the court's order is entered
- b. The case should never close, we love open files
- c. A closing affidavit is filed
- d. None of the above
- e. Any of the above
- f. All of the above except b



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# Muniment of Title

- The Court's Order ends court's involvement in the case
- Closing Affidavit (Tex. Estates Code Sec. 257.053)
  - a. May be waived by Court
  - b. Filed within 180 days stating terms of will have been fulfilled and any terms that have not been fulfilled



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# Muniment of Title

## Combine with Declaratory Judgment

The Applicant may combine the muniment of title application with a request for a declaratory judgment on some issue of will construction or interpretation.



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# Small Estates

Question 7:

To qualify as a small estate. A decedent's non-exempt assets must not exceed \_\_\_\_\_?

- a. \$50,000
- b. \$60,000
- c. \$75,000
- d. \$100,000



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# Small Estates

To qualify as a small estate, the following requirements must be met:

- a. Decedent died intestate;
- b. Decedent's non exempt assets must exceed the known liabilities of the estate, and the value of the nonexempt assets must not exceed \$75,000;
- c. no petition for the appointment of a personal representative is pending or has been granted;  
and
- d. the decedent has been dead for thirty days.  
(Tex. Estates Code Sec. 205.001)





# Small Estates

Question 8:

Only the distributee making the application must sign a small estate affidavit

- a. True
- b. False
- c. Depends on who the Judge is



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# Small Estates

1. Affidavit prepared by distributees and must include:
  - a. all assets of the estate;
  - b. all liabilities of the estate;
  - c. names and addresses of distributees;
  - d. an explanation of their right to receive the money or property of the estate. (Tex. Estates Code Sec. 205.002); and
  - e. every distributee must sign the affidavit



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# Small Estates

Question 9:

Title to any interest in real property in the estate subject to a small estate affidavit may be transferred by the affidavit.

- a. True
- b. False



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# Small Estates

Title to homestead is the only real property in the estate that may be transferred by affidavit.

(Tex. Estates Code Sec. 205.008)



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# Small Estates

Question 10:

A small estate affidavit must include \_\_\_\_\_.

- a. The social security number of all distributees
- b. The signature of two disinterested witnesses
- c. A request for citation on all interested parties
- d. I have no idea, I have never seen one that is correct.



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# Small Estates

Small Estate Affidavit – must include:

- a. names of all distributees with legal capacity;
- b. the natural guardian or next of kin of any minor or the guardian of any other incapacitated person who is a distributee; and
- c. two disinterested witnesses (Tex. Estates Code Sec. 205.002)



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# Small Estates

Question 11:

Does a small estate affidavit require a hearing?

- a. Yes
- b. No
- c. Depends on the Judge
- d. Depends on my mood



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# Small Estates

## Order

- a. can be signed by the judge with or without a hearing
- b. recorded in the “Small Estates” records of the county clerk’s office (Tex. Estates Code Sec. 205.005)
- c. if transferring homestead, must be filed in the deed records of the county where the homestead is located. (Tex. Estates Code Sec. 205.006)
- d. distributees provide certified copy of the order to each debtor of the estate or person having custody of property of the estate
- e. Procedure ineffective to transfer title to other real property





# Order of No Administration

Question 12:

An Order of No Administration can only be used when there is no property in the decedent's estate.

- a. True
- b. False



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# Order of No Administration

Can be used when:

a. decedent is survived by a spouse, minor child, or adult incapacitated child; and

b. the value of the estate, not including homestead and exempt property, does not exceed the family allowance.  
(Tex. Estates Code Sec. 451)

➤ Administration not necessary because there would be no property for the decedent's creditors or will beneficiaries to reach

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# Order of No Administration

Question 13:

An Order of No Administration can be filed in:

- a. any probate court in Texas
- b. Any court where venue is proper
- c. The court where an application for the appointment of a personal representative has been filed by not yet granted
- d. The court where an application for the appointment of a personal representative has been granted
- e. All of the above
- f. A,B, and C only
- g. A and C only



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# Order of No Administration

An Application for Family Allowance and Order of No Administration

- a. can be filed in any court in which venue is proper; or
- b. in the court where an application for the appointment of a personal representative has been filed but not yet granted (Tex. Estates Code Sec. 451.001 (b))

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# Order of No Administration

The application must:

- (1)state the names of the heirs or devisees;
- (2)list, to the extent known, estate creditors with the amounts of the claims;
- (3)describe all property belonging to the estate, including estimated value and any liens or encumbrances; and
- (4)request that a family allowance be granted and if allowance exceeds value of estate excluding exempt and homestead property, the assets of the entire estate be set aside for the surviving spouse, minor children and adult incapacitated children



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# Order of No Administration

Question 14:

A hearing on an Application for Order of No Administration has no notice requirements.

- a. True
- b. False



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# Order of No Administration

## Order

- a. no notice requirement for hearing...but court can order it (Tex. Estates Code Sec. 451.002)
- b. court grants application and signs order granting family allowance and finds no necessity for an administration
- c. order serves as legal authority to collect any debts or assets of the estate for the purpose of the family allowance.



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# Affidavit of Heirship

## A Texas non-judicial “custom”

- Accept affidavits on public record as evidence of good title despite no court action.
- Although weak procedure, title companies may accept.
- Unlikely to work with personal property such as bank accounts.
- Query- As of January 1, 2014, no statute of limitations for determination of heirship. Will this reduce a title company’s willingness to rely on this procedure?



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# Family Settlement Agreements

Question 15:

Can heirs or beneficiaries of a will agree to a division of assets of the estate that is different than the will provides?

- a. Yes, as long as all of the named beneficiaries are also beneficiaries in the agreement
- b. Yes, as long as no one excluded in the will is a beneficiary
- c. No, but they can agree to division of property omitted from the will
- d. No, the testator's wishes should prevail
- e. A and B
- f. C and D
- g. Yes, without limitations so long as they all agree



# Family Settlement Agreements

- Favored by courts
  - Better for family relations
  - Lessens burden on court
- Agree to:
  - Not probate the will (if there is one), and
  - Division of the estate property



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# Family Settlement Agreements

- Court approval not necessary, but may be appropriate if:
  - Will already probated and agreement differs from will disposition
  - Minor, unknown, or unascertained heirs or beneficiaries
  - Agreement modifies or terminates a testamentary trust without agreement of all trust beneficiaries
- Filing
  - The parties to a family settlement agreement should file it in the deed records if it impacts real property
    - Thus, the agreement should be acknowledged to facilitate filing



THE END