



TEXAS ASSOCIATION *of* COUNTIES

**2019 Probate Academy**

# **PROBATE OVERVIEW**

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# Drinking at the funeral



# Advance directive for the final playlist



# Checking on your partner



# Estate Administration Reasons

- **1. Title Transfer**
  - Prove the identity of the new owners of the decedent's probate property:
    - Heirs, if intestate
    - Beneficiaries, if testate

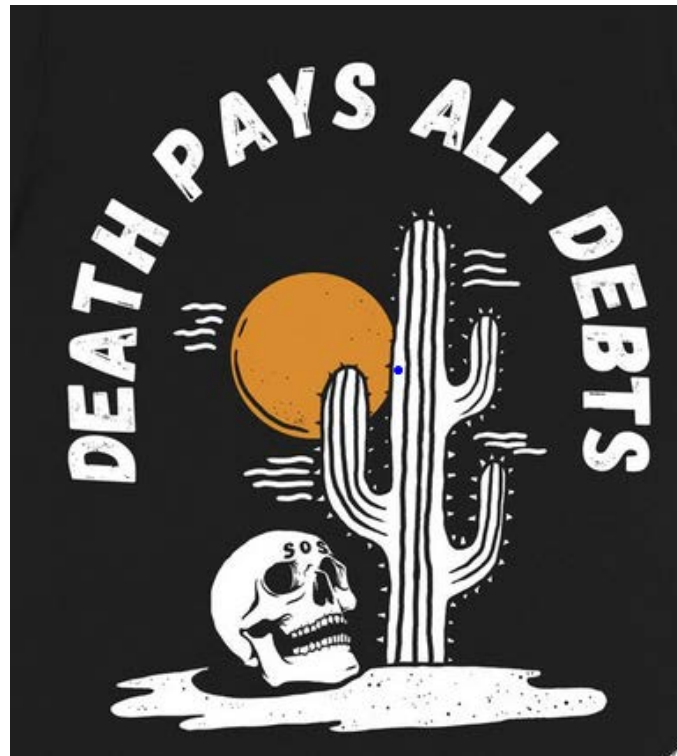
**UNDER NEW  
OWNERSHIP**

# Estate Administration Reasons

- **Non-Probate Property**
  - Joint tenancies with survivorship rights
    - Bank accounts
    - Real property
    - Automobiles
  - Pay-on-death designations
    - Bank accounts
    - Retirement funds, pensions, annuities, etc.
    - Life insurance
  - Other arrangements
    - Inter vivos trusts
    - Transfer on death deeds
    - Transfer on death motor vehicle titles
    - Community property survivorship agreements

# Estate Administration Reasons

- 2. Creditor Payment



# Who Performs Administration?

- **Personal representative:**
  - **Executor or Executrix = will**
  - **Administrator or Administratrix = intestate**
- **Must be appointed by a court.**



# Who Performs Administration?

- **Legal Requirements**
  - **Not incapacitated**
  - **Not a convicted felon**
  - **Not a non-resident of Texas**
    - **Allowed if person appoints resident agent to accept service of process.**
  - **Not a corporation not authorized to be a fiduciary in Texas**
  - **Not a person the court finds “unsuitable”**

# Overview of Administration Process

- **1. Determine if Decedent Left a Will**
  - **Home and office**
    - Search carefully – testators often “hide” wills
  - **Safe deposit box**
    - Texas has accelerated access method to allow access to look for will, life insurance policies, and burial plot deed.
  - **Significant individuals**
    - Family members, friends, drafting attorney
  - **Clerk of the court**

# Overview of Administration Process

- 2. A person with standing begins the process
  - Administration does not automatically happen.
    - Heir
    - Will beneficiary
    - Named executor
    - Creditor
    - “Good Samaritan” to prevent waste to the estate
  - Prepares and files application.
  - Pays filing fee.

# Overview of Administration Process

- **3. Proper Notice**
  - Clerk of Court gives notice according to applicable law.
  - Most often, just posting on the court house door or a nearby bulletin board.
  - Other methods may be required (e.g., probate after four years of death, unable to produce original will)
    - Publication
    - Mail
    - Personal service

# Overview of Administration Process

- **4. Hearing**
  - **Court conducts hearing on application.**
    - Determines validity of will, or
    - Determines that decedent died intestate.
  - **Court appoints personal representative unless:**
    - Muniment of title.
    - Determination of heirship only.
    - Abbreviated [e.g., small estate affidavit]
  - **Court determines type of administration**
    - Dependent
    - Independent [most common]

# Overview of Administration Process

- **5. Personal representative qualifies**
  - Takes oath of oath.
  - Posts bond
    - Unless testator waived it
    - Unless the personal representative is a corporation.
  - Obtains letters testamentary (if will) or letters of administration (if intestate) from clerk.

# Overview of Administration Process

- **6. Personal representative gives notices**
  - **To will beneficiaries.**
  - **To creditors.**
    - **Secured**
    - **Unsecured**

# Overview of Administration Process

- 7. Personal representative collects and preserves the decedent's probate property.
  - Only probate assets.
  - Beware of the "Tomb Raiders" and "Vulchers"





# Overview of Administration Process

- **8. Personal representative prepares inventory, appraisement, and list of claims (of affidavit in lieu thereof).**
  - **File with court within 90 days of appointment.**
  - **Court reviews and approves (or not).**
    - **If independent administration, rest of process is outside of court supervision unless someone complains.**

# Overview of Administration Process

- **9. Manage decedent's property**
  - **Must do so in a fiduciary capacity**
    - **No self-dealing.**
    - **Avoid conflicts of interest.**

# Overview of Administration Process

- **10. Certain property is protected from most creditors**
  - Homestead
  - Exempt personal property
  - Family allowance

# Overview of Administration Process

- **11.** Personal representative pays claims according to a detailed priority order specified in the Estates Code.

# Overview of Administration Process

- **12. If dependent administration, personal representative makes reports to the court on status of administration, typically annually.**

# Overview of Administration Process

- **13. If property remains after paying creditors, personal representative distributes to heirs or beneficiaries.**

# Independent Administration

# Creation of Independent Administration

- **1. Express language in the will**
  - **“To the extent permitted by law, no action shall be had in any court exercising probate jurisdiction in relation to the settlement of my estate other than the probating and recording of my will and return of any required inventory, appraisement, and list of claims of my estate.”**
  - **“I appoint [name] to be independent executor.”**



# Creation of Independent Administration

- **2. By agreement of all recipients of the decedent's property**
  - Will beneficiaries
  - Intestate heirs

# Bond in Independent Administration

- **Court may waive bond**
  - Even if will did not provide for bond waiver
  - Even if decedent died intestate

# Court action in Independent Administration

- Once inventory, appraisement, and list of claims (or affidavit in lieu thereof) is filed and approved, no further court action is needed unless someone “complains.”

# Accounting in Independent Administration

- Annual accounts are not needed.
- Interested person may demand accounting from personal representative after 15 months.
  - If PR not comply within 60 days, suit is possible.
- Interested person may petition court to force PR to account *and* distribute after two years.

# Dependent Administration

# Dependent Administration

- **Except for a few minor things (e.g., pay taxes and insure property), personal representative must:**
  - **Ask the court for permission to do something.**
  - **Court conducts hearing.**
  - **Do the act (assuming court approves it).**
  - **Ask the court to approve what was done.**

# Dependent Administration

- **Examples of things personal representative will petition court to do:**
  - **Setting apart exempt property**
    - Homestead
    - Exempt personal property
    - Family allowing
  - **Selling estate property.**
  - **Paying debts.**
  - **Approving annual accountings.**
  - **Distributing to beneficiaries.**
  - **Approving PR compensation.**

# Questions?

