

Glossary of Probate Terms

Administrator/Administratrix - one appointed to handle the affairs of a person who has died intestate; one who manages the estate of a deceased person who left no Executor. Administrator is male; Administratrix is female.

Adverse Action – Opposed action; contrary; in resistance or opposition to original action; having opposite interests

Beneficiary – One who receives anything as a gift or benefit; a person (or entity) named to receive the income or inheritance from a Will; insurance policy, etc.

Authorized corporate surety - a domestic or foreign corporation authorized to engage in business in this state for the purpose of issuing surety, guaranty, or indemnity bonds that guarantee the fidelity of an executor or administrator.

Bond – cash or surety from an insurance company guaranteeing faithful performance of duties

Citation - summons to appear in a proceeding; can be by posting, personal service and/or publication in a local newspaper

Claims - assertion of a right to money or property; liabilities, expenses and debts of a decedent

Claimant - party who asserts a right to money or property

Codicil (to Will) -A supplement or addition to a will; it may explain, modify, add to, subtract from, qualify, alter, restrain or revoke provisions in existing will. Such does not purport to dispose of entire estate or to contain the entire will of testator.

Co-Executor - One who is a part executor with one or more others; two or more who are joined in the execution of a will.

Community Survivor -When a husband or wife dies intestate and the community property passes to the survivor; no administration thereon, community or otherwise, shall be necessary. (No "Letters" issued).

Constitutional Court - court established by the Texas Constitution; County court

Creditor – one to whom money is owed by a debtor

Decedent - the deceased person

Descendant – related or descended from someone

Determination of Heirship – proceeding to determine decedent's heirs and their respective shares and interests of decedent's estate

Devise - disposition of property (noun); to dispose of property (verb)

Devisee - person entitled to property

Distributee - person entitled to a share of an estate

Distribution – succession to personal property

Docket - List of cases on a court's calendar; a formal record of the Court

Docket Sheet – document kept in a case file that lists all papers filed and actions taken in a case.

Estate - decedent's property

Executor/Executrix - person who is either expressly or by implication is appointed by a testator (one who dies leaving a Will) to carry out the testator's directions concerning the dispositions he makes under his Will. Executor is male; Executrix is female.

Fee Simple - Absolute; an estate in which the owner is entitled to the entire property; the estate that a man has where lands are given without any end or limit put to his estate.

Fiduciary - A person or institution who manages money or property for another and who must exercise a standard of care in such management activity imposed by law or contract e.g. executor of estate; receiver in bankruptcy; trustee

Foreign Will - Will executed by decedent while domiciled in a jurisdiction other than the State of Texas.

Heir - person who received property from a decedent who dies intestate.

Holographic Will - a Will written, dated and signed by the hand of the testator himself (hand-written Will).

Independent Executor/Administrator - personal representative of an estate under independent administration; appointed by the Court; once appointed, they serve without court supervision.

Interested Person (Probate)– an heir, devisee, spouse, creditor, or any other having a property right in or claim against an estate being administered.

Intestate - to die without leaving a valid Will.

Inventory and Appraisal – Written instrument that contains a verified, full, and detailed inventory of all estate property that has come into the representative's possession or of which the representative has knowledge.

Legacy - gift or devise of real or personal property made by a Will.

Legatee - person entitled to a legacy under a Will.

Letters of Administration – document granted to a person by a probate court evidencing such person's authority to act as administrator of the estate of a person who has died without evidence of a valid will.

Letters Testamentary - document issued by the County Clerk that states that a person has the ability to act on behalf of a decedent's estate, pursuant to the person's Last Will and Testament. Can be issued as soon as the Judge signs the Order appointing the executor named in the will and the executor files an Oath and a bond, if one is necessary.

Muniment of Title - Means "no executor or administrator is necessary" and the beneficiary simply became owner of their parts of the estate; no letters, oaths or bonds are necessary. (No "Letters" issued).

Oath – Any form of attestation by which a person signifies that he is bound in conscience to perform an act or to speak faithfully and truthfully.

Pecuniary - Monetary; financial; consisting of money or that which can be valued in money. (I.e. pecuniary benefits, pecuniary bequest, pecuniary condition, pecuniary damages, pecuniary loss, etc.).

Per Capita - By the head; according to the number of individuals; share and share alike; equally divided. (i.e., 3 children; 2 living and 1 deceased; deceased had 2 children so to be divided to each living child and to each child of the deceased child).

Per Stirpes – Equally divided between heirs; by roots or stocks; by representation denotes method used to divide an intestate estate. (I.e. 3 children; 2 living and 1 deceased; divide 1/3 to each living child and 1/3 to heirs of deceased child).

Pretermitted Heir - A child or other descendant omitted by a testator when he executed his last will and no provision is made therein for any such child.

Prima Facie - At first sight; on the first appearance; on the face of it; i.e. prima facie evidence - evidence good and sufficient on its face; is sufficient to establish a given fact.

Pro Se - One who represents oneself without the aid of legal counsel; cannot represent others.

Probate - matter or proceeding relating to a decedent's estate.

Real Property – estates and interests in land.

Reciprocal - Given or owned mutually as between two persons; or parties, entities, states

Residuary Estate - That which remains after debts and expenses of administration, legacies and devises have been satisfied; consists of all that has not been legally disposed of by will, other than by residuary clause. All debts must be paid by residuary estate.

Representative/Personal Representative - Executor or Administrator of an estate; they are named by Order of the Court; they must qualify.

Safe Keeping of Will – deposit of Will with the county clerk of the county of the testator's residence.

Self-Proving Will - Will is signed and notarized and has two witnesses, whose signatures are notarized.

Small Estate Affidavit – affidavit distributing decedent's estate that died intestate.

Statute - an act of the Legislature that becomes law.

Statutory Court - court established by an act of the Legislature by passing a Bill and put in statute, the existence of a court in a county.

Statutory Probate Court – court created by statute and designated as a statutory probate court under Chapter 25, Government Code; can only hear probate cases.

Surety – guarantees that a person appointed will perform their duties; promise to faithfully execute duties; involves promise to assume responsibility in the event that the principal fails to do so; the surety is directly and is immediately liable for the debt. Includes a personal surety and a corporate surety.

Testator - one who makes a Will.

Venue - proper court of trial or court proceeding.

Will - person (testator's) declaration of how he desires his property to be disposed of after his death; appoints an executor or guardian and revokes a previous will.

Types of Wills

(1) Holographic -

Wholly in the handwriting of the testator. Dated and signed by the testator himself.

(2) Joint Will -

One where the same instrument is made the will of two or more persons and is jointly signed by them. Such wills are usually executed to make testamentary disposition of joint property.

(3) Living Will -

(Has to do with "Natural Death Act"; nothing to do with the estate.) A short document that states, "If the situation should arise in which there is not reasonable expectation of my recovery from physical or mental disability, I request that I be allowed to die and not be kept alive by artificial means or heroic measures."

(4) Nuncupative

An oral will declared or dictated by the testator in his last sickness before a sufficient number of witnesses, (and afterwards reduced to writing)

(5) Reciprocal -

Wills made by two or more persons in which they make reciprocal testamentary provisions in favor of each other, whether they unite in one will or each executes a separate one.

(6) Self - Proved Will -

A will that eliminates some of the formalities of proof by execution in compliance with statute. It is made self-proved by affidavit of attesting witnesses in the form prescribed by statute.

(7) Attested Will -

Will signed in the presence of witnesses; witnesses have to testify in Court when the will is probated.