

## **AUTHENTICATED, EXEMPLIFIED AND THREE WAY CERTIFICATES**

What is an Authenticated, Exemplified or Three-Way Certificate, and when am I supposed to require them?

### **DEFINITIONS:**

**Authenticate**: To render authentic; to give authority to by proof, attestation, or formalities required by law; to prove authenticity.

**Authentication**: Such official attestation of a written instrument as will render it legally admissible in evidence.

**Exemplification**: A portrayal by example. The authentication of a copy by attestation or certification under seal.

**Exemplified Copy**: An authenticated copy; a copy of a public document or record verified by the great seal or the seal of the court.

**Three Way Certificate**: Certified and attested to by the clerk stating that it is attached to a True and Correct Copy. Certified and signed by the Judge stating that the clerk that signed above is the clerk and that he is the judge of the Court in which the proceedings were had, and lastly signed and attested to by the clerk stating that the court is a court of record and that the judge was duly elected to that court and that his signature is genuine.

**Foreign Will**: Written Will of a testator who was not domiciled in Texas at the time of his death.

**Authenticated or Exemplified and Three Way Certificates are actually three different terms that perform the same function.**

There are two kinds of proofs of authenticity used by courts, exemplified and certified. The most common reason to order these from your court is so you can domesticate the judgment to another state where your judgment debtor's assets are.

An exemplified judgment is a copy of the judgment to which a certificate has been attached signed in three places, once by the judge, and twice by court clerks, attesting to the authenticity and validity of the judgment.

Texas Estates Code Chapters 501, 502 and 503 explain when an Authenticated/Exemplified or Three-Way certificate is required.

**Chapter 501** states that a Foreign Will can be probated in Texas if the will affects property and contains proof that the will was probated in another state or foreign nation. The application must include a copy of the foreign will or any other decree admitting it to probate. The copy must be:

- (1) Attested by and with original signature of the court clerk or other official who has custody of the will or who is in charge of probate records;
- (2) Include a certificate with the original signature of the judge or presiding magistrate of the court stating that the attestation is in proper form; and
- (3) Have the court seal affixed, if a court seal exists.

County Clerks authenticate a particular act by the legal formality of applying a seal to a written document that describes the act. Section 191.001(b), Local Government Code, requires that the County Clerk use the county court seal to authenticate all of the Clerk's official acts as county recorder. This section was amended in 2013 by HB 1728 to provide that the Clerk may affix the seal on an original document by stamp, electronic means, facsimile, or other means that legibly reproduces all of the required elements of the seal for the purposes of reproduction.

**Chapter 502** states that a copy of a foreign will, authenticated in the manner required, is sufficient proof of the contents of the will to admit the will to probate in an original proceeding in this state if an objection to the will is not made.

**Chapter 503** states that a copy of a foreign will that conveys, or in any other manner disposes of, land in this state and that has been probated according to the laws of any state of the United States or a country other than the United States, along with a copy of the judgment, order, or decree by which the instrument was admitted to probate that has the attestation, seal, and certificate required by Section 501, may be filed and recorded in the deed records in any county in this state in which the land is located.

In conclusion, any time the clerk's office receives an Out of State or Foreign Will it must have an Authenticated, Exemplified or Three Way Certificate attached before filing a new case for probate or recording in the county's Official Public Records.

When preparing copies of probate papers to be filed in other states you will have to rely on what the attorney ordered since we are not governed by other states statutes and do not know what they might require. If the attorney does order an Authenticated or Exemplified copy, you would prepare the Certificate and attach it to the copies of the documents. (See the attached example.)

AUTHENTICATED/EXEMPLIFIED CERTIFICATION

THE STATE OF TEXAS §                      CLERK'S ATTESTATION  
COUNTY OF BRISCOE §

I, Bena Hester, Clerk of the County Court of Briscoe County, Texas, the same being a court of record, in the performance of the functions of my office, certify that I am the lawful possessor and keeper, and have legal custody of the papers and records of said courts; and I further certify and attest that the foregoing is a true and correct copy of:

**Application To Probate Will and For Issuance of Letters Testamentary  
Will**

in the action numbered 1367 in the County Court, styled: IN THE ESTATE OF \_\_\_\_\_, DECEASED.

as the same remains on file and of record in my office.

IN WITNESS WHEREOF, I set my hand and affix the seal of said Court at office in the City of Silverton this 5<sup>th</sup> day of October, 2005.

\_\_\_\_\_  
BENA HESTER  
Clerk of the County Court  
Briscoe County, Texas

THE STATE OF TEXAS §                      CERTIFICATE OF JUDGE AS TO CLERK  
COUNTY OF BRISCOE §

I, Wayne Nance, Judge, County Court of Briscoe County, Texas, certify that Bena Hester is, and was at the time of signing above, Clerk of said Court, and is legally entrusted with the possession and custody of the records and files thereof; that the signature thereto applied is genuine and that said certificate and attestation are in due form and by the proper officer.

I further certify that I am the Judge in the County Court of Briscoe County, Texas; and that said Court is a court of record, having a clerk and a seal in which the herein above attested to record is kept.

\_\_\_\_\_  
WAYNE NANCE, Judge  
Briscoe County, Texas

THE STATE OF TEXAS §                      CLERK'S AUTHENTICATION AS TO JUDGE  
COUNTY OF BRISCOE §

I, Bena Hester, Clerk of the County Court of Briscoe County, Texas, certify that said Court is a court of record, and that the Honorable Wayne Nance, is a duly elected Judge of the County Court, and that the signature to said certificate is genuine.

IN WITNESS WHEREOF, I set my hand and affix the seal of said Court at office in Silverton, Texas, this the 5<sup>th</sup> day of October, 2005.

\_\_\_\_\_  
BENA HESTER, County Clerk  
Briscoe County, Texas

## ESTATES CODE

## TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE K. FOREIGN WILLS, OTHER TESTAMENTARY INSTRUMENTS, AND  
FIDUCIARIES

## CHAPTER 501. ANCILLARY PROBATE OF FOREIGN WILL

## Sec. 501.001. AUTHORITY FOR ANCILLARY PROBATE OF FOREIGN WILL.

The written will of a testator who was not domiciled in this state at the time of the testator's death may be admitted to probate at any time in this state if:

- (1) the will would affect any property in this state; and
- (2) proof is presented that the will stands probated or otherwise established in any state of the United States or a foreign nation.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 46, eff. September 1, 2015.

## Sec. 501.002. APPLICATION FOR ANCILLARY PROBATE OF FOREIGN

WILL. (a) An application for ancillary probate in this state of a foreign will admitted to probate or otherwise established in the jurisdiction in which the testator was domiciled at the time of the testator's death is required to indicate only that probate in this state is requested on the basis of the authenticated copy of the foreign proceedings in which the will was admitted to probate or otherwise established.

(b) An application for ancillary probate in this state of a foreign will that has been admitted to probate or otherwise established in a jurisdiction other than the jurisdiction in which the testator was domiciled at the time of the testator's death must:

- (1) include all information required for an application for probate of a domestic will; and

(2) state the name and address of:

(A) each devisee; and

(B) each person who would be entitled to a portion of the estate as an heir in the absence of a will.

(c) An application described by Subsection (a) or (b) must include for filing a copy of the foreign will and the judgment, order, or decree by which the will was admitted to probate or otherwise established. The copy must:

(1) be attested by and with the original signature of the court clerk or other official who has custody of the will or who is in charge of probate records;

(2) include a certificate with the original signature of the judge or presiding magistrate of the court stating that the attestation is in proper form; and

(3) have the court seal affixed, if a court seal exists.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 501.003. CITATION AND NOTICE. (a) Citation or notice is not required for an application described by Section 501.002(a).

(b) For an application described by Section 501.002(b), a citation shall be issued and served by registered or certified mail on each devisee and heir identified in the application.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 501.004. RECORDING BY CLERK. (a) If a foreign will submitted for ancillary probate in this state has been admitted to probate or otherwise established in the jurisdiction in which the testator was domiciled at the time of the testator's death, it is the ministerial duty of the court clerk to record the will and the evidence of the will's probate or other establishment in the judge's probate docket.

(b) If a foreign will submitted for ancillary probate in this state has been admitted to probate or otherwise established in a jurisdiction other than the jurisdiction in which the testator was

domiciled at the time of the testator's death, and a contest against the ancillary probate is not filed as authorized by Chapter 504, the court clerk shall record the will and the evidence of the will's probate or other establishment in the judge's probate docket.

(c) A court order is not necessary for the recording of a foreign will in accordance with this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.019, eff. January 1, 2014.

Sec. 501.005. EFFECT OF FILING AND RECORDING FOREIGN WILL. On filing and recording a foreign will in accordance with this chapter, the foreign will:

- (1) is considered to be admitted to probate; and
- (2) has the same effect for all purposes as if the original will had been admitted to probate by order of a court of this state, subject to contest in the manner and to the extent provided by Chapter 504.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 501.006. ANCILLARY LETTERS TESTAMENTARY. (a) On application, an executor named in a foreign will admitted to ancillary probate in this state in accordance with this chapter is entitled to receive ancillary letters testamentary on proof made to the court that:

- (1) the executor has qualified to serve as executor in the jurisdiction in which the will was previously admitted to probate or otherwise established;

- (2) the executor is not disqualified from serving in that capacity in this state; and

- (3) if the will is admitted to ancillary probate in this state after the fourth anniversary of the testator's death, the executor continues to serve in that capacity in the jurisdiction in

which the will was previously admitted to probate or otherwise established.

(b) After the proof required by Subsection (a) is made, the court shall enter an order directing that ancillary letters testamentary be issued to the executor. The court shall revoke any letters of administration previously issued by the court to any other person on application of the executor after personal service of citation on the person to whom the letters were issued.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 47, eff. September 1, 2015.

Sec. 501.007. EFFECT ON PROPERTY. A foreign will admitted to ancillary probate in this state as provided by this chapter after having been admitted to probate or otherwise established in the jurisdiction in which the testator was domiciled at the time of the testator's death is effective to dispose of property in this state regardless of whether the will was executed with the formalities required by this title.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 501.008. SETTING ASIDE OF CERTAIN FOREIGN WILLS. (a) This section applies only to a foreign will admitted to ancillary probate in this state, in accordance with the procedures prescribed by this chapter, based on the previous probate or other establishment of the will in the jurisdiction in which the testator was domiciled at the time of the testator's death.

(b) The admission to probate in this state of a foreign will to which this section applies shall be set aside if it is subsequently proven in a proceeding brought for that purpose that the foreign jurisdiction in which the will was admitted to probate or otherwise established was not in fact the domicile of the testator at the time of the testator's death.

(c) The title or rights of a person who, before commencement of a proceeding to set aside the admission to probate of a foreign will under this section, purchases property in good faith and for value from the personal representative or a devisee or otherwise deals in good faith with the personal representative or a devisee are not affected by the subsequent setting aside of the admission to probate in this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.



## ESTATES CODE

## TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE K. FOREIGN WILLS, OTHER TESTAMENTARY INSTRUMENTS, AND  
FIDUCIARIES

## CHAPTER 502. ORIGINAL PROBATE OF FOREIGN WILL

## Sec. 502.001. ORIGINAL PROBATE OF FOREIGN WILL AUTHORIZED.

(a) This section applies only to a will of a testator who dies domiciled outside of this state that:

(1) on probate, may operate on any property in this state;  
and

(2) is valid under the laws of this state.

(b) A court may grant original probate of a will described by Subsection (a) in the same manner as the court grants the probate of other wills under this title if the will:

(1) has not been rejected from probate or establishment in the jurisdiction in which the testator died domiciled; or

(2) has been rejected from probate or establishment in the jurisdiction in which the testator died domiciled solely for a cause that is not a ground for rejection of a will of a testator who died domiciled in this state.

(c) A court may delay passing on an application for probate of a foreign will pending the result of probate or establishment, or of a contest of probate or establishment, in the jurisdiction in which the testator died domiciled.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 502.002. PROOF OF FOREIGN WILL IN ORIGINAL PROBATE PROCEEDING. (a) A copy of the will of a testator who dies domiciled outside of this state, authenticated in the manner required by this title, is sufficient proof of the contents of the will to admit the will to probate in an original proceeding in this state if an objection to the will is not made.

(b) This section does not:

(1) authorize the probate of a will that would not otherwise be admissible to probate; or

(2) if an objection is made to a will, relieve the proponent from offering proof of the contents and legal sufficiency of the will as otherwise required.

(c) Subsection (b)(2) does not require the proponent to produce the original will unless ordered by the court.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE K. FOREIGN WILLS, OTHER TESTAMENTARY INSTRUMENTS, AND  
FIDUCIARIES

CHAPTER 503. RECORDING OF FOREIGN TESTAMENTARY INSTRUMENT

SUBCHAPTER A. REQUIREMENTS FOR RECORDING FOREIGN TESTAMENTARY  
INSTRUMENT

Sec. 503.001. AUTHORIZATION TO RECORD CERTAIN FOREIGN TESTAMENTARY INSTRUMENTS IN DEED RECORDS. (a) A copy of a will or other testamentary instrument that conveys, or in any other manner disposes of, land in this state and that has been probated according to the laws of any state of the United States or a country other than the United States, along with a copy of the judgment, order, or decree by which the instrument was admitted to probate that has the attestation, seal, and certificate required by Section 501.002(c), may be filed and recorded in the deed records in any county in this state in which the land is located:

(1) without further proof or authentication, subject to Section 503.003; and

(2) in the same manner as a deed or conveyance is required to be recorded under the laws of this state.

(b) A copy of a will or other testamentary instrument described by Subsection (a), along with a copy of the judgment, order, or decree by which the instrument was admitted to probate that has the attestation and certificate required by Section 501.002(c), is:

(1) prima facie evidence that the instrument has been admitted to probate according to the laws of the state or country in which it was allegedly admitted to probate; and

(2) sufficient to authorize the instrument and the judgment, order, or decree to be recorded in the deed records in the proper county or counties in this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 503.002. ORIGINAL SIGNATURES NOT REQUIRED.

Notwithstanding Section 501.002(c), the original signatures required by that section may not be required for a recordation in the deed records in accordance with Section 503.001 or for a purpose described by Section 503.051 or 503.052.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 503.003. CONTEST OF RECORDED FOREIGN TESTAMENTARY INSTRUMENT PERMITTED. The validity of a will or other testamentary instrument, a copy of which is filed and recorded as provided by Section 503.001, may be contested in the manner and to the extent provided by Subchapter A, Chapter 504.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. EFFECTS OF RECORDED FOREIGN  
TESTAMENTARY INSTRUMENT

Sec. 503.051. RECORDED FOREIGN TESTAMENTARY INSTRUMENT AS CONVEYANCE. A copy of a foreign will or other testamentary instrument described by Section 503.001 and the copy of the judgment, order, or decree by which the instrument was admitted to probate that are attested and proved as provided by that section and delivered to the county clerk of the proper county in this state to be recorded in the deed records:

- (1) take effect and are valid as a deed of conveyance of all property in this state covered by the instrument; and
- (2) have the same effect as a recorded deed or other conveyance of land beginning at the time the instrument is delivered to the clerk to be recorded.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 503.052. RECORDED FOREIGN TESTAMENTARY INSTRUMENT AS NOTICE OF TITLE. A copy of a foreign will or other testamentary instrument described by Section 503.001 and the copy of the judgment, order, or decree by which the instrument was admitted to probate that is attested and proved as provided by that section and filed for recording in the deed records of the proper county in this state constitute notice to all persons of the:

- (1) existence of the instrument; and
- (2) title or titles conferred by the instrument.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.