



*Riddle & Butts, LLP*

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## Fiduciary Handbook for Estates

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# A NOTE FROM THE TEAM



## Introduction

Thank you for taking the time to familiarize yourself with the information in this handbook. The purpose of this handbook is to serve as a reference guide, highlighting specific issues and requirements necessary to administer an estate. We hope the information provided enhances your understanding of this process. Should you be appointed as Executor or Administrator of an estate, this handbook will assist you in serving in such capacity in a thoughtful and competent manner. If you have additional questions or concerns, your attorney and our staff are available to provide assistance.

## About the Team

**Michael C. Riddle** began his practice of law as a gift and estate tax attorney for the Internal Revenue Service. He graduated from the University of Houston Law School in 1972 and in 1991 became Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate. He is the Managing Partner of Riddle & Butts, LLP and has been practicing law in Harris County and surrounding counties for over 40 years.

**Christine Butts** is a 1993 graduate of the University of Texas at Austin where she obtained her BBA in International Business. In 1996, she graduated from the University of Houston Law School. Christine is Board Certified in Probate and Estate Planning by the Texas Board of Legal Specialization. Christine served Harris County as Judge of Probate Court 4 from 2011 to 2018.

**Kristi Gourley** is a 1997 graduate of Texas A&M University where she obtained her BS in Biomedical Science. In 2003, she graduated from the Paul M. Hebert Law Center at LSU, where she was an editor for the Louisiana Law Review.

**Kathryn Hansen** is a 2015 graduate of the Texas Tech University School of Law and 2012 graduate of the University of Texas at San Antonio. In addition to being a licensed attorney, Kathryn is a Certified Public Accountant. Prior to joining Riddle & Butts in 2021, Kathryn worked in the tax department of a mid-market accounting firm in Houston where she specialized in tax planning and tax return preparation for individuals and business entities.

**Kaitlyn Ready** graduated from Texas A&M University in 2016 with a degree in business management. She continued her education at South Texas College of Law. Kaitlyn now handles both probate and estate planning matters.





# LAYING THE GROUNDWORK

## Meeting with Your Attorney

Your attorney will need the following information to prepare an application to probate a Will or administer an estate. In order to move forward in a timely manner, it is helpful to have these details and documents with you when you meet with your attorney for the first time:

- Decedent's name;
- Copy of decedent's Death Certificate;
- Dates of decedent's birth and death;
- Decedent's age at the date of death;
- County in which decedent died;
- Decedent's address at the time of death;
- The county where the majority of decedent's assets are located;
- Decedent's parents' information;
- Decedent's siblings' information;
- Decedent's children's information (including adopted children);
- Decedent's spouse's information;
- Information regarding all marriages and divorces;
- Whether decedent's spouse is a common law spouse;
- Name and address of the applicant and the applicant's relationship to decedent;
- General idea of the value of decedent's estate;
- Original or copy of the Will (if applicable);
- Copy of the trust (if applicable); and
- Reason for the need to administer the estate (in administration proceedings).

## Familiarize Yourself with Vocabulary

**Accounting.** A document that sets out the property which came into the hands of the fiduciary, the disposition of such property, the debts or expenses that were paid, any debts or expenses remaining to be paid, and property remaining in the estate.

**Administrator.** A person appointed by a court to administer the estate of a deceased person who died intestate or with a Will but failed to name a person in such Will to serve as Executor who is able and willing to so serve. So long as all distributees agree, an Administrator may serve independently and free of court supervision.

**Attorney Ad Litem.** An attorney appointed by a court to represent and advocate on behalf of unknown, missing, or incapacitated heirs.

**Creditor Claim.** Claim for money against an estate. In dependent administrations, claims are classified according to priority with funeral expenses taking the highest priority.

**Distributee.** A person who is entitled to a part of the estate of a decedent under a lawful Will or pursuant to a Judgment Declaring Heirship.

**Executor.** The personal representative of an estate appointed pursuant to the Will of a decedent. Often, an Executor in Texas serves independently and free of court supervision.

**Estate.** The probate estate of a decedent consists of real and personal property owned by the decedent on the decedent's date of death and not passing to others via beneficiary designation, a pay on death provision, a joint tenant with right of survivorship agreement, or some other transfer related agreement.

**Family Settlement Agreement.** A specific type of settlement agreement, usually entered into when potential beneficiaries and other interested parties are considering contesting a Will's validity or the heirship of a decedent.

**Fiduciary.** Anyone who holds control or custody over the funds or property for the benefit of another person.

**Fiduciary Duties.** Fiduciaries owe those they serve duties of loyalty and good faith, integrity of the strictest kind, fair, honest dealing, and the duty of full disclosure.

**Heir.** A person who is entitled under the statutes of descent and distribution to a part of the estate of a decedent who dies intestate.

**Heirship.** Process by which the court determines who is entitled to the assets of a decedent's estate pursuant to the laws of descent and distribution when the decedent died intestate or left a Will but the Will failed to dispose of all of the decedent's property.

**Interested Person.** An heir, devisee, spouse, creditor, or any other person having a property right in or claim against an estate being administered.

**Intestate.** Used to describe a person who dies without leaving a valid Last Will and Testament.

**Inventory.** A list of estate assets coming into the hands of the Executor or Administrator.

**Letters of Administration.** A document issued by the County Clerk indicating that the person named is authorized to act as Administrator for a decedent's estate. Letters of Administration are issued when the decedent died intestate or failed to name an Executor in a Will who is willing and able to so serve.

**Letters Testamentary.** A document issued by the County Clerk indicating that the person named is authorized to act as Executor for a decedent's estate pursuant to an appointment in a Will.

**Will.** A legal document that, if admitted to probate, typically names beneficiaries and fiduciaries.

# OPENING ADMINISTRATION WITH A WILL

## Probating a Will

One of the first steps in administering a loved one's estate is to determine whether he or she had a Will. If your loved one had been working on their estate planning, it is likely that they hired an attorney to help them. This attorney will be able to assist in locating any estate planning documents. If you are unsure whether or not your loved one worked with an attorney, he or she may have files in their home or office that contain records of meetings and correspondence with a lawyer, or drafts of estate planning documents. It is crucial to locate any Wills that your loved one may have left behind. If a Will exists, it may be filed with the court for probate. If a Will is not located, the estate may require administration in absence of a Will.

## Steps to Probate a Will

### Application to Probate Last Will and Testament and for Issuance of Letters Testamentary

Once the Will is located, an Application to Probate Last Will and Testament and for Issuance of Letters Testamentary may be filed. The Application describes the background of the decedent, states relevant parties, and names the proposed Executor who will begin administering the Estate. In this filing, the applicant also requests the court to issue Letters Testamentary, which are documents that can be taken to banks, insurance companies, and other institutions to inform them that the court has authorized the Executor to handle the affairs of the decedent. A copy of the Will and any Codicils must be filed with the Application. The applicant may set a hearing with the court so that a judge may hear the Application.

### Civil Case Information Sheet

A Civil Case Information Sheet is a short form that details for the court the decedent's information, names of the parties, and the attorney's name and contact information. This form helps

the clerk to assign a cause number, enabling the case to be easily tracked throughout the court system.

### Original Will and Codicil

Within three business days of filing the Application to Probate the Last Will and Testament, the original Will must be filed with the clerk's office. If any Codicils were executed in addition to the Will, the original Codicils must be filed as well.

### Proof of Death

In addition to the aforementioned documents, the Proof of Death testimony must be prepared and brought to the court on the date of the hearing. The Proof of Death testimony contains the decedent's name, date of death, place where the death occurred, domicile, and information about the decedent's family and marital history.

### Hearing

After posting the Application and Will for a minimum of 10 days, a hearing may take place. At the hearing, a judge will determine whether or not to admit the Will for probate. The judge will hear testimony on the Proof of Death at this time. If the judge determines that the Will should be admitted to probate, the judge will sign an Order Admitting Will to Probate and for Issuance of Letters Testamentary.

### Oath and Bond

Once the Order has been signed admitting the Will for probate, the named Executor must sign and file with the court an Oath in order to qualify as an Executor. If a bond is required, the Executor should obtain a bond. Most often, bonds take the form of a surety bond rather than a cash bond. The bond acts to protect the estate assets from any malfeasance of the Executor. Once the Oath has been filed and the bond approved by the court, the Executor is qualified to receive Letters Testamentary.





# OPENING ADMINISTRATION WITH A WILL

## Letters Testamentary

Letters Testamentary authorize the Executor to act and manage affairs on behalf of the estate. The Executor will take Letters Testamentary to financial institutions, title companies, and insurance companies to demonstrate that they are the person authorized by the court to handle estate matters.

Sometimes, a Will fails to name an Executor or the named Executor is unable or unwilling to serve. In such cases, the beneficiaries under the Will may collectively designate a person willing and able to serve as an Administrator. When a decedent's Will is admitted to probate and an Administrator is appointed, the Administrator will receive Letters of Administration with Will Annexed.

## Notice to Creditors

Within 30 days of appointment, the Independent Executor must publish a notice to all creditors in a publication circulated within the county where the Will is being probated. This notice gives all creditors to whom the estate owes money the opportunity to claim the debts owed to them. The notice should include the Independent Executor's qualification date, address to which the claims should be presented, and the person to whom the claims should be addressed (usually the Independent Executor or an attorney). After publication, the Executor will file with the court an affidavit of the publisher along with a copy of the notice.

## Notice to Beneficiaries

Within 60 days of qualification, the Independent Executor must send notice to all beneficiaries listed in the Will by certified mail, return receipt requested. This notice must include:

- The name and address of the beneficiary;
- The decedent's name;
- That the decedent's Will has been admitted to probate;

- That the beneficiary receiving the notice is named as a beneficiary in the Will; and
- The Independent Executor's name and contact information.

A copy of the Will and the Order admitting the will to probate must be attached to this notice. A beneficiary may waive this notice by filing a waiver with the court.

## Affidavit of Notice to Beneficiaries

Within 90 days of appointment, the Independent Executor must file an Affidavit of Notice with the court stating that notice has been given to all beneficiaries. This Affidavit must include:

- The name and address of each beneficiary notified of the probate by certified mail;
- The name and address of each beneficiary who filed a waiver of notice;
- The name of each beneficiary whose identity or address could not be determined despite the Independent Executor's efforts to find them; and
- Any other information necessary to explain the Independent Executor's inability to give notice to any beneficiary.

This Affidavit may be filed independently, or alternatively, with the Inventory, Appraisal, and List of Claims.

## Family Settlement Agreements

Family Settlement Agreements are favored under law and enable those interested in an estate to resolve disputes and solve problems associated with the administration of estates. Issues commonly resolved within the context of Family Settlement Agreements include: excluded family members, poorly drafted Wills, failure to appoint Executor, undivided interests in property, ambiguous familial relationships, and the questionable testamentary capacity of testator.



# INDEPENDENT ADMINISTRATION WITHOUT A WILL

## Independent Intestate Administration

Independent administration of an estate can occur in one of two ways. The first occurs when a decedent specifies in his or her Will that the estate should be administered independent of the court's oversight. The second occurs when a decedent dies without a Will and all of the beneficiaries of the estate agree on the appointment of an Independent Administrator. The process of administering an estate moves more quickly and is more cost effective in an independent administration because the Independent Administrator can perform his duties without having to spend time and money obtaining the court's approval for each step of the process.

### Consent of All Heirs

All heirs of a decedent's estate must agree that the estate will proceed as an independent administration, otherwise, the court will permit only a dependent administration. The heirs must also agree on the nomination of an Independent Administrator. So long as the heirs of an estate agree and consent, an estate may proceed as an independent administration with an Administrator of the heirs' collective choosing. If an heir is a minor child or an incapacitated person, such consent may only be obtained from the Guardian of the Estate of such person.

### Application for Independent Administration

After all heirs have consented to an independent administration, an interested person will file an Application for the Appointment of an Independent Administrator. The Application will include, among other things, the decedent's identity, domicile, and date of death, along with a list of all known heirs and the relationship of each heir to the decedent.

### Heirship Determination

In the absence of a Will, the court will not grant the independent administration until it enters a Judgment Declaring Heirship. A person interested in the estate may file an Application for Determination of Heirship and a Motion to Appoint an Attorney Ad Litem to represent unknown heirs. The applicant must also include a verification form, signed in the presence of a notary, which states that all facts within the Appli-

cation are true and correct. All heirs must be served with citation and notice of the Application unless they submit a waiver of such service to the court. The hearing on the Application for Determination of Heirship usually takes place immediately before the appointment of an Independent Administrator.

### Hearing and Judgment

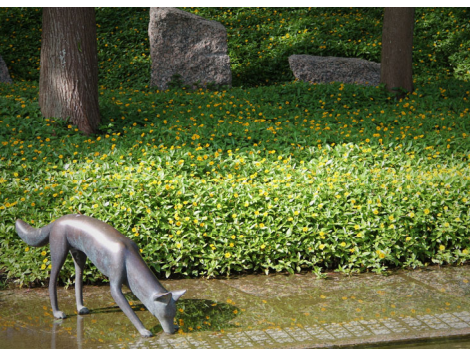
Once the Application for the Appointment of an Independent Administrator and the Application for a Determination of Heirship have been filed with the clerk and the Attorney Ad Litem has been appointed and is ready to proceed, the court will allow a hearing to be set. The court hears the testimony of at least two disinterested witnesses before it enters the Judgment Declaring Heirship. In addition, if the court determines that administration of the estate is necessary and all heirs have agreed on the appointment of a qualified person to serve independently, it will enter the Order appointing such qualified person as Independent Administrator and typically waive the requirement of bond, provided the heirs collectively request such bond be waived.

### Oath and Bond

Once the Order Appointing Independent Administrator has been signed, the named Independent Administrator must sign and file an Oath in order to qualify. In the unusual circumstance that a bond is required by the court, the Independent Administrator will obtain such bond, and upon court approval of such bond, qualify as Independent Administrator. The Independent Administrator may then order from the clerk Letters of Independent Administration.

### Letters of Independent Administration

Letters of Independent Administration are letters that authorize the Independent Administrator to act and manage affairs on behalf of the estate. The Independent Administrator will take these Letters to financial institutions, title companies, insurance companies, and others to demonstrate that they are the person authorized by the court to handle estate accounts. Cash and investments will be transferred into an account styled in the name of the estate and the Independent Administrator will have access to invest and distribute these assets as necessary.





# INDEPENDENT ADMINISTRATION

## Independent Administrations After the Hearing

Whether the independent administration is formed pursuant to the probate of a Will or upon the consent of all heirs, the personal representative serving independently must complete important tasks to settle the affairs of the decedent.

### Notices to Creditors

Within 30 days of appointment, the Independent Executor or Independent Administrator must publish a notice to all creditors in a publication circulated within the county where the estate is being administered. Within 60 days of appointment, the Independent Executor or Independent Administrator will give notice to all creditors known to have a secured claim by certified mail, return receipt requested. If a claim is filed by a creditor, the personal representative will consult his or her attorney to determine how to handle the claim.

### Inventory and List of Claims

Within 90 days of appointment, the Independent Executor or Independent Administrator must prepare and file an Inventory, Appraisement, and List of Claims or an Affidavit in Lieu of Inventory with the court. This Inventory must include a sworn verification. Preparation of the Inventory is one of the most important duties of the personal representative, as it is the personal representative's fiduciary duty to beneficiaries to notify them and the court of the assets under administration. The Inventory will be prepared by the personal representative's attorney and will include:

- All personal property of the estate, a description of the property, and the location of the property;
- All real property that is located in Texas;
- All property owned with others and the percentage interest owned by the estate;
- The characterization of each asset as separate or community property;
- The market value of each item of property on the date of the decedent's death; and
- All claims that the estate has against others.

Estate debts will not be listed on the Inventory. In addition, real property owned by the decedent outside the State of Texas should not be included on the Inventory. If the Inventory is not approved, the personal representative must file an Amended Inventory. If an accounting must be filed with the court, the Inventory will serve as the starting point for the accounting.

### Affidavit in Lieu of Inventory

If the Independent Executor or Independent Administrator wishes to keep financial matters private, or for other valid reasons, such personal representative may file an Affidavit in Lieu of Inventory. To file such Affidavit, there must be no unpaid debts except for secured debts, taxes, and administration expenses at the time the Inventory is due including extensions. The Inventory must be prepared and complete by the time this Affidavit is filed. The Affidavit must state that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries have received a verified, full, and detailed Inventory and Appraisement. However, in the following situations, a personal representative is not required to provide an Inventory to a beneficiary unless such beneficiary has made a written request for an Inventory:

- The total value of bequests to which the beneficiary is entitled under the Will is valued at \$2000 or less;
- The beneficiary has received all bequests to which he is entitled per the Will by the time the Affidavit is due; or
- The beneficiary has waived his right to receive a full, detailed Inventory in writing.

### Form 706 Tax Return and Other Taxes

The Independent Executor or Independent Administrator should consult with his or her attorney to determine whether the estate is a taxable estate. Tax returns, including individual and fiduciary returns, may be required for both the decedent and the estate. Form 706 is an estate tax return, and if necessary, must be filed within 9 months of the decedent's date of death, unless extended. In addition to the decedent's final personal income tax return, the estate may also have to file an income tax return for the estate, or a Form 1041.



# DEPENDENT ADMINISTRATIONS

## Introduction to Dependent Administrations

The dependent administration of an estate usually occurs when a decedent dies without a Will. However, it may also be proper when a Will is probated yet fails to provide for an independent administration and the beneficiaries do not agree on the advisability of an independent administration. In contrast to an independent administration, a dependent administration is much more restrictive and must proceed with the court's approval on each action taken by the Dependent Administrator, with few exceptions.

Another reason to pursue a dependent administration is in certain cases where the estate is heavily indebted. With a dependent administration, the court has much more oversight and there are certain rules and priorities with respect to paying creditor claims which make it more difficult for creditors to collect on their claims. In addition, if an Administrator anticipates that there may be disagreement amongst distributees, a dependent administration may be a better option so that the court is involved and may approve the decisions of the personal representative.

## Steps in a Dependent Administration

Dependent administrations are most often opened when the decedent failed to leave a Will and the heirs cannot agree on the appointment of an Independent Administrator, when the will failed to provide for an independent administration and the beneficiaries do not consent to an independent administration, and when the decedent's estate is heavily indebted.

## Dependent Administration without a Will

When the decedent died without leaving a Will and the settlement of the estate requires an administration and heirship proceeding, an Application for Appointment of Dependent Administrator along with an Application for Determination of Heirship and Motion for the Appointment of Attorney Ad Litem should be filed. A Civil Case Information Sheet must

also be filed at this time. Notice of the heirship proceeding must be served upon the heirs of the estate unless the heirs waive the service of such filings, as often happens.

## Dependent Administration with a Will

If the decedent died testate but failed to provide for an independent administration or if a dependent administration is desired despite provisions in the Will for an independent administration, the Will may be filed for probate and the Application for Probate of Will should seek the appointment of an Executor or Administrator.

## Determination of Heirship

With respect to a determination of heirship, once the Attorney Ad Litem has been appointed and has had an opportunity to file an answer, interview witnesses, and prepare the case, a hearing may be set with the court. At the hearing at least two witnesses may testify as to the family history of the decedent and the applicant may offer testimony in the form of a proof of death if an administration of the estate is being sought. If the judge signs the Judgment Declaring Heirship and appoints an Administrator, the Administrator will sign and file an Oath and post a bond, which is required in dependent administrations.

## Notices to be Published, Filed, and Sent

Within one month of qualification, the Dependent Administrator must publish a Notice to Creditors in a newspaper of general circulation in the county where the Administrator was appointed. Such published notice must then be filed with the court. Within two months of qualification, the Administrator must send a Notice to Secured Creditors. The Administrator should consult his attorney as to the advisability of sending permissive notices to unsecured creditors of the estate. Sending permissive notices to unsecured creditors prompts creditors to present claims within 121 days, lest such claims be barred.





# DEPENDENT ADMINISTRATIONS

## The Inventory

An Inventory, Appraisal, and List of Claims must be filed with the court within 90 days of the appointment of the personal representative, unless the court grants an extension. For more information about the Inventory, please see the relevant sections under “Independent Administration” on page seven herein.

## Annual Accountings

The law requires the personal representative to account for all transactions and disbursements of estate property. An Annual Accounting is required to be filed each year within sixty days after the anniversary date of the personal representative’s qualification. The Annual Accounting reports the following information and must be verified and supported with vouchers and official letters from institutions managing cash and investments:

- Claims allowed, paid, or rejected by personal representative;
- Claims developing into a lawsuit and status of lawsuit;
- All property coming into the hands of the personal representative;
- Changes in estate property;
- Itemized list of receipts and disbursements;
- Description of property being administered;
- Condition and use of property being administered;
- Cash on hand and description of personal property of the estate;
- Status of tax returns and taxes of the estate; and
- Statement that bond premiums have been paid.

## Final Accounting

A Final Accounting is required before the dependent administration may be closed. In addition to providing the

same information as an Annual Accounting, the Final Accounting lists the property that each heir or devisee has received, and once filed, the devisees have an opportunity to object if necessary. Once the Final Accounting is filed and approved, the personal representative may file an Application to Close, Discharge, and Release Bond, which essentially ends the personal representative’s duties to the estate. This Application should detail how the estate has been administered and distributed. When the judge signs the Order to Close, Discharge, and Release Bond, the court recognizes that the personal representative has completed his or her duties, discharges the personal representative, and releases the bond.

## Dependent vs. Independent Administration

A key difference between dependent and independent administrations is that the personal representative is required to post bond. Because the personal representative has access to personal property belonging to the estate once the personal representative receives Letters, the bond acts as an insurance policy to ensure that the personal representative performs his duties appropriately.

The most important difference between independent and dependent administrations is that all acts by a personal representative require prior court approval except:

- Paying taxes;
- Paying a bond premium; and
- Insuring property.

The personal representative might wish to prepare a monthly budget to be filed as soon as practicable so that permission for the ongoing, routine expenses for a year may be sought. Expenses and transactions outside the budget require separate approval from the court. No attorneys’ fees or compensation can be paid without court approval.



# HEIRSHIPS

## An Introduction to Heirship

Heirship proceedings enable the court to declare the heirs of a decedent who dies without leaving a Will or dies leaving a Will which fails to dispose of all of his property. The heirship also allocates the share of community property, separate real property, and separate personal property to which each heir is entitled. Though an heirship can be a stand-alone proceeding to pass title, it is most often accompanied by an administration of the estate.

## Application to Determine Heirship

The first step in an heirship is to file an Application for Determination of Heirship. Those who may begin heirship proceedings must be an interested person and include:

- The personal representative of the decedent's estate;
- A person claiming to be a creditor or the owner of a portion of the decedent's estate;
- A person representing a person claiming ownership of a portion of the decedent's estate as guardian or next friend;
- The guardian of an estate for a decedent who was a ward, so long as the proceeding is commenced and maintained in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the decedent's death;
- A party seeking the appointment of an independent administrator; or
- The Trustee of a trust holding assets for the benefit of a decedent.

An Application to Determine Heirship must include the decedent's name, along with the date and place of decedent's death. In addition, the Application must state the names and addresses of all heirs, as well as each heir's relationship to the decedent and their interest in the estate. The Application must also delineate whether the decedent died testate, and if so, the disposition of the estate. Finally, the Application will

include a general description of all property belonging to the estate or held in a trust, if applicable. Included with the Application must be a verification, signed by the applicant and notarized, stating that all information in the Application is true and correct and nothing has been omitted.

## Attorney Ad Litem

With the Application for Determination of Heirship, the applicant should file a Motion for the Appointment of Attorney Ad Litem. The court requires this Motion to appoint an attorney to represent the interests of any heirs whose names and/or locations may be unknown. The court may also utilize such attorney to represent the interests of any incapacitated heirs of an estate.

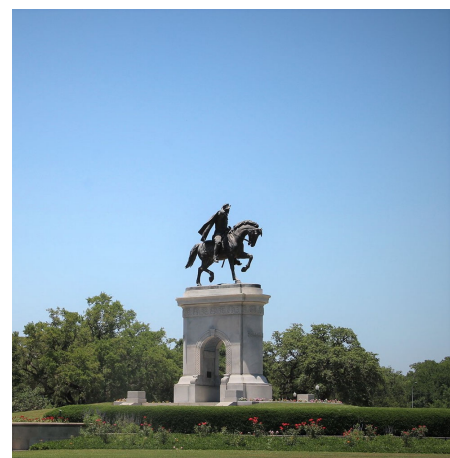
## Service of Citation and Publication

After filing the Application, all known heirs must be served with citation through the clerk's office by certified mail. Each heir must be served individually if they are 12 years of age or older. If an heir is younger than 12 years of age, the applicant may serve a parent or guardian of the child. If any heirs choose to waive service of citation, they may do so by filing a waiver with the clerk's office and service will not be required.

Service by publication is required by law in an heirship so that any unknown heirs may be made aware of the proceedings. The applicant will publish a notice in a local newspaper or other publication in the county in which the proceedings are being held, and also the county in which the decedent last resided, if different.

## Affidavit of Service and Citation

After each heir has been served or has filed a Waiver of Service of Citation, the applicant will file an Affidavit of Service of Citation with the clerk. Such Affidavit will state that the citation was served, the name of each person who was served, and the name of each person who has waived service.





# HEIRSHIPS

The Affidavit will also include copies of all citations that were served and proof of delivery of service. This Affidavit is very important because the court cannot enter a Judgment Declaring Heirship until the Affidavit is filed.

## **The Attorney Ad Litem**

The court shall appoint an Attorney Ad Litem in a proceeding to declare heirship to represent the interests of heirs whose names or locations are unknown. The court may expand the appointment of the Attorney Ad Litem to include representation of an incapacitated heir on a finding that the appointment is necessary to protect the interests of the heir. Proceedings to declare heirships most commonly result when a decedent dies intestate, but heirships may be also be used when a will fails to dispose of all property of the decedent or when a Trustee of a trust must determine the heirs of a deceased beneficiary. Though the attorney ad litem in an heirship represents unknown heirs and seemingly reports only to the court and his own conscience, he must represent such clients with tenacity and good judgment.

## **The Hearing**

After the above-listed documents have been accepted by the court, a hearing will be set for the court to determine heirship. For expediency, the court will often combine the heirship hearing with the hearing on the administration of the estate.

For the hearing, the Attorney Ad Litem will contact at least two disinterested witnesses, whose contact information your attorney provides to the Attorney Ad Litem. The witnesses must have personal knowledge of the heirs and family history of the decedent. The applicant's attorney and the Attorney Ad Litem will question the witnesses at the hearing. After the testimony is complete, and provided the judge has the evidence to support a determination of heirship, the judge will enter a Judgment Declaring Heirship and discharge the Attorney Ad Litem. The applicant should be prepared to pay the Attorney Ad Litem his fees on the date of the hearing. Typical fees range between \$500 and \$1000.

## **Intestate Distribution in Texas—Special Rules**

Intestate distribution plans are set out graphically in pages 12 and 13 herein. Set out below are special rules to keep in mind when determining the distribution plan of an intestate decedent.

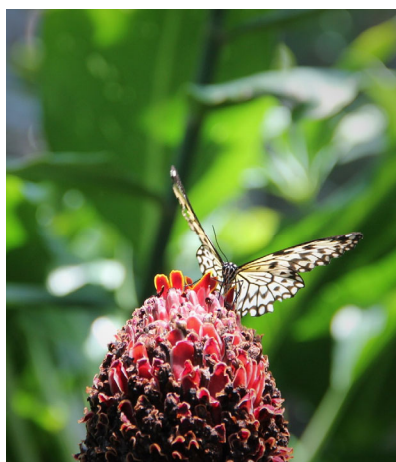
### **Distribution When Child Predeceases Parent**

In Texas, if some of the children predecease the intestate decedent and at least one child survives the intestate decedent, then each descendant of a child who predeceases the intestate decedent is entitled to a distribution of the intestate decedent's estate. Each such descendant shares in only that portion of the property to which the parent through whom the descendant inherits would be entitled if that parent had survived the decedent. If all of an intestate decedent's children predecease him, then the grandchildren of such decedent take equal shares.

### **Who is a Child under Texas Law?**

In Texas, for purposes of inheritance, a child is the child of a biological father if: 1) the child is born under circumstances which create a presumption of paternity; 2) the child is adjudicated to be the child of the father by court decree; 3) the child was adopted by the child's father; or 4) the father executed an acknowledgment of paternity. A child described above may inherit from and through his or her paternal kindred. Even if a child does not meet the criteria described above, he or she may petition the probate court for a determination of inheritance rights from a decedent.

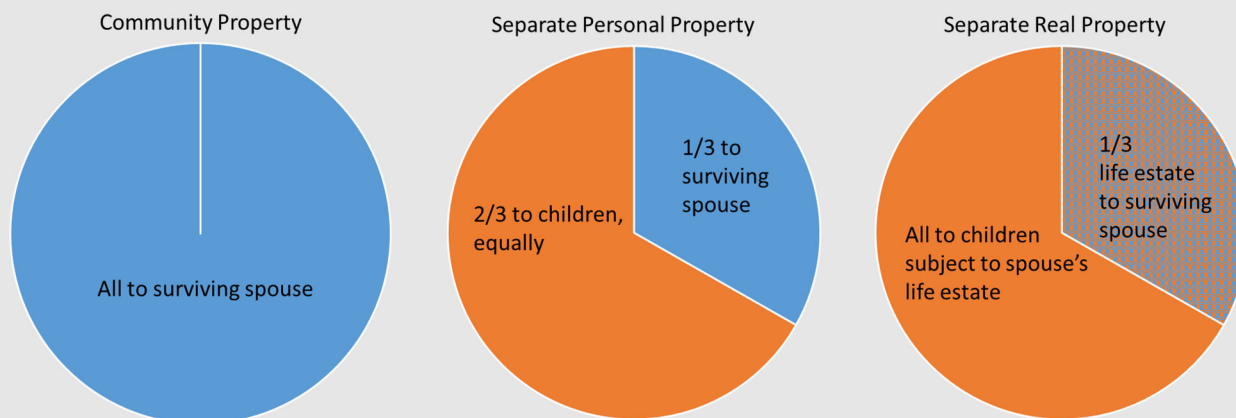
In addition, Texas has long recognized the doctrine of adoption by estoppel. Modern Texas courts have held that a child's knowing reliance on an agreement to adopt is unnecessary as the child's belief in his or her status as a "child" is enough to support a claim of adoption by estoppel. A person claiming to be a child under the doctrine of adoption by estoppel inherits only from the decedent purporting to be the child's parent and not through the parent.



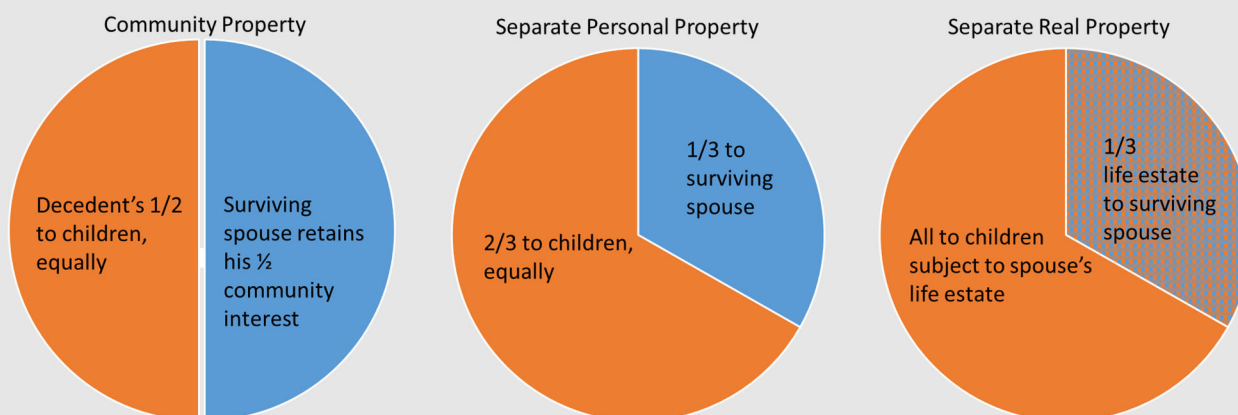
# INTESTATE DISTRIBUTION

## Descent and Distribution for Texas Domiciliary Dying Without Leaving a Will

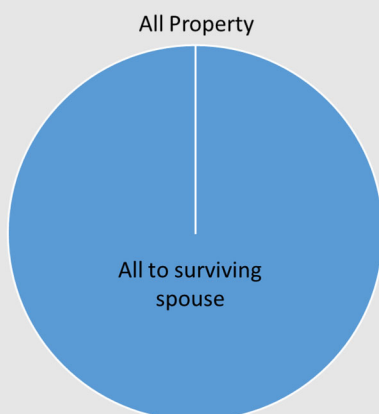
### Married Decedent with all Children Born or Adopted by Decedent and Decedent's Spouse



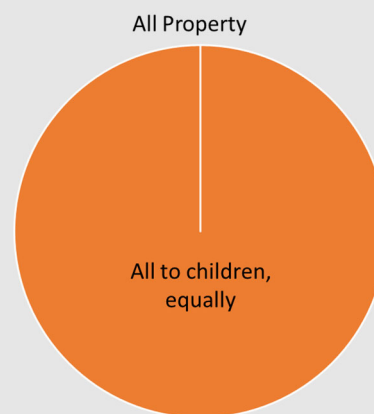
### Married Decedent with at Least One Child Born or Adopted by Decedent and Person Other Than Decedent's Spouse



### Married Decedent without Surviving Descendants, Parents, Siblings, or Descendants of Siblings



### Unmarried Decedent with Surviving Descendants



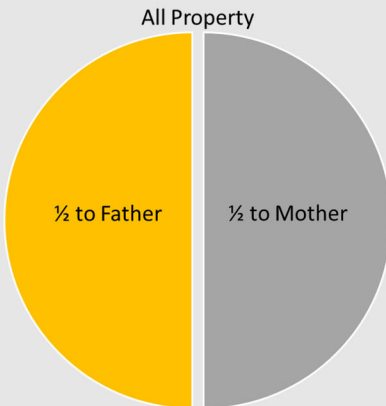


# INTESTATE DISTRIBUTION

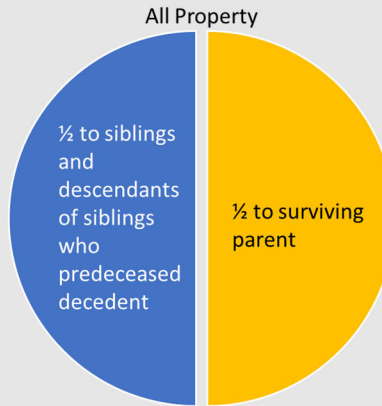
## Descent and Distribution for Texas Domiciliary Dying Without Leaving a Will

### Unmarried Decedent without Descendants

#### Both Parents Surviving



#### One Parent Surviving



#### Only Siblings Surviving



### Married Decedent without Descendants

#### Separate Real Property

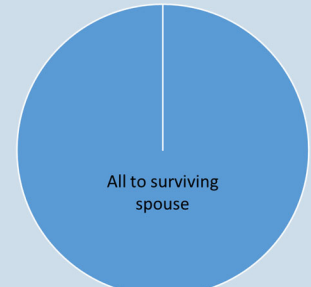
##### Both Parents Surviving



##### One Parent Surviving and No Siblings



#### All Other Property



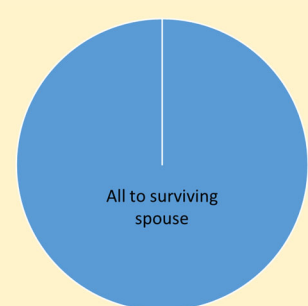
##### One Parent Surviving



##### No Surviving Parent



##### No Surviving Parent and No Siblings



The descendants of a child or sibling who predeceases the decedent share in the portion that would have passed to such predeceased child or sibling had the child or sibling survived the decedent. In addition, in the event a whole blood and a half blood sibling are heirs of a decedent, each half blood sibling receives a portion equal to one-half of the share reserved for each whole blood sibling.

# SERVING AS A FIDUCIARY

## What is a Fiduciary?

A fiduciary is a person or institution which has a confidential, legal, or ethical relationship with a person or a group. As a result of such relationship, the fiduciary must act in the best interests of the person or group to whom he owes a fiduciary duty. When a person or institution assumes the role of Executor, Administrator, or Trustee, they are entrusted with the care of money or property and owe a host of duties to the beneficiaries on whose behalf they serve.

## What are Fiduciary Duties?

A fiduciary duty is an obligation to act in the best interests of another party. A fiduciary is held to high standards of loyalty, care, honesty, and full disclosure.

### Duty of Loyalty

It is the duty of the fiduciary to administer the estate solely in the best interests of the beneficiaries. The fiduciary must minimize or avoid conflicts of interest and hold the interests of the beneficiaries above his own.

### Duty not to Delegate

The fiduciary is under an obligation to personally administer the estate and is under a duty not to delegate to others acts that the fiduciary should personally perform, like engaging attorneys and other professionals, opening a bank account, collecting assets, overseeing the management of investments, and approving or rejecting claims. Naturally, the fiduciary may delegate professional tasks such as the preparation of tax returns to a professional.

### Duty to Keep and Render Accounts

A fiduciary is under a duty to the beneficiaries to keep full and accurate accounts; and a beneficiary has the right to demand accountings as set out in the Estates Code or under the decedent's Will.

### Duty to Furnish Information

A fiduciary is under a common law duty to the beneficiaries

at reasonable times to give complete and accurate information regarding the estate.

### Duty to Exercise Reasonable Care and Skill

A fiduciary is under a duty in administering an estate to exercise the same care and skill as a man of ordinary prudence would use in dealing with his own property.

### Duty to Take and Retain Control of Estate Property

A fiduciary must use the same care and skill that a person of ordinary prudence would use to preserve estate property.

### Duty to Enforce Claims

A fiduciary is under a duty to take reasonable actions to collect claims that are due to the estate.

### Duty to Defend

The fiduciary is under a duty to do what is reasonable, under the circumstances, to defend actions by third parties against the estate.

### Duty to Avoid Co-Mingling of Funds

The fiduciary has a duty to keep estate property separate from other property, and to properly designate it as estate property. Not only is it the fiduciary's duty to keep the estate property separate from the fiduciary's own property, but also to keep that property separate from other estates or trusts the fiduciary may administer.

### Duty with Respect to Investments

Because a personal representative's primary responsibility is to collect estate assets, pay creditors, and distribute the estate, the personal representative will not typically actively manage investments. The personal representative cannot ignore the investments, however, as he or she does have the duty to preserve estate property. If the assets of the estate require active management in order to preserve value, or when the estate administration will continue for a lengthy time, the personal representative should oversee the management required in a prudent manner.





# SERVING AS A FIDUCIARY

## Duty to Treat Beneficiaries Impartially

When there are multiple beneficiaries of an estate, it is the duty of the fiduciary to deal impartially among the beneficiaries. A fiduciary may face tax elections and other situations that will require careful attention to impartiality.

## Duty with Respect to Co-Fiduciaries

Unless the Will provides otherwise, all fiduciaries are under a duty to participate in the estate administration. Therefore, a fiduciary cannot properly delegate the acts required of the fiduciary to co-fiduciaries. It is also the duty of a fiduciary to use reasonable care to prevent other fiduciaries from committing a breach of trust. Pursuant to Texas law, any Executor or Administrator can act alone to bind the estate, except that all Executors must execute any conveyance of real estate. Nonetheless, Co-Executors and Co-Administrators should act in concert whenever possible.

## When Should an Accounting be Filed?

In dependent administrations, Annual Accountings must be filed; and when the administration is to be closed, a Final Accounting must be filed with the court. In addition, in an independent administration, any person interested in an estate may demand an accounting from the personal representative after the expiration of 15 months from the issuance of Letters Testamentary or Letters of Independent Administration. Finally, once an estate has been fully administered, taxes have been paid, and the distributees of the estate are in receipt of estate assets, a personal representative serving independently may seek a judicial discharge via a declaratory judgment and pay from estate assets legal fees, expenses, and other costs incurred in relation to such declaratory judgment. Often, the court will require a full accounting of the estate to be filed before granting a judicial discharge.

## Remedies for Breach of Fiduciary Duties

When breach of trust arises, the beneficiaries may pursue

measures to remedy the breach. Such remedies may include removal without notice, removal with notice, and requiring the fiduciary to be bonded. When a serious breach occurs and the interests of the beneficiaries are damaged, the successor fiduciary or the beneficiaries may seek to be made whole by suing on the fiduciary's bond, if the fiduciary is bonded, or by seeking recovery from the fiduciary directly.

## Under What Circumstances Can an Executor or Administrator be Removed?

An Executor or Administrator may be removed by the probate court when:

- The Executor or Administrator cannot be served with notice because their whereabouts are unknown, they are eluding service, or they are a non-resident without a designated resident agent;
- It appears to the court that sufficient grounds exist to believe the Executor or Administrator has or is about to misapply or embezzle all or part of estate property; or
- The Executor or Administrator:
  - ◆ fails to qualify in the time required by law;
  - ◆ fails to file an Inventory or Affidavit in Lieu of Inventory within 90 days of qualification, unless extended by court order;
  - ◆ fails to file an Accounting if required by law;
  - ◆ fails to file an Affidavit of Notice within 90 days of the Order Admitting Will to Probate stating that the required notice to the beneficiaries has been made;
  - ◆ is proven guilty of gross misconduct or gross mismanagement in the performance of his duties;
  - ◆ becomes incapacitated or is sentenced to a penitentiary; or
  - ◆ becomes incapable of properly performing his duties due to a material conflict of interest.



*Special thanks to Laurel Smith, Abigail Butts, and staff members from Harris County Probate Court Four for your hard work and research which made this publication possible.*

# INFORMATION AND CONTACTS

## **Harris County**

### **Probate Courts**

201 Caroline Street  
6th and 7th Floors  
Houston, Texas 77002

### **Probate Court No. 1**

#### **Honorable Jerry Simoneaux**

Office: 832-927-1401  
Fax: 832-927-1400

### **Probate Court No. 2**

#### **Honorable Michael Newman**

Office: 832-927-1402  
Fax: 832-927-1432

### **Probate Court No. 3**

#### **Honorable Jason Cox**

Office: 832-927-1403  
Fax: 832-927-0010

### **Probate Court No. 4**

#### **Honorable James Horwitz**

Office: 832-927-1404  
Fax: 832-927-1499

## **Harris County Clerk's Office**

Probate Department  
P.O. Box 1525  
Houston, Texas 77251-1525  
(713) 274-8585  
<http://www.cclerk.hctx.net>

## **Physical Address**

Harris County Civil Courthouse  
201 Caroline, 8th Fl./Probate Dept.  
Houston, Texas 77002

## **Judicial Branch**

### **Certification Commission**

205 W. 14<sup>th</sup>, Ste. 600  
Austin, TX 78701  
(512) 475-4368

Oversees the certification, registration, and licensing of guardians, court reporters, court reporter firms, process servers, and licensed court interpreters.

## **Houston Volunteer Lawyers Association**

1111 Bagby, Suite FLB300,  
Houston, TX 77002  
Main: (713) 228-0735 Intake: (713) 228-0732  
Fax: (713) 228-5826  
Email: [info@hvlp.org](mailto:info@hvlp.org)

## **Disability Rights Texas East Texas Regional Office**

1500 McGowen, Suite 100  
Houston, TX 77004  
(713) 974-7691 (Voice)  
(713) 974-7695 (Fax)  
(866) 362-2851 (Video Phone)

Information on regional offices available at [www.dfps.state.tx.us/](http://www.dfps.state.tx.us/)

Riddle & Butts, LLP  
8777 West Rayford Rd.  
The Woodlands, Texas 77389  
(281) 537-7110  
[www.riddlebutts.com](http://www.riddlebutts.com)

## IMPORTANT INFORMATION & DATES TO REMEMBER

STYLE OF ESTATE: \_\_\_\_\_

BENEFICIARIES ENTITLED TO NOTICE: \_\_\_\_\_

DATE OF DEATH: \_\_\_\_\_ APPOINTMENT: \_\_\_\_\_ QUALIFICATION: \_\_\_\_\_

INVENTORY/AFFIDAVIT IN LIEU/AFFIDAVIT OF NOTICE TO BENEFICIARIES DUE DATE: \_\_\_\_\_

NAME AND ADDRESS OF ATTORNEY: \_\_\_\_\_

NAME AND ADDRESS OF CPA: \_\_\_\_\_

OTHER: \_\_\_\_\_