

# Probate Frequently Asked Questions

## What is a will?

- A will is a legal declaration by which a person transfers property at death. In order to be a will a document must meet the requirements of the Texas Estates Code. A will has no force or effect until admitted to probate by the Court.

## What is necessary to probate a will?

- An attorney should offer the will to the Court with proper jurisdiction.

## Can I probate a matter without an attorney (pro se)?

- Only a licensed attorney may represent a third person or entity in a judicial proceeding in the State of Texas. In most probate or guardianship cases, an individual applicant is not truly representing only himself, rather he or she is attempting to represent another person or persons such as beneficiaries, heirs, or the estate itself. Unless the applicant is a licensed attorney, filing an application to probate a will without an attorney constitutes the unauthorized practice of law and will not be allowed by the Court. In certain limited circumstances a person may act without an attorney.

## How long do we have to probate a will?

- Typically, an application to probate a will must be filed within four (4) years of the date of death of the decedent.

## What is letters testamentary?

- Letters testamentary is a legal document issued by the Court having probate jurisdiction after a will has been presented for probate. Letters testamentary name an individual as executor and provide the authority to administer the estate. For example, banks and other financial institutions usually require letters testamentary and a death certificate before funds can be disbursed from a deceased person's accounts. To receive letters testamentary, an application must be filed by an attorney. Letters testamentary become part of a legal public record.

## When can we contest a will?

- The contest can occur any time after the will is offered and up to two (2) years after the will is admitted to probate.

## How long must I wait after filing before my hearing?

- Although every case is different, statutory notice is returnable the Monday following the expiration of ten (10) days. If filed on or before 12:00pm on a Thursday in any given week the earliest your hearing can occur is the Monday occurring after the lapse of ten (10) days.

## When does an annual account have to be filed in an administration?

- An annual account must be filed within 60 days of the anniversary of the dependent administrator's date of qualification, which is the later of the date of filing of the dependent administrator's oath or bond.

**Does this court require an Attorney Ad Litem for an heirship determination?**

- Yes.

**Once the will is probated does the Court distribute the property?**

- No, distribution of property is NOT handled by the court. The independent executor or administrator will distribute the property after all debts of the estate have been paid and after the estate tax return, if any, has been filed.

**What is a muniment of title?**

- It is a unique Texas procedure where the will is filed through a probate proceeding to transfer ownership of real estate in Texas to the beneficiaries in the will without a deed or a full probate. Sections 257.001, 257.101, 257.102, and 257.103 of the Texas Estates Code addresses the probate of wills as muniments of title.

**What is the difference between real property and personal property?**

- Real property is land, including mineral interests. Personal property is anything else.

**Can I ask the judge a question concerning the merits of a pending judicial proceeding (Ex Parte Communications)?**

- No. Canon 3 of the Code of Judicial Conduct entitled `Performing the Duties of Judicial Office Impartially and Diligently` states that a judge shall accord to every person who has a legal interest in a proceeding, or the person's lawyer, the right to be heard according to law and that a judge shall not initiate, permit, or consider ex parte communications made to the judge outside the presence of the parties between the judge and a party, an attorney, a guardian or attorney ad litem, an alternate dispute resolution neutral, or any other court appointee concerning the merits of a pending or impending judicial proceeding. Further, a judge shall require compliance by court personnel subject to the judge's direction and control.

**Please note the County Judge and court staff cannot give legal advice or answer legal questions. If you need someone to research the law and give you legal advice, you should consult an attorney.**

**Where can I review a file or recently filed documents?**

- Documents may be reviewed at the Gonzales County Clerk's office at 427 St. George Street, on the second floor.

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