



**Hon. Patrick C. Davis
Presiding Judge**

Judge's Annotated Checklists ("JAC")
"Before you come to court, you better know JAC!"

Heirship and Administration¹ Checklist
(Updated September 25, 2022)

I. Filing the Applications

A. Jurisdiction & Procedural Matters

Probate Matters [Chapter 31]

- Scope of Probate Proceeding [§ 31.001]
 - Probate of a Will
 - Issuance of Letter Testamentary and of Administration
 - Heirship Determination, Small Estate Affidavit, Community Property Administration, and Homestead and Family Allowances
 - An Application, Petition, Motion, or Action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent
 - Claims arising from administration and any action on the claim
 - Will Construction
 - Will Modification or Reformation
- Matters Related to a Probate Proceeding [§ 32.002]
 - Actions against a current or former Personal Representative (PR) based on their performance in such role.
 - Action on Surety of current or former PR
 - Claim brought by a PR on behalf of estate
 - Action against PR in their capacity as PR

- Trial for Title to Real Property in Estate, including Liens
- Trial of the Right of Property that is estate property
- In Counties where there is no Statutory Probate Court, but there is a County Court at Law exercising Original Probate Jurisdiction, then the following in addition to the above listed matters:
 - Interpretation and Administration of a Testamentary Trust if the will creating it was admitted to probate in the court; and
 - Interpretation and Administration of an Inter Vivos Trust created by a decedent whose will has been admitted to probate in the court.
- For Statutory Probate Courts, the following in addition to all above matters:
 - Any cause of action in which a PR of an estate pending in the Statutory Probate Court is a party in their capacity as PR.

Jurisdiction [Chapter 32]

- Probate matters must be filed in courts exercising original probate jurisdiction [§ 32.001]
- Original Jurisdiction
 - **County Court** where there is no Statutory Probate Court or County Court at Law Exercising original probate jurisdiction
 - If there are both a County Court and a County Court at Law, then both have concurrent original jurisdiction, unless otherwise provided by law.
 - **County Court at Law** where there is no Statutory Probate Court
 - Counties with **Statutory Probate Courts**, the Statutory Probate Court has original jurisdiction (10 counties, 19 courts, soon to be 11 counties and 20 courts)
 - **Statutory Probate Courts** jurisdiction over Trusts and Powers of Attorney [§ 32.006]
 - Actions by or against a trustee
 - Actions involving inter vivos trusts, testamentary trusts, or charitable trusts
 - Actions by or against a current or former agent under a power of attorney (POA) arising from their performance as such.
 - Actions to determine the validity of a POA or of an agent's rights, duties, or powers.
 - Statutory Probate Courts have **Concurrent jurisdiction with District Courts** over [§ 32.007]
 - Personal Injury, Survival, or Wrongful Death by or against a person in their capacity as a PR

- Actions by or against Trustees
 - Actions involving inter vivos trusts, testamentary trusts, or charitable trusts
 - Actions involving PR in which each other party aligned with the PR is not an interested person of the estate.
 - Actions against former agents under a POA arising out of their performance as an agent.
 - Actions to determine the validity of a POA or to determine an agents rights, powers, or duties.
- Jurisdiction of Contested Probate Matters
- **County Courts** – On Motion of either Judge or Party, judge may
 - Request assignment of Statutory Probate Judge (SPJ) [§ 32.003]
 - Transfer to the District Court [§ 32.003]
 - District Clerk may perform any duty of a County Clerk while the case is pending in the District Court
 - Transfer to a County Court at Law [§ 32.004]
 - If a party requests a SPJ before the County Judge transfers to a District Court, then the Judge shall grant the motion and may not transfer to a District Court.
 - SPJ or District Court Judge may hear only the contested matter, or the entire case.

B. Venue

Probate of Wills and Granting Letters Testamentary and of Administration [§ 33.001]

- County where Decedent resided
- If no residence in this state, then
 - If Decedent died in this state, then County in which
 - Principal estate located, or
 - County where Decedent died
 - If Decedent died outside of this state, then
 - Any County in Texas where Decedent’s nearest of kin reside, or
 - If no next of kin, then County where principal estate located
- For Statutory Probate Courts
 - Venue for any cause of action related to a Probate Proceeding pending in a Statutory Probate Court is proper in the Statutory Probate Court in which the Decedent’s estate is pending.

Heirship Proceedings [§ 33.004]

- County where Will was probated or Administration is pending
- County where venue would otherwise be proper for the probate of a will under §33.001 if:
 - No will has been admitted in this state and no administration has been granted; or
 - The proceeding is commenced by a Trustee of a trust holding assets for the benefit of the Decedent
- County where guardianship proceedings pending on the date of the Ward's death
 - May not be brought as part of the guardianship proceeding. [§ 32.004(b)]

C. Citation & Notice

Heirships

- Citation
 - Return of Citation by mail on known persons [§ 202.051] is on file
 - Distributees age 12 and over; or
 - Parent, conservator, or guardian of distributee under 12
 - Waivers of Citation (in lieu of Citation by mail above) [§ 202.052] are on file
 - Signed by persons 18 years of age or older
 - Parent, conservator, or guardian of a distributee under 12
 - **NOTE: minors aged 12-17 cannot waive citation.**
 - Return of Citation by Publication requested and issued [§ 202.052; see also § 51.054(a)]
 - Newspaper; and
 - Office of Court Administration
- Notice of hearing SHALL be served on all interested persons who file a notice of appearance, but have not waived notice [TRCP 21]

Administrations

- Citation by Posting required. [§ 303.001]
- Notice Requirements
 - Independent Administrations:
 - All distributees SHALL be served with Citation and Notice unless such person waives citation and notice (of the hearing date) or enters an appearance. [§ 401.004]
 - Dependent Administrations

- A copy of the application SHALL be served by certified mail return receipt requested or by e-service on all persons who have an equal or higher right to serve: See TEC 304.001 for order of persons qualified to serve
- Notice of hearing SHALL be served on all interested persons who file a notice of appearance, but who have not waived notice. [TRCP 21]

D. Application Contents

Heirships

- Court Appoints an Attorney Ad Litem [§ 202.009]
- Application is verified by the applicant (not the attorney) [202.007]
- Application must contain the following [202.005]
 - Decedent's Name, Date and Place of Death
 - Heirs
 - Names
 - Physical addresses where heirs can be served
 - The relationship of each heir to the to the Decedent
 - Whether each is an adult or minor (*Tip: age is important here, too, for purposes of determining whether they can waive citation*)
 - True interest of the applicant and each heir in the decedent's estate or in the trust (*Tip: use fractions, not percentages*)
 - All children born to or adopted by the Decedent are listed
 - Each of Decedent's marriages listed with:
 - Date of marriage
 - Name of the spouse
 - Date and place of termination of marriage
 - Other facts to show whether a spouse has had an interest in the Decedent's property
 - Whether Decedent died testate—if so, the disposition of the estate made by the will
 - A general description of all property belonging to the Decedent's Estate or held in Trust.
 - An explanation for the omission of any information required

Administrations

- Contents of Application [§ 301.052]
 - Applicant's Name, domicile, and relationship to Decedent (if any)

- Applicant's last three digits of their driver's license and Social Security Number
- Decedent's name and that the Decedent died intestate
- Decedent's last three digits of their driver's license and Social Security Number (if not stated, must state reason why. [301.052(b)])
- Fact, date, and place of Decedent's Death
- Venue Facts (see Ch. 33)
- Statement of Decedent's Property, if any
- Names, addresses, and relationships of heirs, and whether each is an adult or minor
- Whether any children were born to or adopted by Decedent along with names, birth dates, and place of birth of each child
- Whether Decedent was ever divorced. If so, from whom and when
- Facts showing a necessity exists for an administration
- Applicant is not disqualified by law from acting as Administrator

II. Pre-Hearing Checklist

Heirships

- Application is verified by the applicant [§ 202.007]
- Notice Requirements
 - Return of Citation by mail on known persons [§ 202.051] is on file
 - Distributees age 12 and over; or
 - Parent, conservator, or guardian of distributee under 12
 - Waivers of Citation (in lieu of Citation by mail above) [§ 202.052] are on file
 - Signed by persons 18 years of age or older
 - Parent, conservator, or guardian of a distributee under 12
 - NOTE: minors aged 12-17 cannot waive citation.
 - Return of Citation by Publication requested and issued [§ 202.052; see also § 51.054(a)] is on file
 - Newspaper; and
 - Office of Court Administration
 - Notice of hearing SHALL be served on all interested persons who file a notice of appearance [TRCP 21]
- Complete and file the Affidavit of Service of Citation [§ 202.057]
 - NOTE: The Court may not enter an order in proceeding to declare heirship until this affidavit is filed (and correct). [§ 202.057(b)]
- Attorney Ad Litem has filed an Answer [§ 202.009]
- Proposed Order filed
 - Should be signed by the applicant's counsel and the attorney ad litem
 - Shares should be represented in fractions, not percentages.

Administrations

- Citation by Posting has been requested and received. [§ 303.001]
 - NOTE: Citation by Posting is required before a Court can act on an Application for Administration. [§ 303.002]
- Consents to Independent Administration (if applicable) [§ 401.003]
 - NOTE: Distributees must agree to the independent administration and designate a qualified person, firm, or corporation to serve without bond. Merely stating that an independent administration is in the best interest of the estate and NOT designating a person, firm, or corporation to serve without bond is not a proper Consent. [§ 401.003(a)]

- NOTE 2: Court cannot grant an independent administration until all distributees have collectively consented to an independent administration and designated a person or entity to serve. In order for a court to know who can consent and designate, it must first determine who those distributees are. Therefore, a court must first determine the heirs before it can grant an independent administration for an intestate decedent. [§ 404.003(b)]
- NOTE 3: the APPLICANT must execute a consent if she/he does not sign the application
- Waive Bond [§ 401.005]
 - If Independent Administration is created by agreement pursuant to § 401.003, then distributees may agree to waive bond. Waivers should be on file.
- Notice Requirements
 - Independent Administrations:
 - All distributees SHALL be served with Citation and Notice unless such person waives citation and notice (of the hearing date) or enters an appearance. [§ 401.004]
 - Dependent Administrations
 - A copy of the application SHALL be served by certified mail return receipt requested or by e-service on all persons who have an equal or higher right to serve: See TEC 304.001 for order of persons qualified to serve
 - Proof of notice to such person shall be e-filed
 - Notice of hearing SHALL be served on all interested persons who file a notice of appearance [TRCP 21]
- Proposed Order filed

III. Orders

Heirships

- Evidence
 - Two disinterested and credible witnesses [§ 202.151(b)]
 - One disinterested and credible witness if shown to the Court's satisfaction that, after a diligent search, only one witness could be found [§ 202.151(c)]
 - Court may require any testimony to be reduced to writing and subscribed and sworn to by the witnesses. [§ 202.151(a)]
 - Witness testimony must be taken in open court or by Deposition on Written Questions [§§ 202.151 (b) & (c), 51.203]
- Contents of the Order
 - The Order must state [§202.201]
 - The names of the heirs
 - Heirs' respective shares and interest in the Decedent's property.
 - The Order should additionally contain statements of
 - Jurisdiction [Ch. 32]
 - Venue [Ch. 33]
 - That Decedent died intestate owning or entitled to property in this state and there has been no administration in this state [§ 202.002(a)] [see code for other reasons. This is the most common].
 - that all persons interested in the estate have been cited to appear or have filed waivers [§§ 202.051 & .052]
 - The Attorney Ad Litem was appointed and has answered [§ 202.005]
 - That the evidence presented and admitted satisfactorily proves each and every issue presented [§ 202.151]

Administrations

- Evidence
 - Sworn Testimony of a Witness with Personal Knowledge [§ 305.155]
 - Taken in Open Court; or
 - If proved under oath that Witness is Unavailable, by Deposition on Written Questions [§§ 305.155(2) & 51.203]
- Contents of the Order
 - The evidence proves to the Court's satisfaction that: [§ 301.151]

- Decedent is dead
- Four years have not elapsed since the date of Decedent's death and before the Application was filed.
- Court has Jurisdiction [Ch. 32] and Venue [Ch. 33]
- Citation has been served and returned in a manner and for the period required by law (Citation by Posting [§§ 305.001 & .002])
- Applicant (use name) is entitled by law to letters and is not disqualified.
- There is a necessity for an Administration. [§301.153]
- Bond
 - Unless waived, bonds are generally required [§§ 401.005 & 305.151]
 - Amount of bond must be sufficient to protect the estate and its creditors [§ 305.151(a)]
 - Evidence to determine Bond [§ 305.152]
 - Amount of cash on hand.
 - Amount of cash estimated to be needed for administrative purposes (including for businesses, factory, farm, or ranch owned by the estate) and expenses of administration for one year.
 - Revenue anticipated to be received in succeeding 12 months.
 - Estimated value of certificates of stock, bonds, notes, or other securities.
 - Face value of life insurance and other policies payable to the decedent's estate.
 - Estimated value of other personal property
 - Estimated amount of debts due and owing by the estate.
 - Reduced by amount in safe-keeping [§ 305.156]

IV. Audits

Administrations

- Date of Qualification of Personal Representative
 - Oath and Bond (if required) by 21st day after order signed [§§ 305.002 & .003]
- Date Inventory or Affidavit In Lieu of Inventory is Due
 - 91st day after personal representative qualifies [§ 309.051]
- Date Annual Accounting Due
 - 60th day after the anniversary of the date Personal Representative qualified [§359.001]