



Harris County Probate Courts

WHEN THERE IS NO WILL KEY POINTS FOR FILING AN HEIRSHIP AND/OR ADMINISTRATION

1. **Document checklist:**
 - **An Application to Determine Heirship with or without an Application for Administration (see TPC §§49(a), 49(b), and 82;**
 - **Accompany an Application to Determine Heirship with a Motion to Appoint Attorney Ad Litem with order for same;**
 - **Service of citation upon (or waiver from) all non-applicant heirs and any other persons requiring notice under TPC §49;**
 - **Affidavit of Publication;**
 - **Proof of Death and Other Facts;**
 - **Affidavit of Facts concerning the identity of heirs from two disinterested witnesses to be signed at time of hearing; and**
 - **Judgment Declaring Heirship (with an Order for Administration if applicable).**

TPC §53(c) requires the appointment of an attorney ad litem to represent unknown heirs even if the applicant thinks that there are no unknown heirs. The court will not appoint an ad litem to represent minors or adult heirs whose names are known. You must request an attorney to represent unknown heirs. The court will fax the order appointing the attorney ad litem to the applicant's attorney and the ad litem appointed. It is the applicant's attorney's responsibility to provide the ad litem with a copy of the application and other documents.

Please carefully review TPC §§49(a) and 82, so that your applications contain all of the information required by the TPC.
2. **Is an independent administration desired?**

Pursuant to TPC §145(g), no independent administration can be granted before the court has determined the heirs. The court will accept a combined Application for Determination of Heirship and for Letters of Administration, or separate applications can be filed.
3. **Are any of the heirs minors?**

If there is a minor heir, the Courts do not ordinarily approve an independent administration under §145(e). However, depending upon the circumstances, some Harris County Probate Courts have exercised discretion and allowed independent administrations on a case by case basis when: 1) the minor stands to inherit only real property and the fiduciary does not have the power to sell such real property during the course of administration; or 2) the fiduciary is bonded for the child's share of the estate. However, if the fiduciary is bonded in an independent administration, the only ways the fiduciary may be released from their bond upon completion of administration are

to prepare and file an accounting of the estate and obtain a judicial discharge or obtain a release from the child once the child has attained the age of majority. In addition, if the applicant is the surviving spouse of the decedent and the minor children are all the children of both the decedent and the surviving spouse, and independent administration may be considered provided that the decedent's estate does not contain separate property.

4. **Does your Application to Determine Heirship include a chart of all heirs, reflecting their true interest in separate personal, separate real, and community property?**

Include in your application a chart listing all known heirs with the following information: name; address; relationship to decedent (if a child, be sure to note the name of the other parent); true interest of each heir (in fractions). You must provide the age of a child who is a minor.
5. **Has the the Publisher's Affidavit for the citation by publication (in an heirship) been filed?**

The Harris County Clerk takes care of the citation by publication in the paper of your choice. The cost for such publication, however, is the responsibility of the applicant and applicant's attorney. The County Clerk does not collect as a part of the filing fee the cost for publication of the citation. No hearing can be held until the Affidavit of Publication has been filed. The Affidavit of Publication is not sent to the County Clerk until the publisher has been paid. The publisher is paid by the applicant, not the County Clerk. Be sure to check the County Clerk's website before the hearing to make sure that the publisher has returned proof of publication. The website will indicate that citation by publication has been returned with language similar to the following: "Citation Returned Served Proof Of Hrshp-Cit By Publication." The County Clerk's probate database may be accessed at the following location: <http://www.cclerk.hctx.net/applications/websearch/Probate.aspx>.
6. **Have all of the non-applicant heirs been served or waived service?**

All non-applicant heirs must be either served with citation or waive service. It is helpful to the court have the waivers in the file prior to the hearing. A parent or legal guardian may waive service for a minor or incapacitated person.
7. **If seeking an independent administration pursuant to §145(e), have all non-applicant distributees agreed to the applicant serving as an independent administrator?**

All non-applicant distributees must agree to have an independent administration. It is acceptable to combine the waiver of service for the heirship with the consent to independent administration. In the alternative, the distributees can sign the application for independent administration, consenting to such independent administration. All waivers and consents must be sworn (notarized). In addition, if the applicant failed to sign the application, the applicant must also file a consent to the independent administration.
8. **Is all of your testimony reduced to writing?**

The court requires all oral testimony to be reduced to writing and signed in the present of the clerk at the hearing. In an heirship proceeding, that includes the Proof of Death and the Statements of Fact from the two disinterested witnesses.
9. **Judgment Declaring Heirship**

Please include in the judgment a provision discharging the attorney ad litem and taxing his or her fees as costs, to be paid pursuant to a separate order.
10. **What should you do when witnesses are not available to appear in court?**

Deposition on Written Questions – The court recommends this alternate method of providing witness testimony. A Notice of

Intention to Take Deposition on Written Questions (with a copy of the questions attached) must be filed and posted for ten (10) days. Please also request (and pay for) the County Clerk to issue a commission to take the deposition on written questions. The commission will be ready after the 10 day notice period has run. The commission, notice, and questions should then be mailed to the notary public, court reporter, or witness (as the case may be) with instructions to follow the directions in the commission for returning the questions to the Harris County Clerk. Before filing a Notice of Intention to Take Deposition on Written Questions, please send the questions to the attorney ad litem and allow the attorney ad litem to include questions or his or her own.

Please speak with the Associate Judge if extraordinary circumstances require other arrangements.

11. **What property description should be included in the Judgment Declaring Heirship?**

The court does not determine what types of property the decedent owned. The judgment must indicate each heir's fractional interest in every possible type of property: separate personal property; separate real property; community property (if decedent was married at date of death). See TPC §38 for separate property and TPC §45 for community property. All types of property must be listed, even if the applicant believes there is no separate property or no community property.
12. **What if an heir survived the Decedent yet died before the Application to Determine Heirship is filed?**

Your application should contain such deceased heir's name, relationship to the decedent, date of death, and true interest of such heir as of the decedent's date of death. The heirs of such deceased heir should not be listed on the application.