

WILLS CHECKLIST

The court strongly suggests use of this Texas Bar resource for Texas Estates Code mandates, procedure, and current forms:

[Texas Probate System Online Subscription](#) | [Texas Bar Practice](#)

All attorneys of record must sign the Order.

I. PROBATE OF WILL & LETTERS TESTAMENTARY

_____ (date filed) CITATION - *TEC 258.001 & 258.002 & 51.102*

- Citation return date must pre-date hearing date. *TEC 51.102 & 258.0001*

- All Amended Application(s) mandate reissuing citation.

-Decedent's name is exactly as written in the Will, please include Decedent's other names used, i.e., "also known as", "AKA"s, or "formerly known as", "FKA".

- Need not be served on an heir who filed a sworn Waiver - *Tex.R.Civ.P. 119*

- If four (4) years after date of death - *TEC 258.051(b)(1)*

_____ (date filed) APPLICATION – TEC

-Decedent's name is exactly as written in the Will, please include Decedent's other names used, i.e., AKAs, or formerly known as, FKAs, domicile and age at date of death. – *TEC 256.052*

-Date of Death is NOT over four years before the date the Will Application is filed. - *TEC 258.051(b)(1)*

- Include Applicant's Address, Social Security # Last Three Digits. and Driver License # Last Three Digits. – *TEC 301.052(a)(1-a)* and Decedents' last three digits of driver's license and Social Security number - *TEC 301.052(a)(2-a)*

APPLICANT named in the Will, if not, -*TEC 256.052*,

- Named Executor sign and notarized "Declination to Serve" or

- Statement of Disability or Incapacitated submit Evidence of Disability or Incapacitated.

Declination Name _____ Date filed

Applicant named in the Will or the Codicil?

YES or NO - Applicant is named as "Independent" Executor or language denoting without court oversight.

YES or NO -Applicant shall serve without bond.

YES or NO - Applicant is a TEXAS RESIDENT TEC 304.003(3) (B) (ii), if No, RESIDENT AGENT is required.

_____ (date filed, only if required) RESIDENT AGENT TEC 304.003(3) (B) (ii)

_____ (date filed) WILL (ORIGINAL) - TEC 257.052

- Original Will in court file.

VALID WILL - TEC 251.001-2, 251.051; 257.052

- TESTATOR signed the Will? YES or NO
- TWO WITNESSES sign the Will after the Testator Clause? YES or NO
- Testator 18 years old? YES or NO
- Valid will? YES or NO

- SELF PROVING AFFIDAVIT * (Not required for Will to be valid) YES or NO
- Signed by Testator, Two Witnesses, and Notary YES or NO
- Exact terminology "Subscribed and sworn to" used by jurat (person's signature being notarized). YES or NO
- If not Self-Proven, then two witnesses will be needed at the hearing (fill in below).

Witness Written Testimony:

Witness 1 Name: _____ Date Filed _____
 Witness 2 Name: _____ Date Filed _____

II. COPY OF WILL FOR PROBATE

_____ COPY OF WILL (Must state "COPY" in Application Title, Body, Prayer & Citation)

- Requires testimony in court by two disinterested witnesses of search efforts. Attach Witness Written Testimony*. TEC 257.053

Witness Written Testimony:

Witness 1 Name: _____ Date Filed _____
 Witness 2 Name: _____ Date Filed _____

YES or NO - INDEPENDENT EXECUTOR

-Testator named Executor to act "Independently" in Will, by use of word Independent, or verbiage "no other action be had in this county court in relation to the settlement of their estate than probating the Will and return of inventory, appraisalment and list of claims." Or where all devisees EXPRESSLY agree to Independent, not simply Waiver of Notice and Citation. If Successor Executor, is that Executor named Independent, as well? Or where Named Independent Executor Declines to Serve.

YES or NO - BOND WAIVED -TEC 401.002, 401.003, 401.005

OR

____ (Date(s) filed) WAIVERS of BOND E-FILED

Devisee Name _____ Date filed _____

Devisee Name _____ Date filed _____

The Bond Waiver must specifically refer to the Applicant, if not, the requirement is that all devisees Waive the bond requirement (a Waiver of Notice and Citation will not suffice).

____ TESTATOR sign the Will? *TEC Sec. 251.051*

____ TWO WITNESSES sign the Will after the Testator Clause? *TEC Sec. 251.051*

____ SELF PROVING AFFIDAVIT – *TEC Sec. 251.102*

- Signed by Testator, Two Witnesses, and Notary
- Exact terminology “Subscribed and sworn to” used by jurat (person’s signature being notarized).
- Affidavit must be “in substantial compliance” with *TEC 251.104 & 251.1045*

III. HOLOGRAPHIC WILL

____ HOLOGRAPHIC WILL - *TEC 251.052*

- Will written in its entirety in the Testator’s handwriting.
- Will need not fulfill formalities such as Witnesses, Dates and Self-Proving.
- Requires testimony of disinterested Witnesses* to the testamentary intent and Testator’s handwriting;

Witness Written Testimony:

Witness 1 Name: _____ Date Filed _____

Witness 2 Name: _____ Date Filed _____

REQUIRED DOCUMENTS & ORDERS

____ (date filed) AFFIDAVIT OF COMPLIANCE

____ (date filed) PROPOSED ORDER – *TEC 306.003*, Need for Appraisers – *TEC 309.001*,

Sell Realty – *TEC 401.006*

____ (date filed) PROPOSED PROOF OF DEATH

____ (date filed) PROPOSED OATH

WITNESSES WRITTEN TESTIMONY (2)* for COPY OF WILL & HOLOGRAPHIC WILL & Not SELF PROVEN *TEC 256.153* -see names and date filed above.

IV. MUNIMENT OF TITLE

____ (date filed) CITATION - TEC 258.051

- Citation return date must pre-date hearing date.
- All Amended Application(s) mandate reissuing citation.
- Decedent's name is exactly as written in the Will, please include Decedent's other names used, i.e., also known as, AKAs and formerly known as, FKAs.
- Include Applicant's Address, Social Security # Last Three Digits. and Driver License # Last Three Digits. - TEC 301.052(a)(1-a)

____ (date filed) APPLICATION - TEC 257.051

- Four years have elapsed, then **give a reason why they fail to file** within the four (4) years.
- No DEBTS - give a statement asserting there are no debts owing, other than realty.
- ____ (date filed) MERP Certification filed. 42 U.S.C. 1396(b)(1), Tex. Gov't Code 531.077, 1 T.A.C. 373.201, 373.217 [AUTHORIZATION AND MERP* CERTIFICATION \(texas.gov\)](http://www.texas.gov)
- ____ (date filed) Waive fulfillment of terms **only** if the Applicant is the sole devisee. TEC 251.103

____ (date filed) WILL - TEC 251.001-2, 251.051; 257.052

- Valid will
- TESTATOR signed the Will? YES or NO
- TESTATOR over age of 18? YES or NO
- TWO WITNESSES sign the Will after the Testator Clause? YES or NO
- SELF PROVING AFFIDAVIT * (not required to make it valid) YES or NO
- Signed by Testator, Two Witnesses, and Notary YES or NO
- Exact terminology "Subscribed and sworn to" used by jurat (person signature being notarized). YES or NO

____ (date filed) PROPOSED ORDER - TEC 257.102

____ (date filed) PROPOSED PROOF OF DEATH

If the Order includes a request to Waive the Fulfillment of Terms, that only applies if the named Executor and the beneficiary are the same person.