FORBES & FORBES LAW

# HOW TO START THE PROBATE PROCESS IN TEXAS

There are 18 probate courts in 10 counties in Texas.
It's extremely important to start the probate process in the correct jurisdiction.
Probates filed in the incorrect court will likely be thrown out.

## STEP 1

## FILING

An application for probate must be filed with the proper Texas probate court in the county where the decedent resided.

## STEP 2

## POSTING

After the probate application is filed, there will be approximately a 2 week waiting period before a hearing is held for the application. During this time, the county clerk will post a notice at the courthouse stating that a probate application was filed to serve as notice to anyone who may contest the will or administration of the estate. If no contests are received, the probate court proceeds in opening the administration.

## STEP 3

## WILL VALIDATION

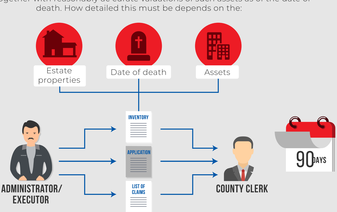
After the waiting period, a Texas probate judge will preside over a hearing and he will legally recognize the decedent's death. You can also expect the probate judge to verify that the decedent had a valid will or that there was no will, and finally appoint an administrator or verify the person named as executor.

## STEP 4

## CATALOGUING ASSETS

After an executor or administrator is named to the estate, that person must catalogue and report to the county clerk all the assets held by the estate within 90 days after appointment. The executor must prepare an Inventory, Appraisement, and List of Claims, sworn to be accurate to the best of their knowledge.

The Inventory is essentially a catalog of estate properties which must be carefully prepared. It must include proper and complete descriptions of the various estate assets together with reasonably ac curate valuations of such assets as of the date of death. How detailed this must be depends on the:

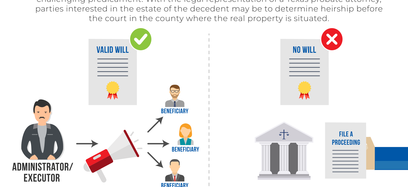


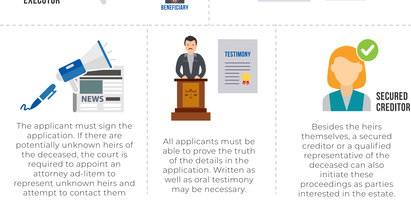

There is an exception to the filing rule for independent executors. If there are no unpaid debts owed by the estate, except for secured debts, taxes, and administration expenses, and if the decedent's will does not require the Inventory to be filed, then the executor may file an Affidavit In Lieu Of Inventory with the county clerk before the deadline, swearing that there are no unpaid debts (except secured debt, etc.) and that all estate beneficiaries have received a copy of the Inventory. The purpose of this exception is to protect the decedent's privacy and to keep his/her assets from appearing in a public record.

## STEP 5

## BENEFICIARIES IDENTIFIED

If the decedent had a valid will, the executor will notify beneficiaries of the estate. If no will was filed, the probate court in Texas must determine heirship. This can be a challenging predicament. With the legal representation of a Texas probate attorney, parties interested in the estate of the decedent may be to determine heirship before the court in the county where the real property is situated.




The applicant must sign the application. If there are potentially unknown heirs of the deceased, the court is required to appoint an attorney ad-litem to represent unknown heirs and attempt to contact them

All applicants must be able to prove the truth of the details in the application. Written as well as oral testimony may be necessary.

Besides the heirs themselves, a secured creditor or a qualified representative of the deceased can also initiate these proceedings as parties interested in the estate.

## STEP 6

## NOTIFYING CREDITORS

Decedents usually leave behind debts. These must be resolved out of their estate. Typical debts include medical bills, mortgages and household expenses. Creditors are notified of the decedent's death by the estate's executor and given the opportunity to file claims against the estate. This notice to creditors can be legally accomplished in Texas with a notice published in the local newspaper.

## STEP 7

## RESOLVING DISPUTES

The estate cannot be finalized if family members or other potential beneficiaries are contesting a will in Texas or if they file related grievances. These disputes must be heard by a probate court judge.

Probating a Last Will and Testament is often an emotional situation that has the potential to cause problems in the family. In the state of Texas, contesting a will must be done within two years after the original probate. A legal representative is necessary to direct and guide you through the dispute process whether or not you are the complainant.

One way to contest a will is to prove that the testator (person signing will) didn't have testamentary capacity - they weren't mentally able to understand the nature of the act

Proving the will was a forgery

The will was forced due to excessive influence by a third party

The will was improperly executed

They was more than one will executed

Many people contesting a will in Texas never get to court because mediation is the suggested course of action for resolving conflict with Texas probate. Sometimes the dispute never even makes it to a mediator because the problems are settled out of court between family and their attorneys.

## STEP 8

## DISTRIBUTING ASSETS

After the debts are resolved and cleared up, remaining assets are then distributed to the beneficiaries.