

"Lost Wills" / "Photocopies"

A "photocopy" of a self-proved "lost will" proves the original will was properly signed.

It is NOT necessary to call witnesses concerning the signing of a lost will (will that cannot be produced in Court).

BRACEWELL v. BRACEWELL, 20 S.W.3d 14, CT. OF APP., HOUSTON

OPINION

This is an appeal from a will contest.....

It is undisputed that W.T. was able to produce only a photocopy of the 1975 will and that the original document was not admitted into evidence. Section 85 of the Texas Probate Code provides that a "written will which cannot be produced in court shall be proved in the same manner as provided" in § 84 of the Code. Here, W.T. contends that his probate application was proper, under § 85, because the 1975 will was a "self-proved" document in the manner prescribed by § 84(a).

Section 84(a) of the Texas Probate Code states that "if a will is self-proved as provided in this Code, no further proof of its execution with the formalities and solemnities and under the circumstances required to make it a valid will shall be necessary." In Texas, a will is self-proved if it complies with § 59 of the Texas Probate Code,,,,,

TEX. PROBATE CODE ANN. § 59(a) (Vernon 1980). In this case, W.T. testified that he and Irene signed the 1975 will in the offices of an attorney, Roger Knight, Sr., and that they also signed self-authenticating affidavits in the presence of two witnesses at that time. A review of the (copy of the) 1975 will shows that it contains a sworn, notarized affidavit which complies with § 59, Texas Probate Code.

Once a self-proved will is admitted into evidence, the proponent has *prima facie* established that the will was properly executed. See Guthrie, 934 S.W.2d at 829 (citing James, 573 S.W.2d at 288). Charles has presented no evidence, or argument, to rebut this *prima facie* showing. Accordingly, we overrule the "no evidence" challenge raised by Charles on this issue, and uphold the trial court's decision to grant W.T.'s application to probate the 1975 will.....

Based on the foregoing, the judgment of the trial court is therefore affirmed.

See also Rules of Evidence 1002: "A duplicate is admissible to the same extent as an original unless (1) a question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original."

**YOU MUST OBTAIN SERVICE ON OR WIAVERS FROM ALL
INTESTATE HEIRS WHEN PROBATING A COPY OF A WILL.**

Form 041320171100

**Will Admitted as
Muniment of Title**

**Sec. 257.102. Authority of,,
Persons Acting in Accordance
with Order.**

**(a) An order admitting a
will to probate as a
muniment of title**

**constitutes sufficient legal
authority for each person
who owes money to the
testator's estate,**

has custody of property,

**acts as registrar or transfer
agent of any evidence of
interest, indebtedness,
property, or right
belonging to the estate,**

**or purchases from
or otherwise deals with the
estate,**

**to pay or transfer without
administration the applicable
asset without liability to a
person described in the will
as entitled to receive the
asset.**

**(b) A person who is entitled
to property under the
provisions of a will
admitted to probate as a
muniment of title is entitled
to deal with and treat the
property in the same
manner as if the record of
title to the property was
vested in the person's
name.**

**Determination that No
Admin. is Necessary when
Will admitted to Probate**

**Sec. 301.153. ,,,, Effect of
Finding No Necessity for
Administration Exists.**

**(c) A court order containing
a recital that no necessity
for an administration of the
estate exists**

**constitutes sufficient legal
authority for each person
who owes money,**

has custody of property, or

**acts as registrar or transfer
agent of any evidence of
interest, indebtedness,
property, or right
belonging to the estate, and**

**to each person purchasing
or otherwise dealing with
the estate,**

**for payment or transfer to
the distributees.**

**(d) A distributee is entitled
to enforce by suit the
distributee's right to
payment or transfer
described by Subsection**

(c).

**Order of No
Administration**

**Sec. 451.003. Effect of
Order. [§141]**

**(a) An order of no
administration issued under
Section 451.002(b)**

**constitutes sufficient legal
authority to each person
who owes money,**

has custody of property, or

**acts as registrar or transfer
agent of any evidence of
interest, indebtedness,
property, or right,
belonging to the estate,**

**and to each person
purchasing from
or otherwise dealing with
the estate,**

**for payment or transfer
without administration
to the persons described in
the order as entitled to
receive the estate.**

**(b) The persons described
in the order are entitled to
enforce by suit their right
to payment or transfer
described by this section.**

**Judgment Declaring
Heirship**

Sec. 202.205. Effect of,,
Judgments,, , .

(a) A judgment in a proceeding to declare heirship **stating that there is no necessity for administration** of the estate of the decedent who is the subject of the proceeding **constitutes authorization for a person who owes money to the estate, has custody of estate property, acts as registrar or transfer agent of an evidence of interest, indebtedness, property, or right belonging to the estate, or purchases from or otherwise deals with an heir named in the judgment to take the following actions without liability to a creditor of the estate or other person:**

(1) to pay, deliver, or transfer the property or the evidence of property rights to an heir named in the judgment; or

(2) to purchase property from an heir named in the judgment.

(b) **An heir named in a judgment** in a proceeding to declare heirship **is entitled to enforce the heir's right to payment, delivery, or transfer** described by Subsection (a) **by suit.**

**Small Estate Affidavit
Order**

Sec. 205.007. Liability of
Certain Persons. [§138]

(a) A person making a payment, delivery, transfer, or issuance **under an affidavit** described by this chapter is **released to the same extent as if made to a personal representative of the decedent.** The person may not be required to:

(1) see to the application of the affidavit; or

(2) inquire into the truth of any statement in the affidavit.

(b) **The distributees to whom payment, delivery, transfer, or issuance is made are:**

(1) (omitted); and

(2) **accountable to any personal representative appointed after the payment, delivery, transfer, or issuance.**

(c) **Each person who executed the affidavit is liable for any damage or loss,,,,,,,,.**

(d) **If a person to whom the affidavit is delivered refuses to pay, deliver, transfer, or issue property as provided by this section, the property may be recovered in an action brought for that purpose by or on behalf of the distributees** entitled to the property on proof of the facts required to be stated in the affidavit.

Original Form
060220171200
Revised Form
060220171201

INFORMATION REQUIRED FOR ESTATES PROCEEDINGS

M = Muniment of Title- 257.051, 257.053, & 257.054.

DH = Determination of Heirship- 202.005, 202.008.

PWw/A = Will with Administration- 256.052, 256.054, 256.151, & 256.152.

SE = Small Estate Affidavit- 205.001 & 205.002.

IA = Independent Administration w/out Will- 301.052, 301.151, & 301.153.

- 1 The name and domicile (residence addresses) of applicant(s), and whether deceased person died with or without a Will.

M	PWw/A	IA	DH	SE
			DH	
		IA		
M	PWw/A	IA	DH	
M	PWw/A	IA	DH	
M	PWw/A			
M	PWw/A	IA	DH	SE
M	PWw/A	IA	DH	
M				
	PWw/A	IA	DH	SE
- 2 What disposition was made of any Will of deceased person if there was a Will.
- 3 The relationship between the Applicant(s) and deceased person.
- 4 The full name of deceased person. (on the death certificate)
- 5 The domicile (residence address) of deceased person at time of death. (on the death certificate)
- 6 The age of deceased person at the time of their death. (on the death certificate)
- 7 The date deceased person passed away (died). (on the death certificate)
- 8 The city and county where deceased person passed away. (on the death certificate)
- 9 Generally, what deceased person owned and the probable value of the estate.
- 10 What deceased person owned, whether it was separate or community property, whether it is exempt, the general approximate value of the various assets, and sufficient information to construct an inventory.
- 11 A description of any property held in trust for the benefit of deceased person.
- 12 The date the Will was signed. (in the Will)
- 13 The name, state of residence, and physical address of the Executor named in the Will (sufficient that service of process could be effected if it were necessary). (name of Executor is in the Will)
- 14 The circumstances of the Estate that establish a necessity for an administration of the estate.
- 15 If using alternate Executor (or Administrator), their name(s) and address(es). (Name of alternate Executor is in the Will)
- 16 Whether the proposed personal representative is incapacitated, a convicted felon, a nonresident, or a corporation not authorized to act as a fiduciary in Texas.
- 17 The name of person who will serve as Resident Agent for Service of Process if Executor/Administrator is a nonresident.
- 18 The name of each subscribing witness to the Will. (names are in the Will)
- 19 Whether any children were born to or adopted by deceased person after making the Will, and if so, their names.
- 20 The names of all children born to or adopted by deceased person at any time, and the decedents of any of those children who predeceased deceased person.
- 21 Dates of birth and place of birth of children of deceased person.
- 22 Whether deceased person had any unpaid debts other than those secured by a lien on real estate.

BENEFICIAL THINGS NOT REQUIRED BY THE CODE

The following information is NOT necessarily required by the Estates Code, but they are often very beneficial to have.

- 1 Home phone number, work phone number, cell-phone number, e-mail address, and social security number of the Applicant(s).*
- 2 The relationship between the deceased person and the Applicant(s).*
- 3 Whether there are any disagreements within the family concerning the Will or any other inheritance issues.*
- 4 Whether your client can get all family members to sign any documents that you prepare for their signature signed and returned to you.*
- 5 The names of any beneficiary listed in the Will who died before the deceased person, if any, and the names and contact information for the intestate heirs of the deceased beneficiary. (If there is no Will, the names of any intestate heirs who died before the deceased and contact information for their intestate heirs.)*
- 6 Contact information for all persons named in the Will other than the Applicant(s).*
- 7 The name(s) and contact information for any beneficiaries under the Will who do NOT support the application, and their declared reason(s) for not supporting the application.*
- 8 The names and contact information for any intestate heirs who were either omitted from the Will, or who received a reduced share of the Estate under the Will in relation to their intestate portion of the Estate.*
- 9 Whether deceased person went on Medicaid after 2005. (hint: they probably didn't.)*
- 10 A copy of the death certificate because some judges require you to present a death certificate at the hearing.*
- 11 The Social Security Number of deceased person (which is on the death certificate).*

The SBOT Probate Forms Manual has a great section on other information that you may want to obtain from the client.