

**SIMPLIFYING
UNCONTESTED
PROBATE PROVE-UPS**

.....

LOCAL PRACTICES

.....

CONTINUED USE OF ZOOM

AND

**ZOOM friendly Proofs, Oaths, and
other Documents**

WELDON COPELAND

COLLIN COUNTY PROBATE JUDGE

March 11, 2022

Complete Estates Code- <http://koeneckelaw.com/public/>

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Reference: 0308 2022 1230 – 2022

IN THE ESTATE OF
[Name of Deceased person]
DECEASED
TEXAS

IN THE PROBATE COURT OF

COLLIN COUNTY,

TESTIMONY REGARDING PROBATE PROCEEDINGS COMMITTED TO WRITING
Probate of Will as Muniment of Title; Proof of Facts- §256.157 TEC

At a hearing in this Cause, the below signed witness, after being duly sworn, testified:

My name is [Name of witness]. [Name of deceased person] was my [husband / father / brother / uncle / father-in-law / cousin / brother-in-law / friend of many years / etc.]

1. [Name of Deceased person] passed away on [date of passing].
 2. The application to probate [his/her] Will was filed within four years thereafter.
 3. [He/She] resided in **Collin County** at the time of [his/her] passing.
 4. The estate does not owe any unpaid debt **other than a debt secured by a lien on real estate** to my knowledge. There is no necessity for administration of the estate.
 5. The Will offered for probate was never revoked.
 6. The Will offered for probate is self-proved.*
- Or-- If the Will is not self-proved, use a separate "Proof of Facts" to prove-up the Will through subscribing witness testimony or non-subscribing witness handwriting recognition testimony.*
7. Citation has been served and returned in the manner and for the time required by law.*
 8. This Court has jurisdiction and venue over this estate.*

State of **Texas**
County of **Collin**

"My name is [name of witness]. My date of birth is [date of birth of witness]. My address is [address of witness].

I declare under penalty of perjury that the foregoing testimony is true and correct."

Signed/Executed on _____, 2 0 2 2 .

Signature: _____

----- Space below is for use by Judge. -----

The foregoing testimony was given under oath in open court by audio – video
teleconference on _____, 2 0 2 2 .

Judge Presiding

0308 2022 1230 – 2022

*Not required in Collin County. Court will take judicial notice that a Will is self-proved, that citation has been served and returned as required by law, and that the Court has jurisdiction and venue over the estate.

IN THE ESTATE OF
[Name of Deceased person]
DECEASED
TEXAS

IN THE PROBATE COURT OF

COLLIN COUNTY,

TESTIMONY REGARDING PROBATE PROCEEDINGS COMMITTED TO WRITING
Probate of Will with Appointment of Executor; Proof of Facts- §256.157 TEC

At a hearing in this Cause, the below signed witness, after being duly sworn, testified:

My name is [Name of witness]. [Name of deceased person] was my [husband / father / brother / uncle / father-in-law / cousin / brother-in-law / friend of many years / etc.]

1. [Name of Deceased person] passed away on [date of passing].
2. The application to probate [his/her] Will was filed within four years thereafter.
- 3- [He/She] resided in Collin County at the time of [his/her] passing.
- 4- I am named in the Will to serve as [Executor or Successor Executor].
- 5- I am not disqualified by law from serving as an Executor, and I am entitled by law to Letters Testamentary.
6. The Will offered for probate was never revoked.
7. The Will offered for probate is self-proved.*

--Or-- If the Will is not self-proved, use a separate "Proof of Facts" to prove-up the Will through subscribing witness testimony or non-subscribing witness handwriting recognition testimony.

8. Citation has been served and returned in the manner and for the time required by law.*
9. This Court has jurisdiction and venue over this estate.*

State of **Texas**
County of **Collin**

"My name is [name of witness]. My date of birth is [date of birth of witness]. My address is [address of witness].

I declare under penalty of perjury that the foregoing testimony is true and correct."

Signed/Executed on _____, 2 0 2 2 .

Signature: _____

----- Space below is for use by Judge. -----

The foregoing testimony was given under oath in open court by audio – video
teleconference on _____, 2 0 2 2 .

Judge Presiding

0308 2022 1230 – 2022

*Not required in Collin County. Court will take judicial notice that a Will is self-proved, that citation has been served and returned as required by law, and that the Court has jurisdiction and venue over the estate.

IN THE ESTATE OF
[Name of Deceased person]
DECEASED
TEXAS

IN THE PROBATE COURT OF
COLLIN COUNTY,

**TESTIMONY REGARDING PROBATE PROCEEDINGS COMMITTED TO WRITING
Probate of Will with Appointment of Administrator; Proof of Facts- §256.157 TEC**

At a hearing in this Cause, the below signed witness, after being duly sworn, testified:

My name is [Name of witness]. [Name of deceased person] was my [husband / father / brother / uncle / father-in-law / cousin / brother-in-law / friend of many years / etc.]

1. [Name of Deceased person] passed away on [date of passing].
 2. The application to probate [his/her] Will was filed within four years thereafter.
 - 3- [He/She] resided in Collin County at the time of [his/her] passing.
 4. There is a necessity for administration of this estate to recover funds or property of the estate.
 5. I am not disqualified by law from serving as an Administrator, and am entitled by law to Letters of Administration.
 7. The Will offered for probate was never revoked.
 8. The Will offered for probate is self-proved.*
- Or-- If the Will is not self-proved, use a separate "Proof of Facts" to prove-up the Will through subscribing witness testimony or non-subscribing witness handwriting recognition testimony.*
9. Citation has been served and returned in the manner and for the time required by law.*
 10. This Court has jurisdiction and venue over this estate.*

State of **Texas**
County of **Collin**

"My name is [name of witness]. My date of birth is [date of birth of witness]. My address is [address of witness].

I declare under penalty of perjury that the foregoing testimony is true and correct."

Signed/Executed on _____, 2 0 2 2 .

Signature: _____

----- Space below is for use by Judge. -----

The foregoing testimony was given under oath in open court by audio – video
teleconference on _____, 2 0 2 2 .

Judge Presiding

*Not required in Collin County. Court will take judicial notice that a Will is self-proved, that citation has been served and returned as required by law, and that the Court has jurisdiction and venue over the estate.

IN THE ESTATE OF
[Name of Deceased person]
DECEASED
TEXAS

IN THE PROBATE COURT OF

COLLIN COUNTY,

TESTIMONY REGARDING PROBATE PROCEEDINGS COMMITTED TO WRITING

Administrator’s Testimony, Determination of Heirship with Administration; Proof of Facts- §202.151(a) TEC;

At a hearing in this Cause, the below signed witness, after being duly sworn, testified:

My name is [Name of witness]. [Name of deceased person] was my [husband / father / brother / uncle / father-in-law / cousin / brother-in-law / friend of many years / etc.]

1. [Name of Deceased person] passed away on [date of passing].
- 2- So far as I know and believe, [he/she] did not leave a Will and died intestate (without a Will).
- 3- An application for Administration of this Estate was filed within four years of [his/her] passing.
- 4- [He/She] resided in Collin County at the time of [his/her] passing.
5. There is a necessity for administration of this estate to recover funds or property of the estate.
6. I am not disqualified by law from serving as an Administrator, and I am entitled by law to Letters of Administration.
7. Citation has been served and returned in the manner and for the time required by law.*
8. This court has jurisdiction and venue over this estate.*

State of **Texas**
County of **Collin**

"My name is [name of witness]. My date of birth is [date of birth of witness]. My address is [address of witness].

I declare under penalty of perjury that the foregoing testimony is true and correct."

Signed/Executed on _____, 2 0 2 2 .

Signature: _____

----- Space below is for use by Judge. -----

The foregoing testimony was given under oath in open court by audio – video
teleconference on _____, 2 0 2 2 .

Judge Presiding

0308 2022 1230 – 2022

*Not required in Collin County. Court will take judicial notice that citation has been served and returned as required by law, and that the Court has jurisdiction and venue over the estate.

IN THE ESTATE OF
[Name of Deceased person]
DECEASED
TEXAS

IN THE PROBATE COURT OF
COLLIN COUNTY,

TESTIMONY REGARDING PROBATE PROCEEDINGS COMMITTED TO WRITING
Family History Witness Testimony, Determination of Heirship; Proof of Facts- §202.151(a) TEC;

At a hearing in this Cause, the below signed witness, after being duly sworn, testified:

My name is [name of witness]. [Name of deceased person] was my [brother / uncle / cousin / father-in-law / nephew / brother-in-law / friend of many years / etc.]

1. No children were ever born to or adopted by [him/her].

-OR-

The name(s) of [his/her] children, all of whom survived, [is/are] [name(s) of children].

-OR-

The name(s) of [his/her] children who survived [is/are] [name(s) of surviving children].

The name(s) of [his/her] children who predeceased [him/her] [is/are] [name(s) of predeceased child(ren)].

(Either) The children who predeceased [him/her] died without leaving any descendants. —OR- The name(s) of the descendants of the children who predeceased [him/her] is/are [name(s) of descendants of any children who predeceased child].

2. [Name of Deceased person] was married to [name of spouse] at the time of [his/her] passing.

-OR- [Name of Deceased person] was not married at the time of [his/her] passing.

3. (If Necessary) The name of [his/her] father, who [predeceased/survived] [him/her], is [name of father]. The name of [his/her] mother, who [predeceased/survived] [him/her], is [name of mother].

4. (If Necessary) The name(s) of [his/her] siblings, all of whom survived [him/her], [is/are] [name(s) of siblings].

—OR- The name(s) of [his/her] sibling(s) who survived [him/her], [is/are] [name(s) of surviving siblings]. The name(s) of [his/her] sibling(s) who predeceased [him/her], [is/are] [name(s) of predeceased siblings]. (Either) The siblings who predeceased [him/her] died without leaving any descendants. —OR- The name(s) of the children of his sibling(s) who predeceased [him/her], is/are [name(s) of surviving children of any deceased sibling].

State of Texas

County of Collin

"My name is [name of witness]. My date of birth is [date of birth of witness]. My address is [address of witness].

I declare under penalty of perjury that the foregoing testimony is true and correct."

Signed/Executed on _____, 2 0 2 2 .

Signature: _____

----- Space below is for use by Judge. -----

The foregoing testimony was given under oath in open court by audio – video
teleconference on _____, 2 0 2 2 .

Judge Presiding

IN THE ESTATE OF
[Name of Deceased person]
DECEASED
TEXAS

IN THE PROBATE COURT OF

COLLIN COUNTY,

OATH OF EXECUTOR

State of **Texas**

County of **Collin**

"My name is **[name of Executor]**.

My date of birth is _____.

My address is _____.

I do affirm that the writing offered for probate is the last Will of **[name of Deceased person]** so far as I know or believe, and that I will well and truly perform all the duties of the **Executor** for this Estate.

I declare under penalty of perjury that the foregoing is true and correct."

Signed/Executed on _____, **2 0 2 2**.

Declarant, Executor

Notarization is NOT required- Chapter 132, Texas Civil Practice and Remedies Code.

Approved: _____, 2022.

Judge: _____

Cause No. P B 1 - _____ - 2 0 2 2

IN THE ESTATE OF
[Name of Deceased person]
DECEASED
TEXAS

IN THE PROBATE COURT OF

COLLIN COUNTY,

OATH OF ADMINISTRATOR OF ESTATE
WITH WILL ADMITTED TO PROBATE

State of **Texas**

County of **Collin**

"My name is [name of Administrator].

My date of birth is _____.

My address is _____.

I do affirm that the writing offered for probate is the last Will of [name of Deceased person] so far as I know or believe, and that I will well and truly perform all the duties of the Administrator of this Estate.

I declare under penalty of perjury that the foregoing is true and correct."

Signed/Executed on _____, 2 0 2 2 .

Declarant, Administrator

Notarization is NOT required- Chapter 132, Texas Civil Practice and Remedies Code.

Approved: _____, 2022.

Judge: _____

Cause No. P B 1 - _____ - 2 0 2 2

IN THE ESTATE OF

IN THE PROBATE COURT OF

[Name of Deceased person]

DECEASED

COLLIN COUNTY,

TEXAS

OATH OF ADMINISTRATOR
OF INTESTATE ESTATE

State of **Texas**

County of **Collin**

"My name is [name of administrator].

My date of birth is _____.

My address is _____.

I do affirm that [name of Deceased person], deceased, died without leaving any **lawful Will** so far as I know or believe, and that I will well and truly perform all of the duties of the **Administrator** of this Estate.

I declare under penalty of perjury that the foregoing is true and correct."

Signed/Executed on _____, **2 0 2 2**.

Declarant, Administrator

Notarization is NOT required- Chapter 132, Texas Civil Practice and Remedies Code.

Approved: _____, 2022.

Judge: _____

Cause No. P B 1 - _____ - 2 0 2 2

IN THE ESTATE OF
[Name of Deceased person]
DECEASED
TEXAS

IN THE PROBATE COURT OF
COLLIN COUNTY,

ORDER ADMITTING WILL TO PROBATE AS A MUNIMENT OF TITLE

On this day came on to be heard an Application to Probate a Will as a Muniment of Title, and the Court having received evidence and having determined that no objection or contest has been filed, and that such Application should be granted;

It is Ordered that the Will of **[Name of Deceased person]**, deceased, dated **[date of Will]**, on file with the Clerk of the Court in this Cause is admitted to probate.

It further Ordered that:

This Order constitutes legal authority for any person who owes money to this decedent to deliver such money to the person(s) or entity described in the Will as entitled to receive such money.

This Order constitutes legal authority for any person who has custody or control of property belonging to this decedent to transfer or to deliver such property to the person(s) or entity described in the Will as entitled to receive such property **without administration of this estate.**

This Order constitutes legal authority for any person who deals with property from this estate, to deal with the person(s) or entity described in the Will as entitled to receive the property **without administration of this estate.**

This Order constitutes legal authority for any person who purchases property from this estate, to purchase from the person(s) or entity described in the Will as entitled to receive the property **without administration of this estate.**

This Order constitutes legal authority for any person who acts as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to this decedent to pay or transfer the applicable interest, indebtedness, property, or right to the person(s) or entity described in the Will as entitled to receive the same, **without administration of this estate.**

This Order constitutes legal authority for any person(s) who is entitled to property under the provisions of this Will to take possession of such property and to deal with and treat such property in the same manner as if the record of title to the property was vested in the person's name **without administration of this estate.**

The requirement of the filing of a Report by Applicant After Probate (Affidavit of Fulfillment) is Waived.

Signed _____, 2 0 2 2 .

Judge Presiding

Cause No. P B 1 - _____ - 2 0 2 2

IN THE ESTATE OF

IN THE PROBATE COURT OF

[Name of Deceased person]

DECEASED

COLLIN COUNTY,

TEXAS

ORDER FOR COMPENSATION OF AD LITEM

The Court finds that sum of \$ _____ is a reasonable fee for services provided by [Name of Attorney Ad Litem], the Attorney Ad Litem appointed in this Cause.

The foregoing sum, if not heretofore paid, is to be paid from the Estate within 15 days.

The Attorney Ad Litem is discharged from further representation, provided that the Attorney Ad Litem may request reinstatement if circumstances hereafter suggest to the Attorney Ad Litem that the interests of the justice in this cause so require.

Signed _____, 2 0 2 2 .

Judge Presiding

0308 2022 1230 – 2022

IN THE ESTATE OF
[Name of Deceased person]
DECEASED
TEXAS

IN THE PROBATE COURT
OF
COLLIN COUNTY,

**ORDER ADMITTING WILL TO PROBATE AND AUTHORIZING
LETTERS [TESTAMENTARY or OF ADMINISTRATION]**

On this day came on to be heard an Application for Probate of a Will and for **LETTERS [TESTAMENTARY or OF ADMINISTRATION]**, and the Court having received evidence and having determined that no objection or contest has been filed, and that such Application should be granted;

It is Ordered that the Will of **[Name of Deceased person]**, deceased, dated **[date of Will]**, on file with the Clerk of the Court in this Cause is admitted to probate.

It is Ordered that **[Name of Executor or Administrator]** is appointed **INDEPENDENT [EXECUTOR or ADMINISTRATOR]** of the Estate, and that bond is Waived.

It is Ordered that **LETTERS [TESTAMENTARY or OF ADMINISTRATION]** be issued when **[Name of Executor or Administrator]** has qualified according to law by taking oath, without bond.

The **INDEPENDENT [EXECUTOR or ADMINISTRATOR]** is vested with the authority to sell real and personal property of the estate without further Court Order and without consent of any distributee under the Will.

No action shall hereafter be taken in this Court other than the return of an Inventory, Appraisalment, and List of Claims, or the filing of an affidavit in lieu thereof, and notice to beneficiaries as required by law.

It is Ordered that the Clerk record the Will together with the Application for Probate in the minutes of the Court.

Signed _____, 2 0 2 2 .

Judge Presiding

SAMPLE 1906 ORDER PROBATING WILL

Cause No. P B 1 - _____ - 1 9 0 6

IN THE ESTATE OF
[Name of Deceased person]
DECEASED
TEXAS

IN THE PROBATE COURT
OF
COLLIN COUNTY,

**ORDER ADMITTING WILL TO PROBATE AND AUTHORIZING
LETTERS TESTAMENTARY (or LETTERS OF ADMINISTRATION)**

This day came on to be heard the application of **[Name of Executor or Administrator]** for **[letters testamentary or letters of administration]** upon the estate of **[Name of Deceased person]**, deceased, and it appearing to the court that the said **[Name of Deceased person]** is dead; that four years have not elapsed since his decease prior to the date of filing said application; that this court has jurisdiction of said estate; that there is a necessity for administration upon said estate, and that the said **[Name of Executor or Administrator]** is entitled to letters by law and is not disqualified, therefore it is ordered by the court that administration be granted upon the estate of the said **[Name of Deceased person]**, deceased, and that the said **[Name of Executor or Administrator]** receive **[letters testamentary or letters of administration]**, upon his taking the oath required by law and giving bond in the sum of **[number of dollars]**; and when the said **[Name of Executor or Administrator]** shall have qualified according to law the clerk of this court will issue letters in accordance with this order.

Signed _____, 1906.

Judge Presiding

Sample “Script” for the testimony for Muniment of Title

To avoid confusion, the questions are structured so that the answer to every question should be YES.

Review the questions in advance with the witness and make sure they agree that the answer to every question is YES.

This “Script” is not turned in to the judge.

Consider starting with: We ask the Court to take judicial notice of the contents of the Court’s file; that the matter before the Court is an Application to Probate a Will as a Muniment of Title; that the Will is self-proved; that the Court has jurisdiction; that venue is proper; and that citation has been served and returned in the manner and for the time required by law.

1. Is your name **[Name of witness]**?
2. Was **[Name of deceased person]** your **[husband / father / brother / uncle / friend for more than twenty years / etc.]**?
3. Did **[name of deceased person]** pass away on **[date of passing]**?
4. Was the application to probate **[his/her]** Will filed within four years thereafter?
5. Is it true that **[he/she]** resided in Collin County at the time of **[his/her]** passing?
6. Is it true that the estate does not owe any unpaid debt **other than a debt secured by a lien on real estate** to you knowledge, and that there is no necessity for administration of the estate?
7. Is it true that **[he/she]** did not revoke the Will offered for probate?
8. Is it true that we have discussed what it means for a Will to be self-proved, and that the Will is self-proved?
(--Or-- If the Will is not self-proved, use a separate “Proof of Facts” to prove-up the Will through subscribing witness testimony or non-subscribing witness handwriting recognition testimony.*)
9. Is it true that we have discussed what it means for citation to be served and returned, and that you believe that citation has been served and returned in the manner and for the time required by law?
10. Is it true that we have discussed what it means for the court to have jurisdiction and venue, and that you believe the Court does have jurisdiction and venue over the estate?*

*#8, 9, & 10 are not required in Collin County. Court will take judicial notice that a Will is self-proved, that citation has been served and returned as required by law, that the Court has jurisdiction, and that Venue is proper.

Note- This “hand-out” addresses the general/ordinary proof requirements for probate proceedings. The Estates Code contains additional proof requirements for Wills that cannot be produced in court (photocopies) 256.054, Wills that are not self-proved 256.153, holographic Wills, and Wills being probated more than four years after death, etc. You should incorporate the language from the form-book pleadings of your choice for these additional matters.

“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.**

CIVIL PRACTICE AND REMEDIES CODE

Sec. 132.001. UNSWORN DECLARATION.

(a) Except as provided by Subsection (b), an unsworn declaration may be used in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by a rule, order, or requirement adopted as provided by law.

(b) This section does not apply to a lien required to be filed with a county clerk, an instrument concerning real or personal property required to be filed with a county clerk, or an oath of office or an oath required to be taken before a specified official other than a notary public.

(c) – (f) Omitted.

TEXAS RULES OF CIVIL PROCEDURE

RULE 86. MOTION TO TRANSFER VENUE

1. Time to File. An objection to improper venue is waived if not made by written motion filed prior to or concurrently with any other plea, pleading or motion except a special appearance motion provided for in Rule 120a. A written consent,,, .

RULE 299a. FINDINGS OF FACT TO BE SEPARATELY FILED AND NOT RECITED IN A JUDGMENT

Findings of fact shall not be recited in a judgment. If there is,,, will control for appellate purposes. Findings of fact shall be filed with the clerk of the court as a document or documents separate and apart from the judgment.

TEXAS RULES OF EVIDENCE

Rule 802. The Rule Against Hearsay

Hearsay is not admissible unless any of the following provides otherwise: a statute; these rules; or other rules prescribed under statutory authority.

Inadmissible hearsay admitted without objection may not be denied probative value merely because it is hearsay.

Rule 704. Opinion on an Ultimate Issue

An opinion is not objectionable just because it embraces an ultimate issue.

Rule 1001. Definitions That Apply to This Article

In this article: (a) omitted, (b) omitted, (c) omitted, (d) omitted, (e) A “duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

Rule 1002. Requirement of the Original

An original writing, recording, or photograph is required in order to prove its content unless these rules or other law provides otherwise.

Rule 1003. Admissibility of Duplicates

A duplicate is admissible to the same extent as the original unless a question is raised about the original’s authenticity or the circumstances make it unfair to admit the duplicate.

TEXAS ESTATES CODE

Selected Provisions

§21.005. APPLICABILITY OF CERTAIN LAWS.

Chapter 132, Civil Practice and Remedies Code, does not apply to Subchapter C, Chapter 251.

§22.001. APPLICABILITY OF DEFINITIONS.

(a) Except as provided by Subsection (b), the definition for a term provided by this chapter applies in this code unless a different meaning of the term is otherwise apparent from the context in which the term is used.

(b) Omitted. Applies only to Guardianship proceedings.

§22.018 INTERESTED PERSON; PERSON INTERESTED.

"Interested person" or "person interested" means:

(1) an heir, devisee, spouse, creditor, or any other having a property right in or claim against an estate being administered; and

(2) anyone interested in the welfare of an incapacitated person, including a minor.

Sec. 305.003. Period for Taking Oath. [TPC §192]

An oath may be taken and subscribed at any time before:

(1) the 21st day after the date of the order granting letters testamentary or of administration, as applicable; or

(2) the letters testamentary or of administration, as applicable, are revoked for a failure to qualify within the period allowed.

(3) as Weldon Copeland would want it, taken from Rule 27, Rules of Appellate Procedure- A prematurely signed Oath is effective and deemed given on the day of but after an Order appointing an Executor or Administrator is entered.

§202.005. APPLICATION FOR PROCEEDING TO DECLARE HEIRSHIP.

..... . The application must state:

(1) the decedent's name and date and place of death;

(2) the names and physical addresses where service can be had of the decedent's heirs, the relationship of each heir to the decedent, whether each heir is an adult or minor, and the true interest of the applicant and each of the heirs in the decedent's estate or in the trust, as applicable;

(3) if the date or place of the decedent's death or the name or physical address where service can be had of an heir is not definitely known to the applicant, all the material facts and circumstances with respect to which the applicant has knowledge and information that might reasonably tend to show the date or place of the decedent's death or the name or physical address where service can be had of the heir;

(4) that all children born to or adopted by the decedent have been listed;

(5) that each of the decedent's marriages has been listed with:

(A) the date of the marriage;

(B) the name of the spouse;

(C) the date and place of termination if the marriage was terminated; and

(D) other facts to show whether a spouse has had an interest in the decedent's property;

(6) whether the decedent died testate and, if so, what disposition has been made of the will;

(7) a general description of all property belonging to the decedent's estate or held in trust for the benefit of the decedent, as applicable; and

(8) an explanation for the omission from the application of any of the information required by this section.

§202.(n/a) There is no “PROOF REQUIRED FOR PROCEEDING TO DECLARE HEIRSHIP” in the Estates Code. Based on “proof requirement” provisions in other portions of the Code, the requirements would seemingly be:

An applicant for a Determination of Heirship must prove to the court's satisfaction that:

- (1) the person whose estate is the subject of the application is dead;
- (2) the court has jurisdiction and venue over the estate;
- (3) citation has been served and returned in the manner and for the period required by law;
- (4) that the decedent died intestate or partially intestate;
- (5) the names of each of the children born to or adopted by the decedent, or that no children were ever born to or adopted by the decedent;
- (6) the name of any surviving spouse of the decedent, or that the decedent was not married at the time of death; and
- (7) The name of each heir of the estate and their relation to the decedent.

Trivia Question- Why are “prior divorces” not included here among these “proof requirements”?

Sec. 202.151. EVIDENCE IN PROCEEDING TO DECLARE HEIRSHIP.

(a) ***The court may require that*** any testimony admitted as evidence in a proceeding to declare heirship be reduced to writing and subscribed and sworn to by the witnesses, respectively.

(b) Except as provided by Subsection (c), in a proceeding to declare heirship, testimony regarding a decedent's heirs and family history must be taken from two disinterested and credible witnesses in open court, by deposition in accordance with Section 51.203, or in accordance with the Texas Rules of Civil Procedure.

(c) If it is shown to the court's satisfaction in a proceeding to declare heirship that, after a diligent search was made, only one disinterested and credible witness can be found who can make the required proof in the proceeding, the testimony of that witness must be taken in open court, by deposition in accordance with Section 51.203, or in accordance with the Texas Rules of Civil Procedure.

§256.052. CONTENTS OF APPLICATION FOR PROBATE OF WILL.

(a) An application for the probate of a will must state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

(1) each applicant's name* and domicile*;

(1-a) the last three numbers of each applicant's driver's license number* and social security number*, if the applicant has been issued one;

(2) **the testator's name, domicile***, and, if known, age*, on the date of the testator's death;

(2-a) the last three numbers of the testator's driver's license number* and social security number*;

(3) **the fact_**, **date_**, and place **of the testator's death**;

(4) **facts showing that the court** with which the application is filed **has venue_**;

(5) that the testator owned property*, including a statement generally describing the property* and the property's probable value*;

(6) the date* of the will;

(7) the name, state of residence, and physical address where service can be had of the executor* named in the will or other person to whom the applicant desires that letters be issued;

(8) the name of each subscribing witness to the will* & *, if any;

(9) whether one or more children born to or adopted by the testator after the testator executed the will survived the testator* and, if so, the name of each of those children;

(10) whether a marriage of the testator was ever dissolved after the will was made* and, if so, when and from whom;

(11) whether the state*, a governmental agency* of the state, or a charitable organization* is named in the will as a devisee; and

(12) **that the executor** named in the will, the applicant, or another person to whom the applicant desires that letters be issued **is not disqualified_ by law from accepting the letters.**

(b) If an applicant does not state or aver any matter required by Subsection (a) in the application, the application must state the reason the matter is not stated and averred.

§256.151. GENERAL PROOF REQUIREMENTS (to probate a Will).

An applicant for the probate of a will must prove to the court's satisfaction that:

(1) **the testator is dead_**;

(2) **four years have not elapsed_ since the date of the testator's death and before the application**;

(3) **the court has jurisdiction*** and **venue_ over the estate**;

(4) citation has been served* and returned* in the manner* and for the period required* by this title; and

(5) **the person for whom letters testamentary or of administration are sought is entitled by law to the letters and is not disqualified_.**

§256.152. ADDITIONAL *PROOF REQUIRED FOR PROBATE OF WILL.*

- (a) An applicant for the probate of a will must prove the following to the court's satisfaction, in addition to the proof required by Section 256.151, to obtain the probate: (1) the testator did not revoke* the will; and
- (2) if the will is not self-proved*, the testator: (A) executed the will with the formalities and solemnities and under the circumstances required by law to make the will valid; and (B) at the time of executing the will, was of sound mind and: (i) was 18 years of age or older,,, .

Note- There are **ADDITIONAL PLEADINGS REQUIREMENTS** and **ADDITIONAL PROOF REQUIREMENTS** in **§301.151, §301.152, and §301.153 WHEN SEEKING ADMINISTRATION** in addition to having the Will Admitted to Probate.

Sec. 256.157. TESTIMONY REGARDING PROBATE TO BE COMMITTED TO WRITING.

- (a) Except as provided by Subsection (b), **all testimony taken** in open court **on** the hearing of **an application to probate a will must be**:
- (1) **committed to writing** at the time the testimony is taken;
- (2) **subscribed and sworn to** in open court **by the witness**; and
- (3) filed by the clerk.
- (b) In a contested case, the court, on the agreement of the parties or, if there is no agreement, on the court's own motion, may waive the requirements of Subsection (a).

§257.051. CONTENTS OF APPLICATION GENERALLY. (Muniment of Title)

(a) An application for the probate of a will as a muniment of title must state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

(1) each applicant's name* and domicile*;

(1-a) the last three numbers of each applicant's driver's license number* and social security number*, if the applicant has been issued one;

(2) **the testator's** name*, **domicile***, and, if known, age*, on the date of the testator's death;

(2-a) the last three numbers of the testator's driver's license number* and social security number*;

(3) **the fact_**, **date_**, and place* **of the testator's death**;

(4) **facts showing that the court** with which the application is filed **has venue_**;

(5) that the testator owned property*, including a statement generally describing the property* and the property's probable value*;

(6) the date* of the will;

(7) the name, state of residence, and physical address* where service can be had of the executor named in the will;

(8) the name of each subscribing witness to the will* & *, if any;

(9) whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children*;

(10) **that the testator's estate does not owe an unpaid debt, other than any debt secured by a lien on real estate, or that for another reason there is no necessity for administration of the estate***;

(11) whether a marriage of the testator was ever dissolved after the will was made* and, if so, when and from whom; and

(12) whether the state*, a governmental agency of the state*, or a charitable organization* is named in the will as a devisee.

(b) If an applicant does not state or aver any matter required by Subsection (a) in the application, the application must state the reason the matter is not stated and averred.

§257.054. PROOF REQUIRED (for Muniment of Title hearing).

An applicant for the probate of a will as a muniment of title must prove to the court's satisfaction that:

- (1) the testator **is dead**;
- (2) **four years have not elapsed since the date of the testator's death and before the application**;
- (3) **the court has jurisdiction and venue over the estate**;
- (4) citation has been served and returned in the manner and for the period required by this title;
- (5) **the testator's estate does not owe an unpaid debt, other than any debt secured by a lien on real estate, or that for another reason there is no necessity for administration of the estate**;
- (6) the testator did not revoke the will; and
- (7) if the will is not self-proved in the manner provided by this title, the testator: (A) executed the will with the formalities and solemnities and under the circumstances required by law to make the will valid; and (B) at the time of executing the will was of sound mind and: (i) was 18 years of age or older,,,,, .

§257.102. AUTHORITY OF CERTAIN PERSONS ACTING IN ACCORDANCE WITH ORDER (that admits Will to Probate as a Muniment of Title).

(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.

§301.052. CONTENTS OF APPLICATION FOR LETTERS OF ADMINISTRATION

(Note- when there is no Will).

(a) An application for letters of administration when no will is alleged to exist must state:

(1) the applicant's name, domicile, and, if any, relationship to the decedent;

(1-a) the last three numbers of: (A) the applicant's driver's license number, if the applicant has been issued one; and (B) the applicant's social security number, if the applicant has been issued one;

(2) the decedent's name and that the decedent died intestate;

(2-a) if known by the applicant at the time the applicant files the application, the last three numbers of the decedent's driver's license number and social security number;

(3) the fact, date, and place of the decedent's death;

(4) facts necessary to show that the court with which the application is filed has venue;

(5) whether the decedent owned property and, if so, include a statement of the property's probable value;

(6) the name and address, if known, whether the heir is an adult or minor, and the relationship to the decedent of each of the decedent's heirs;

(7) if known by the applicant at the time the applicant files the application, whether one or more children were born to or adopted by the decedent and, if so, the name, birth date, and place of birth of each child;

(8) if known by the applicant at the time the applicant files the application, whether the decedent was ever divorced and, if so, when and from whom;

(9) that a necessity exists for administration of the decedent's estate and an allegation of the facts that show that necessity; and

(10) that the applicant is not disqualified by law from acting as administrator.

§301.151. GENERAL PROOF REQUIREMENTS.

(Ed. Note.- EMPHASIS- for Letters Testamentary or Letters of Administration).

An applicant for the issuance of letters testamentary or of administration of an estate must prove to the court's satisfaction that:

- (1) the person whose estate is the subject of the application is dead*;
- (2) except,,,, to receive or recover property,,,, four years have not elapsed* since the date of the decedent's death and before the application;
- (3) the court has jurisdiction* and venue* over the estate;
- (4) citation has been served* and returned* in the manner* and for the period required* by this title; and
- (5) the person for whom letters testamentary or of administration are sought is entitled by law to the letters and is not disqualified*.

§301.152. ADDITIONAL PROOF REQUIRED FOR LETTERS TESTAMENTARY.

(Ed.- Note the absence of a need for proof that a necessity for administration exists for Letters Testamentary vs. Letters of Administration.)

If letters testamentary are to be granted, it must appear to the court that:

- (1) the proof required for the probate of the will has been made; and
- (2) the person to whom the letters are to be granted is named* as executor in the will.

§301.153. ADDITIONAL PROOF REQUIRED FOR LETTERS OF ADMINISTRATION;

EFFECT OF FINDING NO NECESSITY FOR ADMINISTRATION EXISTS.

(Ed.- Note the added requirement (proof that a necessity for administration exists) for Letters of Administration below vs. Letters Testamentary).

(a) If letters of administration are to be granted, the applicant for the letters must prove to the court's satisfaction that a necessity for an administration of the estate exists*.

(b) (omitted).

(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).

Sec. 306.003. ORDER GRANTING LETTERS

When letters testamentary or of administration are granted, the court shall enter an order to that effect stating:

- (1) the name of the decedent*;
- (2) the name of the person to whom the letters are granted*;
- (3) the amount of any required bond*;
- (4) the name of at least one but not more than three disinterested persons appointed to appraise the estate and return the appraisement to the court, *if*: (A) any interested person applies to the court for the appointment of an appraiser; or (B) the court considers an appraisement to be necessary; and
- (5) that the clerk shall issue letters in accordance with the order when the person to whom the letters are granted has qualified according to law.

Sec. 451.001. Application for Family Allowance and Order of No Administration.

(a) If the value of the entire assets of an estate, excluding homestead and exempt property, does not exceed the amount to which the surviving spouse, minor children, and adult incapacitated children of the decedent are entitled as a family allowance, an application may be filed by or on behalf of the surviving spouse, minor children, or adult incapacitated children requesting a court to make a family allowance and to enter an order that no administration of the decedent's estate is necessary.

(b) The application may be filed:

- (1) in any court in which venue is proper for administration; or
- (2) if an application for the appointment of a personal representative has been filed but not yet granted, in the court in which the application is filed.

(c) The application must:

- (1) state the names of the heirs or devisees;
- (2) list, to the extent known, estate creditors together with the amounts of the claims; and
- (3) describe all property belonging to the estate, together with: (A) the estimated value of the property according to the best knowledge and information of the applicant; and (B) the liens and encumbrances on the property.

(d) The application must also include a prayer that the court make a family allowance and that, if the family allowance exhausts the entire assets of the estate, excluding homestead and exempt property, the entire assets of the estate be set aside to the surviving spouse, minor children, and adult incapacitated children, as with other family allowances provided for by Subchapter C, Chapter 353.

Sec. 451.002. Hearing and Order.

(a) On the filing of an application under Section 451.001, the court may hear the application:

- (1) promptly without notice; or
- (2) at a time and with notice as required by the court.

(b) On the hearing of the application, if the court finds that the facts contained in the application are true and that the expenses of last illness, funeral charges, and expenses of the proceeding have been paid or secured, the court shall:

- (1) make a family allowance; and
- (2) if the entire assets of the estate, excluding homestead and exempt property, are exhausted by the family allowance made under Subdivision (1): (A) assign to the surviving spouse, minor children, and adult incapacitated children the entire estate in the same manner and with the same effect as provided in Subchapter C, Chapter 353, for the making of a family allowance to the surviving spouse, minor children, and adult incapacitated children; and (B) order that there shall be no administration of the estate.

Sec. 451.003. Effect of Order.

(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.

Sec. 451.004. Proceeding to Revoke Order.

(a) At any time, but not later than the first anniversary of the date of entry of an order of no administration under Section 451.002(b), any interested person may file an application to revoke the order.

(b) An application to revoke the order must allege that: (1) other estate property has been discovered, property belonging to the estate was not included in the application for no administration, or the property described in the application for no administration was incorrectly valued; and (2) if that property were added, included, or correctly valued, as applicable, the total value of the property would exceed the amount necessary to justify the court in ordering no administration.

(c) The court shall revoke the order on proof of any of the grounds described by Subsection (b).

(d) If the value of any property is contested, the court may appoint two appraisers to appraise the property in accordance with the procedure prescribed for inventories and appraisements under Chapter 309. The appraisement of the appointed appraisers shall be received in evidence but is not conclusive.