

# TEXAS FORMS MANUAL

# A GUIDE TO TEXAS PROBATE

## CHAPTER 1

### PROBATE CHECKLIST, ENGAGEMENT

Getting the information needed to probate a will, to open a guardianship, to document your engagement, and to deliver information to the personal representative of an estate is an important prerequisite to your service as legal counsel. Your engagement is by the person seeking the appointment who will become the estate representative. Your allegiance is to the person who has employed you and not to the estate of the decedent or the ward.

#### Checklist

- Form I-01 Checklist—Information Needed to Probate a Will
- Form I-02 Checklist—Information Needed for an Intestate Estate
- Form I-03 Checklist—Information Needed for a Guardianship

#### Engagement Contract

- Form I-04 Will Probate Engagement Contract and Power of Attorney
- Form I-05 Administration Engagement Contract and Power of Attorney
- Form I-06 Heirship Engagement Contract and Power of Attorney
- Form I-07 Guardianship Engagement Contract and Power of Attorney

#### Power of Attorney to Legal Counsel

- Form I-08 Probate of Will Power of Attorney
- Form I-09 Administration Power of Attorney
- Form I-10 Guardianship Power of Attorney

#### Information Provided to the Personal Representative Concerning Duties

- Form I-11 Procedures Required for the Administration and Settlement of an Estate Following Death
- Form I-12 Procedures Required for the Administration of a Guardianship Estate

#### *\*MISCELLANEOUS FORMS\**

- Form I-13 Notice Concerning Fiduciary Relationship (Form 56)
- Form I-14 Application for Employer Identification Number (Form SS-4)
- Form I-15 Life Insurance Statement (Form 712)

## CHAPTER 2

### INDEPENDENT ADMINISTRATION

This chapter pertains to the probate of a will that provides for the independent administration of the estate with the appointment of an independent executor without a bond. Along with the basic forms needed to complete this process, we are also providing alternative forms for proof of execution where the will is not self-proved, forms for the closure of these estates, and forms needed to appoint a successor should the need arise.

#### Attorney Document and Time Period Checklist Independent Estate With Will

- Form II-01 Independent Estate Attorney Checklist

#### Application for Probate of Will and Letters Testamentary

- Form II-02 Application to Probate Will and Issuance of Letters Testamentary

#### Proof of Death and Other Facts

- Form II-03 Written Testimony and Other Facts Pursuant to Texas Probate Code Sections 84 and 88

#### Abbreviated Proof of Death Form

- Form II-04 Proof of Death and Other Facts

#### Proof of Will Facts

- Form II-05 Witness for Proof of Non-Self-Proved Will

Form II-06 Witness for Proof of Holographic Will

Form II-07 Witness Proof for Nonrevocation

**Proof of Will by Deposition on Written Questions**

Form II-08 Motion to Withdraw Purported Will

Form II-09 Order Granting Motion to Withdraw Purported Will

Form II-10 Receipt for Purported Will

Form II-11 Petition for Deposition Upon Written Questions to Prove Execution of Will

Form II-12 Notice By Posting

Form II-13 Order Granting Motion for Deposition Upon Written Questions

Form II-14 Answers of Witness to Deposition Upon Written Questions

**Order Admitting Will to Probate and Authorizing Letters Testamentary**

Form II-15 Order Probating Will With Letters Testamentary

**Oath of Independent Executor**

Form II-16 Oath of Independent Executor

**Notice to Named Beneficiaries**

Form II-17 Notice to Beneficiary Named in Decedent's Will

Form II-18 Waiver of Notice of Admission of Will

Form II-19 Affidavit of Notice to Beneficiaries Named in Decedent's Will

Form II-20 Attorney's Certificate of Notice to Beneficiaries Named in Decedent's Will

**Notice to Creditors**

Form II-21 Published Notice to Creditors

Form II-22 Mailed Notice to Secured Creditors

Form II-23 Proof of Notice to Secured Creditors

Form II-24 Mailed Permissive Notice to General Creditors

Form II-25 Proof of Permissive Notice to General Creditors

**Application for Extension of Time to File Probate Inventory**

Form II-26 Application for Extension of Time to File Inventory, Appraisal, and List of Claims

Form II-27 Order for Extension to File Inventory, Appraisal, and List of Claims

**Statutory Probate Inventory and List of Claims**

Form II-28 Inventory, Appraisal, and List of Claims

Form II-29 Order for Inventory, Appraisal, and List of Claims

**Statutory Probate Inventory Including a Listing of Section 177 Values**

Form II-30 Statutory Probate Inventory, Appraisal, and List of Claims

Form II-31 Order Approving Inventory, Appraisal, and List of Claims

**Application for Sale of Real Property**

Form II-32 Application for Sale of Real Property

Form II-33 Order Setting Hearing on Application for Sale of Real Property

Form II-34 Order of Sale of Real Property

**Report and Decree of Sale of Real Property**

Form II-35 Report of Sale of Real Property

Form II-36 Decree Confirming Sale of Real Property

Form II-37 Deed

**Application for Sale of Personal Property**

Form II-38 Application for Sale of Personal Property Under Section 334 of the Texas Probate Code

Form II-39 Order of Sale of Personal Property Under Section 334 of the Texas Probate Code

**Report and Decree of Sale of Personal Property**

Form II-40 Report of Sale of Personal Property

Form II-41 Decree Confirming Sale of Personal Property

**Affidavit Closing Independent Estate**

Form II-42 Affidavit Closing Independent Estate Under Section

Form II-43 Closing Report

Form II-44 Receipt and Release

**\* MISCELLANEOUS FORMS \***

**Application for the Appointment of Successor Independent Executor/Administrator With Will Annexed**

Form II-45 Application for Appointment of Successor Independent Executor/Administrator With Will Annexed

**Order Appointing Successor Independent Executor/Administrator With Will Annexed**

Form II-46 Order Appointing Successor Independent Executor/Administrator With Will Annexed

**Waiver of Citation and Request for Independent Administration Under Section 154A**

Form II-47 Waiver of Citation and Service Pursuant to Section 154A

**Designation of Resident Agent**

Form II-48 Designation of Resident Agent

**Designation of Successor Resident Agent**

Form II-49 Designation of Successor Resident Agent

**Independent Executor's Section 149A Accounting**

Form II-50 Independent Executor's Accounting Under Section 149A of the Texas Probate Code

**Disclaimer of Property or Interest in Estate**

Form II-51 Disclaimer

**Waiver of Notice and Citation Will Over Four Years**

Form II-52 Waiver of Notice and Citation Will Over Four Years

**Declaratory Judgment for Judicial Discharge**

Form II-53 Original Petition for Declaratory Judgment for Judicial Discharge of Independent Executor

Form II-54 Receipt of Property

Form II-55 Declaratory Judgment Waiver of Notice and Citation

**Declaratory Judgment**

Form II-56 Declaratory Judgment Judicial Discharge

**Family Allowance**

Form II-57 Application for Family Allowance

Form II-58 Family Allowance Order

**Appointment of Statutory Probate Judge**

Form II-59 Application for Appointment of a Statutory Probate Judge

Form II-60 Order for Assignment of a Statutory Probate Judge

**Transfer to a Statutory Probate Court**

Form II-61 Motion to Transfer Proceedings to a Statutory Probate Court

Form II-62 Order Transferring Proceedings to a Statutory Probate Court

**CHAPTER 3**

**INDEPENDENT ADMINISTRATION—NO WILL**

This chapter pertains to the appointment of an Independent Administrator where the will fails to make such appointment or where there is no will and the estate beneficiaries desire to create an independent estate. Where there is no will, you need to use the procedure for the Determination of Heirship. See Heirship Application and related forms in Chapter V. The court will require you to have the Heirship Determination heard either at the same time or before the Application for Independent Administration. This is necessary so that all parties who need to be served or have waivers filed can be determined. Be aware that the Code and most courts will require a signed, filed waiver and consent before the person will be appointed and allowed to act independently. For successor appointment forms, see Chapter II.

**Attorney Document and Time Period Checklist Independent Administration—Section 145**

Form III-01 Attorney Checklist

**Application for Independent Administration**

Form III-02 Application to Probate Will and for Letters of Independent Administration

**Waiver of Citation and Request for Independent Administration**

Form III-03 Waiver of Citation and Service

**Proof of Death and Other Facts**

Form III-04 Written Testimony and Other Facts Under Sections 84 and 88 of the Texas Probate Code

**Abbreviated Proof of Death Form**

Form III-05 Proof of Death and Other Facts

**Proof of Will Facts**

Form III-06 Witness for Proof of Non-Self-Proved Will

Form III-07 Witness for Proof of Holographic Will

Form III-08 Witness Proof for Nonrevocation

**Deposition Proof of Will and Heirship Facts**

Form III-09 Application to Withdraw Will for Deposition on Written Questions

Form III-10 Order Granting Application to Withdraw Will for Deposition

Form III-11 Application for Deposition on Written Questions

Form III-12 Order Granting Leave to Take Deposition Upon Written Questions

Form III-13 Receipt for Purported Will

**Order Appointing Independent Administrator**

Form III-14 Order Authorizing Issuance of Letters of Independent Administration

**Oath of Independent Administrator**

Form III-15 Oath of Independent Administrator

**Bond of Independent Administrator**

Form III-16 Bond of Independent Administrator

**Notice to Creditors**

Form III-17 Published Notice to Creditors

Form III-18 Mailed Notice to Secured Creditors

Form III-19 Proof of Notice to Secured Creditors

Form III-20 Mailed Permissive Notice to General Creditors

Form III-21 Proof of Permissive Notice to General Creditors

**Extension of Time to File Probate Inventory**

Form III-22 Application for Extension of Time to File Inventory, Appraisement, and List of Claims

Form III-23 Order for Extension of Time to File Inventory, Appraisement, and List of Claims

**Probate Inventory and List of Claims**

Form III-24 Inventory, Appraisement, and List of Claims

Form III-25 Order for Inventory, Appraisement, and List of Claims

**Application for Sale of Real Property**

Form III-26 Application for Sale of Real Property

Form III-27 Order Setting Hearing on Application for Sale of Real Property

Form III-28 Order of Sale of Real Property

**Report and Decree of Sale of Real Property**

Form III-29 Report of Sale of Real Property

Form III-30 Decree Confirming Sale of Real Property

Form III-31 Deed

**Closing Independent Administration**

Form III-32 Affidavit Closing Independent Administration

Form III-33 Receipt and Release

***\*MISCELLANEOUS FORMS\******Designation of Resident Agent**

Form III-34 Designation of Resident Agent

**Designation of Successor Resident Agent**

Form III-35 Designation of Successor Resident Agent

**Disclaimer of Property or Interest in Estate**

Form III-36 Disclaimer

**Waiver of Notice and Citation for Will Over Four Years**

Form III-37 Waiver of Notice and Citation for Will Over Four Years

## **Family Allowance**

- Form III-38 Application for Family Allowance
- Form III-39 Family Allowance Order

## **Appointment of Statutory Probate Judge**

- Form III-40 Application for Appointment of a Statutory Probate Judge
- Form III-41 Order for Assignment of a Statutory Probate Judge

## **Transfer to a Statutory Probate Court**

- Form III-42 Motion to Transfer Proceedings to a Statutory Probate Court
- Form III-43 Order Transferring Proceedings to a Statutory Probate Court

# **DEPENDENT ADMINISTRATION WITH WILL ANNEXED**

## **Attorney Document and Time Period Checklist Dependent Administration With Will**

- Form IV-01 Dependent Estate With Will Attorney Checklist

## **Application for Probate of Will and Issuance of Letters of Administration**

- Form IV-02 Application to Probate Will and for Letters of Administration With Will Annexed

## **Proof of Death and Other Facts**

- Form IV-03 Written Testimony and Other Facts Under Sections 84 and 88 of the Texas Probate Code
- Form IV-04 Proof of Death and Other Facts

## **Abbreviated Proof of Death Form**

- Form IV-05 Proof of Death and Other Facts

## **Proof of Will Facts**

- Form IV-06 Witness for Proof of Non-Self-Proved Will
- Form IV-07 Witness for Proof of Holographic Will
- Form IV-08 Witness Proof for Nonrevocation

## **Order Admitting Will to Probate and Authorizing Issuance of Letters of Administration**

- Form IV-09 Order Admitting Will (and Codicil) to Probate and Authorizing Issuance of Letters With Will Annexed

## **Oath of Administrator With Will Annexed**

- Form IV-10 Oath of Administrator With Will Annexed

## **Bond of Administrator With Will Annexed**

- Form IV-11 Bond of Administrator With Will Annexed

## **Notice to Named Beneficiaries**

- Form IV-12 Notice to Beneficiary Named in Decedent's Will
- Form IV-13 Waiver of Notice of Admission of Will
- Form IV-14 Affidavit of Notice to Beneficiaries Named in Decedent's Will
- Form IV-15 Attorney's Certificate of Notice to Beneficiaries Named in Decedent's Will

## **Notice to Creditors**

- Form IV-16 Published Notice to Creditors
- Form IV-17 Mailed Notice to Secured Creditors
- Form IV-18 Proof of Notice to Secured Creditors
- Form IV-19 Mailed Permissive Notice to General Creditors
- Form IV-20 Proof of Permissive Notice to General Creditors

## **Extension of Time to File Probate Inventory**

- Form IV-21 Application for Extension of Time to File Inventory, Appraisal, and List of Claims
- Form IV-22 Order for Extension of Time to File Inventory, Appraisal, and List of Claims

## **Inventory and List of Claims**

- Form IV-23 Inventory, Appraisal, and List of Claims
- Form IV-24 Order for Inventory, Appraisal, and List of Claims

## **Inventory Including a Listing of Section 177 Values**

- Form IV-25 Inventory, Appraisal, and List of Claims
- Form IV-26 Order Approving Inventory, Appraisal, and List of Claims

## **Section 194 Safekeeping and Bond Reduction Procedure**

- Form IV-27 Application for Safekeeping of Assets and Reduction of Administrator's Bond
- Form IV-28 Order Authorizing Safekeeping of Assets and Reduction of Administrator's Bond
- Form IV-29 Safekeeping Agreement

## **Court Authorization for Expenditures of Funds (Expenses)**

- Form IV-30 Application and Order for Payment of Attorney's Fees and Expenses
- Form IV-31 Application and Order for Expense Account for Service
- Form IV-32 Application and Order for Payment of Service
- Form IV-33 Application and Order for Reimbursement of Service
- Form IV-34 Application and Order for Ratification of Service

## **Annual Accounting**

- Form IV-35 Annual Accounting
- Form IV-36 Annual Accounting Order

## **Application for Sale of Real Property**

- Form IV-37 Application for Sale of Real Property
- Form IV-38 Order Setting Hearing on Application for Sale of Real Property
- Form IV-39 Order of Sale of Real Property

## **Report and Decree of Sale of Real Property**

- Form IV-40 Report of Sale of Real Property
- Form IV-41 Decree Confirming Sale of Real Property
- Form IV-42 Deed

## **Application for Sale of Personal Property**

- Form IV-43 Application for Sale of Personal Property Under Section 334 of the Texas Probate Code
- Form IV-44 Order of Sale of Personal Property Under Section 334 of the Texas Probate Code

## **Report and Decree of Sale of Personal Property**

- Form IV-45 Report of Sale of Personal Property
- Form IV-46 Decree Confirming Sale of Personal Property

## **Final Accounting**

- Form IV-47 Final Accounting of Administrator With Will Annexed With Closure and Discharge
- Form IV-48 Verification of Funds on Deposit
- Form IV-49 Order Approving Final Accounting With Closure and Discharge
- Form IV-50 Receipt
- Form IV-51 Waiver of Notice and Citation for Final Accounting
- Form IV-52 Final Accounting of Administrator With Will Annexed Without Discharge
- Form IV-53 Verification of Funds on Deposit
- Form IV-54 Order Approving Final Accounting Without Discharge

## **Discharge of Administrator With Will Annexed**

- Form IV-55 Application to Close Estate and Discharge Administrator With Will Annexed
- Form IV-56 Receipt
- Form IV-57 Order Closing Estate and Discharging Personal Representative

## **\* MISCELLANEOUS FORMS \***

### **Designation of Resident Agent**

- Form IV-58 Designation of Resident Agent

### **Designation of Successor Resident Agent**

- Form IV-59 Designation of Successor Resident Agent

### **Extension of Time for Closure of Estate**

- Form IV-60 Application and Order to Extend Closure of Estate

### **Disclaimer of Property or Interest in Estate**

- Form IV-61 Disclaimer

### **Waiver of Notice and Citation for Will Over Four Years**

- Form IV-62 Waiver of Notice and Citation for Will Over Four Years

### **Family Allowance**

- Form IV-63 Application for Family Allowance
- Form IV-64 Family Allowance Order

### **Application to Employ Attorney, Execute Fee Agreement, and File Suit**

- Form IV-65 Application for Authority to Employ Attorney, Execute Fee Agreement, and File Suit
- Form IV-66 Order Granting Authority to Employ Attorney, Execute Fee Agreement, and File Suit

### **Payment of Attorney's Fees and Expenses**

- Form IV-67 Application for Payment of Attorney's Fees and Expenses
- Form IV-68 Order Authorizing Payment of Attorney's Fees and Expenses

### **Appointment of Statutory Probate Judge**

- Form IV-69 Application for Appointment of a Statutory Probate Judge
- Form IV-70 Order for Assignment of a Statutory Probate Judge

### **Transfer to a Statutory Probate Court**

- Form IV-71 Motion to Transfer Proceeding to a Statutory Probate Court
- Form IV-72 Order Transferring Proceedings to a Statutory Probate Court

## **HEIRSHIP AND DEPENDENT ADMINISTRATION**

When a person dies without a will (intestate), Texas law provides for a proof of heirship in the probate court and, if an administration of the estate is required, for a dependent administration of the Decedent's estate. This chapter will also examine the affidavit of heirship as an alternative to a court-supervised proceeding in addition to a determination of heirship.

### **Attorney Document and Time Period Checklist Dependent Administration**

- Form V-01 Dependent Estate Attorney Checklist

### **Heirship Under Texas Law Application for Dependent Administration**

- Form V-02 Combined Application for Administration and Heirship
- Form V-03 Application for Administration

### **Proof of Death and Other Facts**

- Form V-04 Written Testimony and Other Facts Under Sections 84 and 88 of the Texas Probate Code

### **Abbreviated Proof of Death Form**

- Form V-05 Proof of Death and Other Facts

### **Order Granting Letters of Administration**

- Form V-06 Order Granting Letters of Administration

### **Oath of Administrator**

- Form V-07 Oath of Administrator

### **Bond of Administrator**

- Form V-08 Bond of Administrator

### **Notice to Creditors**

- Form V-09 Published Notice To Creditors
- Form V-10 Mailed Notice to Secured Creditors
- Form V-11 Proof of Notice to Secured Creditors
- Form V-12 Mailed Permissive Notice to General Creditors
- Form V-13 Proof of Permissive Notice to General Creditors

### **Extension to File Probate Inventory**

- Form V-14 Application and Order for Extension of Time to File Inventory, Appraisalment, and List of Claims

### **Probate Inventory and List of Claims**

- Form V-15 Inventory, Appraisalment, and List of Claims
- Form V-16 Order for Inventory, Appraisalment, and List of Claims

### **Probate Inventory Including a Listing of Section 177 Values**

- Form V-17 Probate Inventory, Appraisalment, and List of Claims
- Form V-18 Order Approving Inventory, Appraisalment, and List of Claims

### **Section 194 Safekeeping and Bond Reduction Procedure**

- Form V-19 Application and Order for Safekeeping of Assets and Reduction of Administrator's Bond

### **Court-Authorized Expenditures (Expenses)**

- Form V-20 Application and Order for Payment of Attorney's Fees and Expenses

- Form V-21 Application and Order for Expense Account for Service
- Form V-22 Application and Order for Payment of Service
- Form V-23 Application and Order for Reimbursement of Service
- Form V-24 Application and Order for Ratification of Service

**Annual Accounting**

- Form V-25 Annual Accounting
- Form V-26 Annual Accounting Order

**Application for Sale of Real Property**

- Form V-27 Application for Sale of Real Property
- Form V-28 Order Setting Hearing on Application for Sale of Real Property
- Form V-29 Order of Sale of Real Property

**Report and Decree of Sale of Real Property**

- Form V-30 Report of Sale of Real Property
- Form V-31 Decree Confirming Sale of Real Property
- Form V-32 Deed

**Application for Sale of Personal Property**

- Form V-33 Application for Sale of Personal Property Under Section 334 of the Texas Probate Code
- Form V-34 Order of Sale of Personal Property Under Section 334 of the Texas Probate Code

**Report and Decree of Sale of Personal Property**

- Form V-35 Report and Decree of Sale of Personal Property

**Final Accounting**

- Form V-36 Final Accounting of Administrator With Closure and Discharge
- Form V-37 Order Approving Final Accounting With Closure and Discharge
- Form V-38 Receipt
- Form V-39 Waiver of Notice and Citation for Final Accounting
- Form V-40 Final Accounting of Administrator Without Discharge
- Form V-41 Order Approving Final Accounting of Administrator Without Discharge

**Discharge of Administrator**

- Form V-42 Application and Order to Close Estate and Discharge Administrator

**Application to Determine Heirship**

- Form V-43 Application to Determine Heirship

**Appointment of Attorney Ad Litem in a Proceeding to Determine Heirship**

- Form V-44 Motion and Order to Appoint Attorney Ad Litem

**Proof of Heirship**

- Form V-45 Proof of Heirship

**Abbreviated Proof of Facts Form**

- Form V-46 Proof of Facts

**Deposition Proof of Heirship Facts**

- Form V-47 Application and Order for Deposition on Written Questions

**Judgment Declaring Heirship**

- Form V-48 Judgment Declaring Heirship
- Form V-49 Heirship Application Waiver of Notice and Citation

**\* MISCELLANEOUS FORMS \***

**Designation of Resident Agent**

- Form V-50 Designation of Resident Agent

**Designation of Successor Resident Agent**

- Form V-51 Designation of Successor Resident Agent

**Extension of Time for Closure of Estate**

- Form V-52 Application and Order to Extend Closure of Estate

**Orders Granting Appointee Fees**

- Form V-53 Order Authorizing Appointee Fees of Attorney Ad Litem
- Form V-54 Order Authorizing Appointee Fees of Guardian Ad Litem
- Form V-55 Order Authorizing Appointee Fees of Estate Representative

### **Application for Abandonment of Property**

- Form V-56 Administrator's Application for Abandonment of Property
- Form V-57 Order of Abandonment of Real/Personal Property

### **Family Allowance**

- Form V-58 Application for Family Allowance
- Form V-59 Family Allowance Order

### **Heirship Citation, Attorney Letter Publication, Abstract, and Publisher's Return Affidavit**

- Form V-60 Heirship Citation
- Form V-61 Attorney Letter to Publisher for Heirship Citation
- Form V-62 Abstract for Heirship Publication Notice
- Form V-63 Publisher's Return Affidavit

### **Application to Employ Attorney, Execute Fee Agreement, and Institute Suit**

- Form V-64 Application for Authority to Employ Attorney, Execute Fee Agreement, and Institute Suit
- Form V-65 Order Granting Authority to Employ Attorney, Execute Fee Agreement, and Institute Suit

### **Payment of Attorney's Fees and Expenses**

- Form V-66 Application for Payment of Attorney's Fees and Expenses
- Form V-67 Order Authorizing Payment of Attorney's Fees and Expenses

### **Appointment of Statutory Probate Judge**

- Form V-68 Application for Appointment of a Statutory Probate Judge
- Form V-69 Order for Assignment of a Statutory Probate Judge

### **Transfer to a Statutory Probate Court**

- Form V-70 Motion to Transfer Proceedings to a Statutory Probate Court
- Form V-71 Order Transferring Proceedings to a Statutory Probate Court

## **TEMPORARY ADMINISTRATION OF DECEDENT'S ESTATE**

A temporary administration of an estate is considered an *ex parte* emergency procedure to prevent injury to the decedent's estate before a Permanent Administration or probate of a will can be filed and obtained. It may also be opened when there is a contest filed to the appointment of an executor or administrator. Temporary administrations which are filed as an emergency will not last longer than 180 days. It is only a temporary administration that has been granted during a contested proceeding that can extend for a longer period. The time limit for this appointment will expire at the end of the contest. The special rules that apply to temporary administrations and temporary administrators are found in sections 131A-135 of the Texas Probate Code. However, you should be aware that all of the Probate Code provisions regarding a permanent administration will also apply to a temporary administration.

### **Emergency Application for Temporary Administration**

- Form VI-01 Emergency Application for Temporary Administration

### **Application for the Appointment of a Temporary Administrator Pending Contest**

- Form VI-02 Application for Temporary Administration Pending Contest

### **Order Appointing Emergency Temporary Administrator**

- Form VI-03 Order Appointing Emergency Temporary Administrator
- Form VI-04 Order Appointing Temporary Administrator Pending Contest

### **Oath of Temporary Administrator**

- Form VI-05 Oath of Temporary Administrator
- Form VI-06 Oath of Temporary Administrator Pending Contest

### **Bond of Temporary Administrator**

- Form VI-07 Bond of Temporary Administrator
- Form VI-08 Bond of Temporary Administrator Pending Contest

### **Notice to Creditors**

- Form VI-09 Published Notice to Creditors
- Form VI-10 Mailed Notice to Secured Creditors
- Form VI-11 Proof of Notice to Secured Creditors

### **Preliminary Probate Inventory and List of Claims**

- Form VI-12 Preliminary Inventory, Appraisal, and List of Claims
- Form VI-13 Order Approving Preliminary Inventory, Appraisal, and List of Claims

### **Application and Order for Granting Extension of Time to File Inventory**

- Form VI-14 Application and Order for Extension of Time to File Inventory

### **Probate Inventory, List of Claims, and a Listing of Section 177 Values**

- Form VI-15 Inventory, Appraisal, and List of Claims
- Form VI-16 Order for Inventory, Appraisal, and List of Claims

### **Section 194 Safekeeping and Bond Reduction Procedure**

- Form VI-17 Application and Order for Safekeeping of Assets and Reduction of Temporary Administrator's Bond

### **Applications and Orders for Expenses**

- Form VI-18 Application and Order for Payment of Attorney's Fees and Expenses
- Form VI-19 Application and Order for Expense Payment for Service

### **Annual Accounting**

- Form VI-20 Annual Accounting
- Form VI-21 Annual Accounting Order

### **Application for Sale of Real Property**

- Form VI-22 Application for Sale of Real Property
- Form VI-23 Order of Sale of Real Property

### **Report and Decree of Sale of Real Property**

- Form VI-24 Report of Sale of Real Property
- Form VI-25 Decree Confirming Sale of Real Property

### **Application for Sale of Personal Property**

- Form VI-26 Application for Sale of Personal Property
- Form VI-27 Order of Sale of Personal Property

### **Report and Decree of Sale of Personal Property**

- Form VI-28 Report of Sale of Personal Property
- Form VI-29 Decree Confirming Sale of Personal Property

### **Final Accounting Pending Settlement of an Estate**

- Form VI-30 Final Accounting of Temporary Administrator With Application for Discharge
- Form VI-31 Order Approving Final Accounting of Temporary Administrator and Discharge
- Form VI-32 Waiver of Notice and Citation for Final Accounting
- Form VI-33 Receipt for Assets

## **PROBATE AS A MUNIMENT OF TITLE**

### **Attorney Document and Time Period Checklist Muniment**

- Form VII-01 Muniment Estate Attorney Checklist

### **Application for Probate of Will as a Muniment of Title**

- Form VII-02 Application to Probate Will as a Muniment of Title

### **Proof of Death and Other Facts**

- Form VII-03 Written Question and Answer Testimony as to Proof of Death and Other Facts

### **Abbreviated Proof of Death Form**

- Form VII-04 Proof of Death and Other Facts

### **Will Not Self-Proved, Proof by Witness in Open Court**

- Form VII-05 Proof of Will in Open Court

### **Will Not Self-Proved, Proof by Witness to Signature**

- Form VII-06 Alternative Proof of Will in Open Court

### **Proof of Will by Deposition on Written Questions**

- Form VII-07 Petition and Order for Deposition Upon Written Questions to Prove Execution of Will
- Form VII-08 Receipt for Purported Will

### **Written Testimony as to No Debts Due**

Form VII-09 Proof of No Debts Due, Court

Form VII-10 Proof of No Debts Due, Notary

### **Order Admitting Will to Probate as a Muniment of Title**

Form VII-11 Order Admitting Will to Probate as a Muniment of Title

### **Probate Inventory and List of Claims**

Form VII-12 Inventory, Appraisal, and List of Claims

Form VII-13 Order for Inventory, Appraisal, and List of Claims

### **Affidavit of Compliance Muniment of Title**

Form VII-14 Affidavit for Compliance With a Muniment of Title

### **\* MISCELLANEOUS FORMS \***

### **Waiver of Notice and Citation Muniment of Title**

Form VII-15 Waiver of Notice and Citation Muniment of Title

### **Declaratory Judgment to Determine Heirship or to Identify Beneficiaries**

Form VII-16 Original Petition to Determine Heirship or to Identify Beneficiaries

### **Proof of Heirship or Beneficiary Identity**

Form VII-17 Proof of Heirship or Beneficiary Identification

### **Order Determining Heirship or Identifying Beneficiaries**

Form VII-18 Order Determining Heirship or Identifying Beneficiaries

Form VII-19 Declaratory Judgment Waiver of Notice and Citation of Beneficiary

Form VII-20 Declaratory Judgment Waiver of Notice and Citation of Heir

## **SIMPLE PROBATE PROCEEDINGS**

This chapter covers some of the simple and less cumbersome probate proceedings, forms, and issues available. The areas covered are emergency burial, access to personal property, small estates, access to safe-deposit boxes, affidavits of heirship, disclaimers, and assignments.

### **Application for Funeral and Burial Expenses**

Form VIII-01 Application for Funeral and Burial Expenses

Form VIII-02 Order for Funeral and Burial Expenses

### **Application for Protection of Personal Property**

Form VIII-03 Application for Protection of Personal Property

Form VIII-04 Order for Protection of Personal Property

Form VIII-05 Inventory for Emergency Protection of Personal Property Proceedings

### **Application to Limit the Cremation and/or Burial of a Decedent**

Form VIII-06 Application to Control Burial or Cremation

Form VIII-07 Temporary Order

Form VIII-08 Permanent Orders for Burial, Cremation, and Interment

### **Small Estate Proceedings**

Form VIII-09 Affidavit of Distributee of a Small Estate

Form VIII-10 Heirship Affidavit by Disinterested Witnesses

Form VIII-11 Inventory and Valuation for Small Estate Proceedings

Form VIII-12 Order of Approval for Affidavit of Small Estate Distributee

### **Application to Examine Safe-Deposit Box**

Form VIII-13 Application to Access Safe-Deposit Box Contents

Form VIII-14 Order to Open Safe-Deposit Box and to Examine Papers

### **Affidavits of Heirship**

Form VIII-15 Affidavit of Heirship Disinterested Witness

Form VIII-16 Affidavit of Heirship Family Witness

Form VIII-17 Statutory Heirship Affidavit

## **Memorandum of Disclaimer**

- Form VIII-18 Court-Filed Disclaimer
- Form VIII-19 Filed Disclaimer

## **Memorandum of Assignment**

- Form VIII-20 Court-Filed Assignment
- Form VIII-21 Clerk-Filed Assignment

# **TEXAS GUARDIANSHIP**

In 1993 the Texas Legislature implemented an entirely new guardianship process. We continue to have changes ranging from the mundane to the significant during each legislative session.

## **Attorney Checklist—Guardianship**

- Form IX-01 Guardianship (Adult or Minor) Attorney Checklist

## **Application for the Appointment of a Permanent Guardian**

- Form IX-02 Application for Appointment of Permanent Guardian of the Person and Estate

## **Order Appointing Attorney Ad Litem, Guardian Ad Litem, etc.**

- Form IX-03 Order Appointing Attorney Ad Litem

## **Physician's Letter**

- Form IX-04 Sample Form Physician's Letter

## **Order Appointing a Guardian of the Person and Estate**

- Form IX-05 Order Appointing Guardian of the Person and Estate

## **Oath of Guardian**

- Form IX-06 Oath of Guardian

## **Bond of Guardian of the Person**

- Form IX-07 Bond of Guardian of the Person

## **Bond of Guardian of the Estate**

- Form IX-08 Bond of Guardian of the Estate

## **Published Notice to Creditors**

- Form IX-09 Published Notice to Creditors

## **Notice to Secured and General Creditors**

- Form IX-10 Mailed Notice to Secured and General Creditors

## **Inventory and List of Claims**

- Form IX-11 Inventory, Appraisal, and List of Claims
- Form IX-12 Order Approving Inventory, Appraisal, and List of Claims

## **Section 703 Safekeeping and Bond Reduction Procedure**

- Form IX-13 Application and Order for Safekeeping of Assets and Reduction of Guardian of the Estate's Bond

## **Application and Order for Safekeeping and Investment of Funds**

- Form IX-14 Application and Order for Investment of Assets, Safekeeping of Assets, and Reduction of Guardian's Bond

## **Court Authorization for Expenditure of Funds (Expenses)**

- Form IX-15 Application for Payment of Attorney's Fees and Expenses
- Form IX-16 Order Without Priority Approving Fees
- Form IX-17 Order With Priority Approving Fees
- Form IX-18 Application for Expense Account of Service
- Form IX-19 Application and Order for Payment of Service
- Form IX-20 Application and Order for Reimbursement of Service
- Form IX-21 Application and Order for Ratification of Service
- Form IX-22 Application and Order for Monthly Expense Allowance for a Minor Ward
- Form IX-23 Application and Order for Monthly Expense Allowance for an Adult Ward

## **Annual Report of the Condition of the Ward**

- Form IX-24 Annual Report on Location, Condition, and Well-Being of Ward

- Form IX-25 Sample Form Physician's Modification Letter  
Form IX-26 Order Acknowledging Review of Annual Report on Location, Condition, and Well-Being of Ward

**Annual Accounting**

- Form IX-27 Annual Accounting  
Form IX-28 Annual Accounting Order

**Application for the Sale of Real Property**

- Form IX-29 Application for Sale of Real Property

**Order Permitting Sale of Real Property**

- Form IX-30 Order of Sale of Real Property

**Report of Sale of Real Property**

- Form IX-31 Report of Sale of Real Property

**Decree Confirming Report of Sale of Real Property**

- Form IX-32 Decree Confirming Sale of Real Property

**Application for Sale of Personal Property Under Section 813**

- Form IX-33 Application for Sale of Personal Property

**Order for Sale of Personal Property Under Section 813**

- Form IX-34 Order of Sale of Personal Property

**Report of Sale of Personal Property**

- Form IX-35 Report of Sale of Personal Property

**Decree Confirming Sale of Personal Property**

- Form IX-36 Decree Confirming Sale of Personal Property

**Final Accounting Pending Settlement of an Estate**

- Form IX-37 Final Accounting of Guardian Without Application for Closure and Discharge

- Form IX-38 Ward's Waiver of Citation and Service for a Final Accounting

- Form IX-39 Beneficiary's Waiver of Citation and Service for a Final Accounting

- Form IX-40 Order Approving Final Accounting of Guardian of the Estate Without Closure and Discharge

- Form IX-41 Final Accounting of Guardian With Closure and Discharge

- Form IX-42 Ward's Waiver of Citation and Receipt of Assets

- Form IX-43 Personal Representative or Beneficiary's Waiver of Citation and Service for a Final Accounting

- Form IX-44 Order Approving Final Accounting With Discharge and Closure of Guardianship

**Application and Order for Discharge as Guardian**

- Form IX-45 Application and Order to Close Estate and Discharge Guardian

**\* MISCELLANEOUS FORMS \***

**Application for the Modification of Permanent Guardian of the Adult Person and Estate**

- Form IX-46 Application for Modification of Guardianship

**Physician's Modification Letter**

- Form IX-47 Sample Form Physician's Modification Letter

**Order for Modification of Guardianship of the Person and/or Estate**

- Form IX-48 Order Modifying Guardianship

**Application for Restoration of Ward and Termination of Guardianship**

- Form IX-49 Application for Restoration and Termination of Guardianship

**Physician's Restoration Letter**

- Form IX-50 Sample Form Physician's Restoration Letter

**Order for Restoration and Termination of Guardianship**

- Form IX-51 Order Restoring the Ward and Terminating the Guardianship

**Application for the Appointment of Successor Guardian**

- Form IX-52 Application for Appointment of Successor Guardian

**Order Appointing Successor Guardian**

- Form IX-53 Order Appointing Successor Guardian of the Person and Estate

**Application for the Sale of Property Without a Guardianship of a Minor Under Section 889**

Form IX-54 Section 889 Application for Sale of Property of Minor

**Order Permitting Sale of Property Under Section 889**

Form IX-55 Order of Sale Under Section 889 of the Texas Probate Code

**Application for the Sale of Property Without a Guardianship of an Adult Under Section 890**

Form IX-56 Section 890 Application for Sale of Property of an Adult

**Order Permitting Sale of Property Under Section 890**

Form IX-57 Order of Sale Under Section 890 of the Texas Probate Code

**Guardian's Application for Abandonment of Property**

Form IX-58 Guardian's Application for Abandonment of Property

**Guardian's Order for Abandonment of Property**

Form IX-59 Guardian's Order for Abandonment of Property

**Application to Employ Attorney, Execute Fee Agreement, and File Suit**

Form IX-60 Application for Authority to Employ Attorney, Execute Fee Agreement, and Institute Suit

Form IX-61 Order Granting Authority to Employ Attorney, Execute Fee Agreement, and Institute Suit

Form IX-62 Waiver of Notice and Citation Guardianship Application

**Payment of Attorney's Fees and Expenses**

Form IX-63 Application for Payment of Attorney's Fees and Expenses

Form IX-64 Order Approving Attorney's Fees

**Designation of Resident Agent**

Form IX-65 Designation of Resident Agent

**Appointment of Statutory Probate Judge**

Form IX-66 Application for Appointment of a Statutory Probate Judge

Form IX-67 Order for Assignment of a Statutory Probate Judge

**Transfer to a Statutory Probate Court**

Form IX-68 Motion to Transfer Proceedings to a Statutory Probate Court

Form IX-69 Order Transferring Proceedings to a Statutory Probate Court

## TEMPORARY GUARDIANSHIP

A temporary guardianship may be of the person or estate or both and is considered an *ex parte* emergency procedure to prevent injury to the proposed ward or his/her estate before a permanent guardianship can be filed and obtained. *See* Tex. Prob. Code § 875. It may also be opened where there is a contest filed to the appointment of a guardian and the need for someone to act is required. Temporary guardianships will not last longer than sixty days. *See* Tex. Prob. Code § 875(h). These guardianships expire by operation of law and cannot be renewed or extended. In addition, there must be a confirmation hearing on emergency temporary guardianship within ten days of the date of filing. *See* Tex. Prob. Code § 875(f). It is only a temporary guardianship that has been granted during a contested proceeding that can operate for a longer period. The time limit for this appointment will expire at the end of the contest. The special rules that apply to temporary guardianships are found in sections 875-879 of the Texas Probate Code. However, you should be aware that all of the Probate Code provisions regarding a permanent guardianship will also apply to a temporary guardianship. *See* Tex. Prob. Code §§ 601-905.

**Attorney Document and Time Period Checklist—Guardianship**

Form X-01 Temporary Guardianship (Adult or Minor) Attorney Checklist

**Application for the Appointment of Temporary Guardian**

Form X-02 Emergency Application for Temporary Guardianship

**Application for the Appointment of a Temporary Guardianship Pending Contest**

Form X-03 Application for Temporary Guardianship Pending Contest

**Order Appointing an Emergency Temporary Guardian**

Form X-04 Emergency Order Appointing Temporary Guardian

**Order Confirming the Appointment of an Emergency Temporary Guardian**

Form X-05 Order Confirming Appointment of Emergency Temporary Guardian

### **Order Appointing a Temporary Guardian Pending Contest**

Form X-06 Order Appointing Temporary Guardian Pending Contest

### **Oath of Temporary Guardian**

Form X-07 Oath of Emergency Temporary Guardian

Form X-08 Oath of Temporary Guardian Pending Contest

### **Bond of Temporary Guardian**

Form X-09 Bond of Temporary Guardian

Form X-10 Bond of Temporary Guardian Pending Contest

### **Published Notice to Creditors**

Form X-11 Published Notice to Creditors

### **Notice to Secured and General Creditors**

Form X-12 Mailed Notice to Secured and General Creditors

Form X-13 Proof of Notice to Secured and General Creditors

### **Probate Inventory and List of Claims**

Form X-14 Inventory, Appraisal, and List of Claims

Form X-15 Order Approving Inventory, Appraisal, and List of Claims

### **Section 703 Safekeeping and Bond Reduction Procedure**

Form X-16 Application and Order for Safekeeping of Assets and Reduction of Bond

### **Annual Accounting**

Form X-17 Annual Accounting

Form X-18 Annual Accounting Order

### **Final Accounting for Temporary Guardian**

Form X-19 Final Accounting of Emergency Temporary Guardian

Form X-20 Order Approving Final Accounting of Emergency Temporary Guardian

Form X-21 Waiver of Notice and Citation for Final Accounting

Form X-22 Receipt for Assets

Form X-23 Final Accounting of Temporary Guardian Pending Contest

Form X-24 Order Approving Final Accounting of Temporary Guardian Pending Contest

Form X-25 Waiver of Notice and Citation for Final Accounting

Form X-26 Receipt for Assets

Form X-27 Waiver of Notice and Citation Temporary Application

## **GUARDIANSHIP ALTERNATIVES**

This chapter provides documents that can help to delay the creation of a formal court-supervised guardianship with its issues and complications. We are all familiar with the preguardianship planning methods that are available by using trusts. Trust alternatives are available when the person has recognized the need to plan and makes the effort to plan before it becomes too late. Other situations exist where no one recognizes the need to plan and no planning is done. Today more families are seeking advice and exploring alternatives for persons that may need some help in the future. This chapter gives you basic forms that can be used toward avoiding or delaying a guardianship. As the number of senior citizens continues to grow, the need for guardianships and their alternatives will become more important. What may not be avoided, in some situations, is the need for creation of a guardian of the person. You will find that state institutions, nursing homes, and other care facilities are now requiring the creation of a guardianship for the person of their adult incapacitated residents. The forms and information provided in this chapter should prove beneficial.

### **Statutory Directives & Powers of Attorney**

Form XI-01 Directive to Physicians and Family or Surrogates

Form XI-02 Medical Power of Attorney

Form XI-03 Statutory Durable Power of Attorney

Form XI-04 Statutory Durable Power of Attorney for Principal

(With Trust and Health Care Powers and Designation of Guardian)

## **Statutory Designation of Guardians**

- Form XI-05 Declaration of Guardian in the Event of Later Incapacity or Need of a Guardian for Principal  
Form XI-06 Parental Declaration of Appointment of Guardian for Children for Affiant

## **COURT-CREATED TRUST**

### **Section 867 Management Trusts Applications**

- Form XI-07 Application for Creation of Adult Section 867 Management Trust  
Form XI-08 Application for Creation of Minor's Section 867 Management Trust  
Form XI-09 Application for Creation of a Supplemental Needs Section 867 Management Trust

### **Section 867 Management Trusts**

- Form XI-10 Section 867 Trust Document for Adult  
Form XI-11 Section 867 Trust Document for Minor  
Form XI-12 Section 867 Trust Document for Supplemental Needs

### **Section 867 Management Trusts Orders**

- Form XI-13 Order Creating Adult's Section 867 Management Trust  
Form XI-14 Order Creating Minor's Section 867 Management Trust  
Form XI-15 Order Creating Supplemental Needs Management Trust

### **Depositing Funds Without A Guardianship**

- Form XI-16 Application for Deposit of Funds Pursuant to Section 887 of the Texas Probate Code

### **Withdrawal From Registry of Court at Majority**

- Form XI-17 Application for Withdrawal of Funds From the Court Registry—Minor

### **Withdrawal From Registry of Court Representative**

- Form XI-18 Application for Withdrawal of Funds From the Court Registry

## **MEDICAID INCOME ELIGIBILITY TRUST**

### **Miller Trust**

- Form XI-19 Trust Declaration for Medicaid Eligibility

## **GUARDIANSHIP AVOIDANCE DISCUSSIONS**

### **Alternative Methods for Avoiding an Estate Guardianship**

- Creation of Section 438A Convenience Accounts  
The Representative Payee  
Paternal Authority—Minor  
Transfer to Minors—TUTMA  
Court-Created Trust—Texas Property Code Section 142  
Receiverships for Minors and Incapacitated Adults—  
Texas Probate Code Section 885

### **Alternatives for Avoiding a Guardianship of the Person**

- Surrogate Decision Makers—Adults  
Mental Health and Mental Retardation  
Removal of Disabilities—Minor  
Medical and Immunization Consents—Minors

## **THE ATTORNEY AND GUARDIAN AD LITEM**

This chapter provides documents for use by both the Attorney and Guardian Ad Litem. We understand that their roles in the probate process are significantly different. The Attorney Ad Litem will act as the attorney for the Proposed Ward, Ward, or for heirs of a decedent. *See* Tex. Prob. Code § 34A; Tex. Prob. Code § 601(1); Tex. Prob. Code § 646; Tex. Prob. Code § 647. The Guardian Ad Litem on the other hand acts as a best interest representative for both the Court and the Ward. *See* Tex. R. Civ. P. 173; Tex. Prob. Code § 601(12); Tex. Prob. Code § 645; Tex. Prob. Code § 683(a). The forms in this chapter are designed to cover many of the basic needs of both Ad Litem in a guardianship and heirship proceeding.

## **Attorney Ad Litem Answers**

- Form XII-01 Answer of Attorney Ad Litem
- Form XII-02 Defensive Answer of Attorney Ad Litem
- Form XII-03 Heirship Answer of Attorney Ad Litem
- Form XII-04 Motion to Withdraw Pursuant to *Anders to California*

## **Attorney Ad Litem Application for Compensation and Expenses**

- Form XII-05 Attorney Ad Litem Compensation and Expenses

## **Attorney Ad Litem Order Approving Compensation**

- Form XII-06 Order Authorizing Attorney Ad Litem Compensation

## **General Order Approving Appointee Compensation**

- Form XII-07 Order Authorizing Appointee Compensation

## **Application Requesting a Guardian Ad Litem Appointment**

- Form XII-08 Motion for Appointment of Guardian Ad Litem

## **Order Appointing a Guardian Ad Litem**

- Form XII-09 Order Appointing Guardian Ad Litem

## **COURT-CREATED MANAGEMENT TRUSTS**

### **Section 867 Management Trusts Applications**

- Form XII-10 Joint Application for Creation of Adult Section 867 Management Trust
- Form XII-11 Joint Application for Creation of Minor's Section 867 Management Trust
- Form XII-12 Joint Application for Creation of a Supplemental Needs Section 867 Management Trust

### **Section 867 Management Trusts Orders**

- Form XII-13 Order Creating Adult's Section 867 Management Trust
- Form XII-14 Order Creating Minor's Section 867 Management Trust
- Form XII-15 Order Creating Supplemental Needs Section 867 Management Trust

### **Guardian Ad Litem Notice of Appearance**

- Form XII-16 Answer and Entry of Appearance

### **Guardian Ad Litem Restoration Answer**

- Form XII-17 Restoration Answer of Guardian Ad Litem

### **Guardian Ad Litem Report**

- Form XII-18 Report of Guardian Ad Litem

### **Information Letter Section 683A**

- Form XII-19 Sample Form Information Letter

### **Section 683 Guardian Ad Litem Appointment Order**

- Form XII-20 Order Appointing Guardian Ad Litem

### **Guardian Ad Litem's Application for the Appointment of a Permanent Guardian**

- Form XII-21 Application for Appointment of Permanent Guardian of the Person and Estate

### **Guardian Ad Litem Waivers**

- Form XII-22 General Waiver of Notice and Citation
- Form XII-23 Waiver of Notice, Citation, and Guardianship Appointment

### **Guardian Ad Litem Waiver Letter**

- Form XII-24 Guardian Ad Litem Waiver Notice Letter

### **Guardian Ad Litem's Order Appointing Guardian of the Person and/or Estate**

- Form XII-25 Order Appointing Guardian of the Person and Estate