

# Judge Guy Herman

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FOR: \_\_\_\_\_

## A Guide for the Texas Independent Executor

CAUSE NO. C-1-PB-\_\_\_\_-\_\_\_\_\_

### Introduction:

This Court has appointed you to a position of great trust and confidence. It is a position that carries with it a considerable amount of responsibility. Your duties are not easy; however, you will find them less difficult if you are careful to heed the advice of your attorney. You should contact your attorney at any time you have questions concerning the handling of this estate. You should never attempt to handle the affairs of this estate without the guidance of your attorney. The following guide has been prepared by my office as a supplement to the information given to you by your attorney. It is only a supplement and not a substitute for his or her advice.

GUY HERMAN  
Judge, Probate Court No. 1  
Travis County, Texas

### Administration:

The administration of an estate involves (1) gathering the assets of the person who died, (2) paying his or her debts, and (3) distributing the remaining assets to those entitled to them under the terms of the Will.

### Your Qualifications:

You have been appointed to act on behalf of this estate. However, you are not qualified to act for this estate until you have taken the oath of office and filed any required bond. Your oath, if not taken at the hearing, should be taken no later than 20 days from the date the Court signed the order appointing you as Independent Executor. Generally, a bond is not required for an Independent Executor named in a Will. (A bond is an insurance policy that insures you meet your responsibilities under the Will and the Probate Code.) In the event either the Will or the Court requires a bond, the Court must approve the bond no later than 20 days from the date of the order appointing you. Your bond, if required, will have to be executed by an authorized corporate surety, and the amount of the bond will be that specified in the order making the appointment.

### **Letters Testamentary:**

You may order your letters testamentary after you have taken the oath and executed the bond, if a bond is required. These letters will serve as the evidence of your appointment when dealing with third persons concerning the affairs of the estate. These letters may be ordered from the Probate Clerk's Office, (512) 854-5958.

### **Notice to Creditors:**

Within 30 days after you have qualified (taken the oath and given any required bond), you must publish your notice to creditors in some newspaper printed in this county advising all creditors of your appointment. Within two months after your qualification, you must mail a registered or certified letter, return receipt requested, to each secured creditor of the estate. A secured creditor is one who holds a claim secured by a deed of trust, a mortgage, or some other lien upon property. You must file proof of the above two notices with the clerk's office. Although the Texas Probate Code does not require that you send notice to any other type of creditor, you may want to do so; your attorney should advise you accordingly.

### **Notice to Beneficiaries:**

Within 60 days of the date the will is probated, you must give a statutorily required notice to the beneficiaries named in the will if the decedent died on or after September 1, 2007.

### **Some of what is required depends on the date of decedent's death:**

#### ***If the decedent died before September 1, 2011:***

- The notices must be sent to all beneficiaries named in the will, regardless of the size of the bequest.
- Each notice must include – in addition to other requirements outlined in the statute – a copy of the will admitted to probate and a copy of the order admitting the will to probate.

#### ***If the decedent died on or after September 1, 2011:***

- You are not required to send notice to certain beneficiaries such as (1) a beneficiary who has received all gifts under the will within 60 days after the will is admitted to probate or (2) a beneficiary who is entitled to receive aggregate gifts with an estimated value of \$2,000 or less.
- Each notice must include – in addition to other requirements outlined in the statute – either (1) a copy of the will admitted to probate and a copy of the order admitting the will to probate or (2) a summary of the gifts to the beneficiary under the will along with the name of the court that admitted the will to probate, the docket number assigned to the estate, the date the will was admitted to probate, and, if different, the date the court appointed the personal representative.

### **Other requirements apply to all of these decedents:**

You are not required to give notice to either (1) beneficiaries who “made an appearance” in the probate proceeding before the will was admitted to probate or (2) beneficiaries who waived the right to notice *in a waiver that meets the statutory requirements and is filed with the Court*. The

requirements of what must be included with that waiver depend on the date of decedent's death; your attorney will advise you about what must be included.

All notices must be sent by registered or certified mail, return receipt requested.

Your attorney will advise you about who must receive notice or sign a waiver and about what must be included in the notices or waivers.

Within 90 days, you must file an affidavit or certificate with the Court that confirms that notice was given or explains why it was not given. The Texas Probate Code sets out what must be included in your sworn affidavit or your attorney's certificate. Your attorney will help you decide whether to file an affidavit or a certificate and will advise you about what must be included in whichever one you file. ***The Court strongly prefers that you file the affidavit or certificate separately from any other document.*** However, if you combine the affidavit or certificate with the Inventory of the Affidavit in Lieu of Inventory (see below) or any other filing, the title of the document must include both "Notice to Beneficiaries" as well as a reference to whatever else you have included in the same document.

### **Inventory or Affidavit in Lieu of Inventory:**

Within 90 days after your qualification, you must submit to the Court either a complete inventory of the estate or – if allowable – an affidavit in lieu of inventory.

***If the decedent died before September 1, 2011, you must file an inventory.*** The inventory must be a complete inventory of the estate, with an attached list of claims owing to the estate (but not debts owed by the estate). The inventory must contain a list of all the real estate located within the State of Texas and a list of all personal property, regardless of where that property is located. In compiling the inventory, you must distinguish between separate and community property belonging to the estate. Your attorney will advise you as to the legal meaning of these two property classifications. The inventory must be verified by a sworn affidavit. If the order appointing you requires appraisers for the estate, then the appraisers must also sign a sworn affidavit to be attached to the inventory. You, your attorney, and any co-executor must all sign the inventory, and the attorney must include a signature block with his or her State Bar number. If at any time during the pendency of this estate you discover additional property, you must file a supplemental inventory reflecting the newly acquired assets.

***If the decedent died on or after September 1, 2011, you must file either an inventory as described above or an affidavit in lieu of inventory, if appropriate. You may file an affidavit in lieu of an inventory only if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions.***

If you are eligible to file an affidavit in lieu of inventory and choose to do so, the affidavit must:

- State that all debts, except for secured debts, taxes, and administration expenses, are paid.
- State that all beneficiaries have received a verified, full, and detailed inventory – as described above.
- Be filed with the clerk within the prescribed time.

**Taxes:**

For sizeable estates, you as the Executor must file U.S. Estate Tax Return, Form 706. The value of the gross estate at the date of the decedent's death governs the liability for filing the U.S. Estate Tax Return. Like the Texas Inheritance Tax Return, the return is due nine months after the date of the decedent's death, unless an extension of time for filing has been granted. Consult your attorney to determine the size of the gross estate and your obligations to either taxing authority.

Both the state inheritance tax and the federal estate tax must be paid before any estate may be closed.

**Your Powers and Duties:**

Upon qualification, it is your duty to take possession of all property belonging to the decedent. Any cash that you receive should be maintained in a bank account separate from your personal funds. You should never co-mingle property belonging to the estate with your personal assets. You must use ordinary diligence in the collection of all claims and debts owed to the estate. If necessary, you may employ an attorney to recover property belonging to the decedent. Your powers to administer the estate are set out in the Will and the Texas Probate Code. Generally, all powers afforded to a dependent administrator under the Texas Probate Code are also available to an Independent Executor without the necessity of court approval, including the sale of real estate under Probate Code Section 341. This Court will not ratify or approve an Independent Executor's actions.

**Claims:**

Claims of creditors against the estate may be presented to you at any time while the estate remains open. You may allow any claim you believe to be a just debt of the estate that is properly presented to you and authenticated, provided such claim is not barred by an applicable statute of limitation. Once a claim is presented to you, you should either allow or disallow it. If you reject a claim, the creditor will have to file suit to secure payment of the claim.

**Closing the Estate:**

You are ready to close the estate after (1) you have gathered the assets of the estate, (2) the inventory has been approved, (3) you have paid the debts and taxes, and (4) you have determined who is entitled to the remaining property. You should begin the procedure to close the estate only upon the advice of your attorney. You may then deliver the assets of the estate to the beneficiaries who are entitled to receive the property under the Will. This distribution concludes your responsibility as the Independent Executor of this estate.