

# Submitting Paperwork for Will Prove-ups and Heirships: When & How?

## Travis County Probate Courts No. 1 and No. 2

**Note to pro se applicants.** If you are probating a Will as a muniment of title and do not have an attorney, you are not required to e-file. When the instructions here say to **e-file** a document, you may deliver the document to the **County Clerk**. When the instructions say to **email** a document, follow the email instructions or deliver the document to the **Court**.

It is both Courts' policy to review, before the hearing, documents for probate prove-up hearings – not only for uncontested-docket hearings, but also for most regular-docket probate prove-ups. By reviewing documents in advance, the Court can ensure that hearings go more smoothly for participants who are already dealing with the stress of someone's death. Attorneys also benefit from smoother hearings and can avoid having errors pointed out to them in front of their clients. Because the Courts hear 40-60 probate prove-ups every week, we ask that you help by submitting documents timely, which will enable us to review the file and get back to you timely.

### 1. Do when you e-file the application.

- E-file Decedent's death certificate (Social Security Number redacted) as a separate document or deliver an original to the Clerk's Office along with the original Will. If you do not have the death certificate yet, please file right after you set the hearing – or definitely no later than a week before the hearing.
- For a Will probate, the Courts recommend (but does not require) that you file a pdf of the Will with your application as a separate document.

### 2. Do within 3 business days after e-filing application to probate a Will.

- TRCP Rule 21(f)(12) requires that any original Will must be **physically filed in the Clerk's office** within three business days after the application is electronically filed.
- If you are probating a copy of a Will or there is a copy of a Will that you are not offering for probate, both Courts require by Administrative Order that the actual copy of the Will being offered for probate (or filed and not offered for probate) must be **physically filed in the Clerk's office** within three business days after the application is electronically filed. Having the copy helps the Court in its evaluation.

### 3. Do before setting an heirship hearing.

- To set an heirship hearing, you must submit an heirship setting request form. The current forms are always available on the Court's website.
  - There are two versions of the form – one to request a hearing on the uncontested probate docket and the other to request a hearing on the regular docket. The forms will help you determine which docket to request. Bottom line: even if no contest, heirships belong on the regular docket if there will be *any* extra testimony.
  - An heirship setting request form must be filled out completely before an heirship hearing is set, so consider using the form as a checklist of basic things that must be done before you send in the setting request form.
- All of the following need to be completed and e-filed before you send in a request to set an heirship hearing:**
1. Service of citation on – or waiver from – all non-applicant heirs and other persons requiring notice under Texas Estates Code § 202.008.
  2. Consents from all heirs if seeking independent administration.
  3. Affidavit of citation by publication in a newspaper. (Clerk prepares citation; you publish and then file affidavit.) The Clerk's Office will handle the citation by publication on the website maintained by OCA.
  4. Section 202.057 affidavit or certificate. See the statute; don't forget 202.057(a)(2)(**A**)!

## 4. Do as soon as you set a probate prove-up hearing.

### For ALL probate prove-ups:

- **As soon as you set the hearing, please email all proposed hearing documents to the Court.** This helps the Court enormously – and getting it out of the way means you don't need to calendar a future deadline.
- We prefer Word or rtf in case modifications are needed. Other editable formats are okay. Don't email only scanned pdfs, etc.; emailing back and forth about changes takes time. We'll clean up formatting if needed.
- Put the hearing date and estate name in the subject line of the email. We keep track of docs by hearing date.
- NEVER E-FILE documents that will be signed *after* a hearing such as testimony, oaths, and orders. With the clerk's document management system, the Court will not see *proposed* documents that are e-filed for probate prove-ups. TRCP 21(f) doesn't apply since these documents aren't actually "filed" before the hearing.

### For Will probates (with no intestacy or partial intestacy):

- Email all proposed documents to be signed after the hearing to [probateone.staffattorney@traviscountytexas.gov](mailto:probateone.staffattorney@traviscountytexas.gov) (Probate Court No. 1) and [probate2two.staffattorney@traviscountytexas.gov](mailto:probate2two.staffattorney@traviscountytexas.gov) (Probate Court No. 2).
- For letters testamentary or letters of administration with will annexed, email the following *at a minimum*:
  1. Proof of death and other facts, 2. Order (with exact title), and 3. Oath (with exact title)
- For muniment of title, email the following *at a minimum*:
  1. Proof of death and other facts (include testimony about no debts; don't use separate oath of no debts)
  2. Order (with exact title)
- **Additional documents are needed for (1) wills that are not self-proved, (2) copies of wills, and (3) wills being probated more than four years after death.** See Estates Code and the Court's website for more information.

### For heirships (or dependent administration with heirship to follow):

- Email all proposed documents for cases in Probate Court No. 1 to [probateone.staffattorney@traviscountytexas.gov](mailto:probateone.staffattorney@traviscountytexas.gov) and for cases in Probate Court No. 2 to [probate2two.staffattorney@traviscountytexas.gov](mailto:probate2two.staffattorney@traviscountytexas.gov).
- Email the following documents at a minimum. If DA with heirship to follow, you do not need #2 or #4 yet.
  1. Proof of death and other facts
  2. Statement of facts concerning the identity of heirs for each of two disinterested witnesses
  3. Oath (if seeking administration)
  4. Electronic version of heirship chart (the Court prepares the Judgment, but the chart makes it easier)

## 5. Do at least one week before the hearing date. (*Earlier is helpful!*)

- **E-file** everything else the Estates Code or the Court requires before an order could be signed. **For example:**
  1. Death certificate if not e-filed when the application was first e-filed (earlier definitely preferable)
  2. Motion for Alternate Proof (with proposed order) if you plan to prove up a non-self-proved Will by (1) the deposition of a subscribing witness or by (2) the testimony of two disinterested witnesses
  3. Declinations of executors with priority
  4. Proof of reason other executors with priority can't serve (e.g., death certificate or letter from physician)
  5. Consents or waivers (for example, if the Will does not name an independent executor without bond)
  6. Appointments of resident agents
  7. Deposition answers
- If you haven't done it yet, **email** the Court all proposed documents to be signed after the hearing. When documents are late for even a handful of those 40-60 weekly prove-ups, we're already behind on our review.

*If you have questions about heirships or will probate prove-ups in Probate Court No. 1, please email [probateone.staffattorney@traviscountytexas.gov](mailto:probateone.staffattorney@traviscountytexas.gov) or call (512) 854-9283, and for Probate Court No. 2, email [probate2two.staffattorney@traviscountytexas.gov](mailto:probate2two.staffattorney@traviscountytexas.gov) or call (512) 854-4355.*