



Hon. Fransheneka “Fran” Watson

Associate Judge Lily U. Leal

HARRIS COUNTY PROBATE COURT FIVE

1115 Congress St, 5th Floor | Houston, TX 77002 | (832) 927-1405 Phone

PROBATING A COPY OF A WILL CHECKLIST

Procedures: The *Attorney of Record* is responsible for completing the checklist and ensuring *All* required documents are **Filed and Accepted** prior to setting. If this matter is uncontested, please use the Probate Court No. 5 [Online Scheduling Link](#) to set the matter for hearing.

Note: This court uses the following explanation of “disinterested witness” for purposes of determining heirs: A disinterested individual is a person who has no interest in the estate or in the outcome of the proceeding and the witness must be familiar with the decedent’s family history. In the event a disinterested witness is simply not available, please state the circumstances.

Checklist for Probating a Copy of a Will or Codicil

In addition to meeting all criteria to probate an original Will, the following must be included when Probating a Copy of a Will (see Texas Estates Code 256.156). Further, an original Codicil does not relieve the Applicant from proving-up a Copy of a Will.

- ✓ Title of document must reflect what you are probating, e.g. *Application to Probate Copy of a Will*...Body and Prayer must reflect the same.
- ✓ Tender the actual copy of the Will offered for probate to the Clerk.
- ✓ Application includes a statement about why Probating a Copy of Will and what diligence was done to locate the original Will.
- ✓ Application includes statements to overcome the presumption the original Will was revoked.
- ✓ Citation issued by the Clerk to all parties interested in the estate (posting). Make sure the citation includes reference to the Application to Probate Copy of the Will
- ✓ Deliver the Copy of Will and or Copy of Codicil to Probate Clerk’s Office within 3 business days.
- ✓ Citation to heirs-at-law by personal service, if they are residents of Texas and their addresses, are known. Texas Estates Code §258.002(b)
 - Service by mail requires at least 20 days before the return day of service. Texas Estates Code 51.052.
- ✓ Sworn Waivers of Citation with explicit acknowledgment of their right to contest the probate of a Copy of a Will and they are waiving such right (ages 16 and older; if younger than 16 years of age a parent, etc. may waive citation) Texas Estates Code §258.002(d),(e).
- ✓ Citation by Publication may be done for transient persons, heirs with unknown addresses, and heirs not residents of Texas. Citation must state each heir’s name if known. The general citation by publication for unknown heirs is **NOT** the same thing.

- ✓ If probating a copy of a codicil only, the beneficiaries of the Original Will tendered are served with personal citation or beneficiaries must execute an affidavit waiving citation specifically stating they have received notice that a copy of a codicil is being probated (see above).
- ✓ If Will is not self-proved or there is an objection to entering duplicate of Will into evidence, need proof of execution of attested Will by sworn testimony from one subscribing witness in open court, or follow Texas Estates Code 256.153 or 256.154.
- ✓ Testimony from a credible witness (not necessarily disinterested) that a Copy of Will produced is an exact duplicate. You will need witnesses from the following group: (1 subscribing witness; or the notary; or 2 handwriting witnesses)
- ✓ Proof of Death states a Copy of Will offered for probate with no objection. If not self-proved, add there is proof by subscribing witness to Will or witnesses to the handwriting of a subscribing witness or the testator.
- ✓ Proof of Death states why probating copy, what diligence was done to locate the original Will, and why the testator did not revoke the Will.
- ✓ Order, including title, reflects the language that Copy of Will probated and finding that Applicant overcame the presumption that Original Will was revoked.
- ✓ E-file Proposed Testimony before setting a hearing.

Live testimony is required.

- ✓ E-file Unsigned Proof of Death for review before setting a hearing.
- ✓ E-file the Unsigned Oath for review before setting a hearing.
- ✓ E-file Proposed Order as a separate lead document for review before a setting hearing. Order must refer to Probating a Copy of a Will, testimony taken, etc.

Note: Probate Court 5 is accepting unredacted unsworn declarations in lieu of notarized signatures for the following documents: Oaths of Executors; Oaths of Administrators; Proof of Death and Other Facts; Witness statements for Estates; Witness statements for Heirships; Inventories, Annual Reports and Annual Accounts.

SIGNING OF ORDERS

Probate Court 5 will sign the Order after the Executed Proof of Death and Other Witness Testimony has been e-filed and accepted by the Clerk's Office. Once the Order is signed, the Oath may be taken.