“THERE HAS GOT TO BE AN EASIER WAY!”
ALTERNATIVES TO PROBATE

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CHAPTER 7
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LAW RELATED PUBLICATIONS AND SPEECHES

Underutilized Probate Code Provisions; South Texas College of Law Wills and Probate Institute; September, 2004

Dependent Administration Can Be Your Friend; South Texas College of Law Wills & Probate Institute; September, 2003

2003 Legislative Update; Attorneys in Tax and Probate; September, 2003

Out of the Woodwork: An Update on the Law Regarding Common Law Marriage, Putative Spouses and Adoption by Estoppel; Houston Bar Association; May, 2003

Update From the Probate Staff Attorneys; Houston Bar Association; August, 2001

Out of the Woodwork: An Update on the Law Regarding Common Law Marriage, Putative Spouses and Adoption by Estoppel; Disability and Elder Law Attorney’s Association; February, 2001

Jurisdictional Issues in Guardianship Law; Guardianship and Elder Law Issues for the Practitioner and Ad Litem; Houston Bar Association; October, 2000

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I. Judge Russell Austin who allowed me to use his paper, Alternatives to Formal Probate, as a starting point for this paper; and,

II. Cameron McCulloch at Thompson & Knight who graciously provided me with some of the forms used as appendices at the end of this paper.
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“THERE HAS GOT TO BE AN EASIER WAY!”
ALTERNATIVES TO PROBATE

SCOPE OF ARTICLE

Is There a Need For Formal Probate Proceedings?
The probate of a will conforming to §59(a) T.P.C. and appointment of a properly named independent executor is a relatively simple procedure. Qualification of the executor can be accomplished quickly and the estate can thereafter be effectively managed without any court supervision. Conversely, when a person dies with a will that does not conform to §59(a) T.P.C., dies intestate, or dies with a will that does not create an independent administration, difficulties may arise.

This article is intended to direct you to eleven (11) ancillary probate procedures. Ten (10) of these are by statute and one (1) is at common law. Six (6) of the statutory alternatives are frequently used and five (5) alternatives are infrequently used.

These ancillary procedures will allow you to expeditiously resolve almost any problem that may arise in an estate because of a deficient will or insufficient language under the will to create an independent administration.

Six (6) Frequently Used Ancillary Probate Procedures

I. PROBATE OF WILL AS MUNIMENT OF TITLE (SEE APPENDIX ONE)
A. §§89A-89C T.P.C. is very useful in the following situations:

1. The will states a named executor but he is not made independent.
2. The Will’s named executor is unwilling to serve, dead or otherwise disqualified.
3. The will specifies no executor.
4. There is no real need to manage the deceased’s estate.
5. There is only a need to transfer title to realty and/or personal property from the decedent to his devisee’s.
6. The beneficiaries have failed to present the will for probate within the statutory four year period as set forth in § 73 (a) T.P.C.

B. Requirements

1. The Court is satisfied that the will is admissible to probate.
2. The Court is satisfied that there are no unpaid debts owing by the decedent’s estate, excluding debts secured by liens on real estate.
3. The Court finds that there is no other necessity for administration upon the estate.
4. If the will is presented after the four year period, then the applicant must comply with § 128B T.P.C. which requires notice to or verified waiver and consent by all heirs or beneficiaries of a previously admitted will which states that:

   a. The testator’s property will pass to the testator’s heirs if the will is not admitted to probate, and;

   b. The person offering the will for probate may not be in default for failing to present the will during the four year period.

C. The Hearing

1. The will conforming to §59(a) T.P.C. may be proven up by the applicant or the applicant’s attorney. See §84(b) T.P.C. for proof of a holographic will and Estate of Donice Johnson, 886 S.W. 2d 869 (Tex. Civ. App. - Beaumont 1994) determining trial court not bound by testimony of any witness and proponent has burden to prove holographic will wholly in handwriting of decedent.
2. The Court should be presented an Order Admitting Will As A Muniment of Title at the hearing. The Order should not request the Court to waive the appointment of appraisers or the filing of an Inventory, Appraisement and List of Claims as same are not statutorily required.

   a) Your Order should recite the language of §89C T.P.C. to the extent the Order reflects that it constitutes legal authority to persons owing money to the estate; persons having custody of the estate property; persons acting as a transfer agent of estate property; or persons purchasing estate property; that they may
transfer title to or purchase title from the persons named as devisees under the decedent’s will without liability. This exception to liability is not found in §141 T.P.C. which states the effect of the Court’s Order in a §139 T.P.C. Application For Order of No Administration, or in §180 T.P.C. which states the effect of the Court’s finding that no necessity for administration exists to a §178 T.P.C. Application For Letters of Administration. (See Appendix Three)

3. Section 89C(d) requires the filing with the probate clerk of an affidavit within 180 days after the admission of the will stating the terms of the will fulfilled and those remaining unfulfilled.

a) The Court will generally waive this requirement if there is only one (1) adult beneficiary to the will, e.g. surviving spouse, or all adult beneficiaries have filed a waiver of service and consent to the §89A ancillary proceeding.

b) The failure to file this affidavit by the applicant will not statutorily affect title to property passing under terms of the will. However, unless waived or the time period is extended by the Court, the failure to file the affidavit may impede the expeditious title transfer(s) by a mortgage company, stock broker, bank, automobile dealer or title company.

D. Declaratory Judgment Relief

1. You may plead for declaratory judgment relief under Chapter 37 C.P.R.C. when a person who is entitled to property under the will cannot be ascertained solely by reference to the will; or, when a question of construction of the will exists. See Harkins v. Crews, 907 S.W. 2d 51 (Tex. Civ. App. - San Antonio 1995) regarding Declaratory Judgment relief in a will construction case, and Sammons v. Elder, 940 S.W.2d 276 (Tex. Civ. App. - Waco 1997) a will construction case regarding interpretation of “savings account and/or savings certificate” mentioned in specific bequest.

E. Benefits

1. Third parties tendering or purchasing estate assets and transfer agents are protected against claims of estate creditors.

2. This procedure that can be commenced and completed in less than 30 days and it allows for the expeditious transfer of title(s) to real and personal property without Court review and approval.

II. INDEPENDENT ADMINISTRATION

A. This ancillary procedure is found in §§145(c), (d) and (e) T.P.C. and is very useful to allow for an independent administration when one is not created.

1. The Court will require that all of the distributees of the decedent execute the application and/or execute waivers of service and consent(s) to the appointment of the named executor to serve independently without bond.

2. §145 (c) T.P.C. allows an applicant to petition the court to have an executor appointed as an independent executor even if the language in the will is insufficient to create an independent estate. (See Appendix Four)

3. §145(d) T.P.C. allows an applicant to petition the Court to name an independent administrator with will annexed if all the named executors are deceased, disqualified
or unwilling to serve, or should the will name no executor. (See Appendix Five).

4. §145 (e) T.P.C. allows an applicant to petition the Court to name an independent administrator in an intestate estate.

B. Persons Eligible to Apply

1. All of the distributees may agree to an independent administration pursuant to T.P.C. §145(c), (d) or (e).

2. A person or class of persons first eligible to receive income from a testamentary trust may apply without the consent of the trustee or any other beneficiary of the trust. (Applies only to §145(c) & (d) relief).

3. A life estate holder whose estate commences on the decedent’s date of death may apply without the consent of any remainderman.

4. The personal representative of a deceased distributee may make application.

C. The Procedural Process

1. File a standard application for the probate of a will pursuant to §81 T.P.C. that includes a paragraph with the language concerning §145 (c) and (d) relief, i.e. “all distributees agree on the advisability of an independent administration…”. See Collins v. Baker, 825 S.W. 2d 555 (Tex. Civ. App. - Houston [14th] 1992) determining independent administration to be managed without Court supervision.

2. Obtain the written consent of all the devisees to the applicant’s appointment as independent executor/administrator without bond. The appointee must file a bond if the waiver of same is not included in the consent(s).

3. Ascertain that all the devisees have the capacity to consent, i.e. they are not minors or incapacitated persons. A guardian or a guardian ad litem of an incapacitated person may execute a consent on behalf of the ward pursuant to T.P.C. §145 (i). However, you are advised to consult with the specific probate court in which the case is pending, because the courts vary as to whether they will grant an independent administration under these provisions if all distributees do not have the capacity to consent. Even if they will grant the independent administration in this situation, they are likely to require a bond to cover the entirety of the incapacitated person’s portion of the estate.

4. Serve all distributees with citation and notice of the application unless the distributee(s) file a waiver of service or appear in Court. T.P.C. §145(f).

Practice note: Don’t forget to include the waiver of citation with the consent and the request for the waiver of a bond! (See Appendix Seven)

D. The Independent Administrator in an Intestate Estate (See Appendix Six)

1. §145(e) T.P.C. allows you to petition the Court to name an independent administrator to an intestate estate if all the distributees agree to same.

a) The major complication to this application is the requirement of each Harris County Probate Court that an Application To Determine Heirship be filed and completed before entry of the §145(e) order.

b) The heirship requirement ensures the Court that all the distributees of the estate are before it. T.P.C. §48

c) The Court(s) will require the appointment of an attorney ad litem in the heirship proceeding. T.P.C. §34A.

E. Service of Citation

1. The Court(s) will require you to obtain waivers of citation from all of the heirs pursuant to §50(a).

Practice Note: Combine the waiver of citation for the heirship with the waiver and consent to the §145(e) appointment.

III. PROCEEDINGS TO DECLARE HEIRSHIP

A. This ancillary probate procedure is found in §§48-56 T.P.C. and is very useful in the following situations:

1. The decedent passed away intestate, i.e. no will, and the decedent’s heirs and their respective percentage of the estate must be determined before the Court orders the estate’s partition and distribution from a dependent estate.
2. The decedent died testate, i.e. with a will, but the will does not dispose of all the estate assets by its terms. Otherwise stated, the will make specific provisions for estate assets to be devised to certain beneficiaries, i.e. specific bequests, but thereafter a residue remains to be distributed to the decedent’s heirs not mentioned in the will. Hence, this proceeding to determine their identity and percentage share.

3. More than four (4) years have elapsed since the decedent’s death and the applicant cannot request an independent administration for the reasons above stated; because your applicant is also barred by the statute of limitation; that even if good cause could be shown for the will’s probate as a Muniment of Title, a determination of heirs to take the residuary is necessary.

4. Four (4) years have not elapsed but there is no reason to administer the estate. The estate consists only of real estate, stocks or bonds and the transfer agent, e.g. title company, stock broker, requires a court judgment determining the heirs (who will also execute necessary transfer documentation) and the percentage each heir is to receive from the sale.

5. A ward has passed away intestate and no administration has been requested, hence, this proceeding to determine the heirs of the ward’s estate.

B. Who Initiates The Action

1. An administrator, heir, secured creditor, guardian, or other interested party may file an application. T.P.C. §49

C. Information Required In The Application

(See Appendix Nine)

1. Complete answers should be given to T.P.C. §49(a)(1)-(8) with particular scrutiny to subparagraphs:

   (a) the name and address of every heir; the heir’s relationship to the decedent, e.g. spouse, son, niece, etc.; the heir’s percentage interest in the estate.

   (b) the name and address of every child born to or adopted by the decedent. See Penland v. Agnich, 940 S.W.2d 324 (Tex. Civ. App. - Dallas 1997, no writ) determining adopted children were lawful issue to take a class gift under a testamentary trust.

   (c) the name and address of each spouse; and, when and where they were married or divorced.

2. You must ascertain that the application contains the applicant’s affidavit that his allegations are true in substance and in fact and no material fact or circumstance has been omitted.

   a) the affidavit is a mandatory requirement to acquire proper jurisdiction. Rose v. Burton, 614 S.W.2d 651, (Tex. Civ. App. - Texarkana 1981, ref. n.r.e.)

D. Notice

1. You should ascertain that all distributees have received certified or registered mail service. T.P.C. §50(a). The Court may require personal service instead. T.P.C. § 33(a).

2. You should ascertain that unknown heirs or known heirs whose addresses are unknown are served by publication. T.P.C. §50(b).

3. You should ascertain that posted citation is made in your county and where the decedent last resided. T.P.C. §50(c).

E. Ad-Litem Appointment

1. The Court shall appoint an attorney ad litem pursuant to §53(c) T.P.C. (See Appendix Ten)

F. Evidence - Unknown Parties

a) The Court may hear the applicant’s testimony as to the application and will hear testimony from two (2) disinterested witnesses.

b) The court may require that the testimony of the witnesses be reduced to writing, signed by the witness, acknowledged by the court clerk and placed in the Court’s file even if the hearing is transcribed by a court reporter. T.P.C. §53(a).

1) The Court will receive as prima facie evidence of the facts therein stated an affidavit of heirship or court judgment if
same have been recorded in the deed records for at least five (5) years. T.P.C. §52.

G. Determination of Heirs and Percentage Interest(s)


2. The persons who take upon the intestacy of the decedent are found in §38 T.P.C. See Kirkpatrick v. Estate of Kane, 743 S.W. 2d 371 (Tex. Civ. App. - Austin 1988, no writ) determining that §38(a)4 directs the trial court to distribute an intestate decedent’s estate according to which of his heirs survives him; and Haas v. Voight, 940 S.W. 2d 198 (Tex. Civ. App. - San Antonio 1996, no writ) determining right of survivorship to joint tenancy property of spouses.

H. The Court’s Judgment (See Appendix Eleven)

You should ascertain that the judgment declares...

a) The name and address of each heir; and,

b) The percentage interest of each heir. T.P.C. §54.; and,

c) Whether or not there is any necessity for the administration of the estate.

Practice tip: Double check the total of the percentage interests stated in the judgment. Amazingly, judgments often exceed 100%.

1. The judgment is final and appealable as other judgments.

a) Any heir may appeal by bill of review within four (4) years of the judgment if not properly served;

b) Any heir may appeal at anytime upon proof of actual fraud and recover from the other heirs.

2. The effect of the judgment is to protect third parties from claims of any omitted heir(s). Also, should the Court rule there is no necessity for administration, then the judgment protects third parties against claims from estate creditors.

3. You should file a certified copy of the Judgment Determining Heirship in the Real Property Records for each parcel of realty therein described, and the judgment should be indexed in the name of the decedent as grantor and the heir as grantee.

a) This filing will thereafter constitute constructive notice of the facts therein stated; and,

b) This filing will allow the expeditious transfer of title by any title company in the future.

IV. THE AFFIDAVIT OF HEIRSHIP

A. This ancillary probate procedure is found in §52 T.P.C. (the statutory form is found in §52A T.P.C. and see Appendix Twelve) and is very useful in the following situations.

1. Where you are proceeding under an Application to Determine Heirship and you wish to substitute the Affidavit of Heirship for live testimony, e.g. living witnesses to decedent’s genealogy are unavailable.

2. The decedent’s estate consists only of real property which title thereof you want to establish for the heirs future partition or sale.

3. The Affidavit of Heirship shall be received as prima facie evidence in any suit involving title to real or personal property.

B. The Affidavit of Heirship is a statement of facts concerning the decedent’s family history, genealogy, marital status and the identity of his heirs.

C. The Affidavit’s validity is premised upon its being executed by the maker and acknowledged before a notary public, and it
having been of public record for five (5) or more years in the deed records.

**Practice Tip:** Generally, title companies and transfer agents will proceed on the basis of an affidavit of heirship being on record for less than the five (5) year requirement. Also, they generally require a minimum of three (3) affidavits from totally disinterested persons.

D. Benefit

1. This little used instrument will allow you to expeditiously transfer an insured title from a decedent’s estate consisting primarily of a homestead without resort to a judicial resolution.

V. THE SMALL ESTATE AFFIDAVIT

A. The Small Estate Affidavit, §137 T.P.C. may be used in an intestate estate when:

1. No petition for the appointment of a personal representative is pending or has been granted;
2. Thirty (30) days have elapse since the death of the decedent; and,
3. The value of the entire estate, not including homestead and exempt property, does not exceed $50,000.00.
4. The Harris County Clerk, Beverly Kaufman, has a very good interactive form on her website at www.cclerk.hctx.net.

B. Determining Value

1. §137 T.P.C. allows passage of title to property to the heirs not exceeding $50,000.00 exclusive of the value of the homestead and exempt property.

   a) Hence, we know the decedent can leave to his heirs property and money worth $50,000.00.
   b) A homestead worth any amount, e.g. $50,000.00 to $500,000.00.
   c) Exempt personal property provided for a family having an aggregate value of not more than $60,000.00 or $30,000.00 if owned by a single adult. *Texas Property Code* §42.001.

C. The Process

1. You file with the clerk of the Court an affidavit sworn to by two disinterested witnesses and by such distributees as have legal capacity, and if the facts warrant, by the natural guardian or next of kin of any minor or incompetent who is also a distributee.

   **Note!** There is no requirement for a guardianship of an incapacitated person, i.e. minor.

2. Your affidavit must include a list of the assets and liabilities of the estate, the names and addresses of the distributees, relevant family history facts concerning heirship that evidence their right to receive the money or property of the estate.

3. Upon the Court’s approval it should be recorded as an official public record by the clerk of the county.

D. Asset Collection

1. A certified copy of the affidavit is provided by the estate distributees to persons owing money to the estate, having custody or possession of estate property, or acting as registrar, fiduciary or transfer agent of the estate of or for estate property; and,
2. If a homestead is the only real property in the estate, title to the homestead can be transferred through the small estate affidavit.

   a) The Small Estate Affidavit must be recorded in the Deed Records of the county where the homestead is located to effectuate title transfer.
   b) A purchaser without notice of any undisclosed heir takes title free of the interests of the undisclosed heir.
   c) A purchaser always takes title subject to creditor claims against the decedent.

E. Undisclosed Heir(s)

1. Any undisclosed heir may recover from an heir who receives consideration from a bona fide purchaser for value to a homestead passing under this affidavit.
F. Effect of Affidavit

1. Persons making payment, delivery, transfer or issuance pursuant to the affidavit described in Section 137(a) are released from liability as if made to a personal representative of the decedent without being required to see to the application thereof or to inquire into the truth of the statements contained in the affidavit.

2. Distributees receiving payment, delivery, transfer or issuance of estate assets shall be liable to any person having a prior right or to any personal representative thereafter appointed.

3. Persons who execute the affidavit shall be liable for any damage or loss to any person which arises from any payment, delivery, transfer or issuance made in reliance on the affidavit.

4. If the person to whom the affidavit is presented refuses to pay, deliver, transfer or issue the property as requested, such property may be recovered by suit by the distributees upon proof of the facts in the affidavit.

VI. INFORMAL FAMILY AGREEMENTS (COMMON LAW) (SEE APPENDIX THIRTEEN)

A. When used: A family agreement by parties who have interests in the decedent’s estate are typically seen where the parties are trying to avoid litigation costs associated with a will contest. Two elements must be addressed in a family settlement agreement:

1. Interested parties must agree not to probate the will; and,

2. Interested parties must agree to the disposition of the estate property.

In Estate of Morris, the court states that the family settlement agreements are supported by “the general principle that the property belongs to the beneficiaries under the will and since they may, by transfers made immediately after the distribution, divide the property as they wish, there is no reason why they may not divide it by agreement before they receive it in the regular course of judicial administration of the estate”. (Estate of Morris, 577 S.W.2d 748 (Tex. Civ. App. - Amarillo 1979, writ ref’d, n.r.e.)

B. Parties to the Agreement must include those with interests under the will. However, parties whose interests are not changed or affected by the agreement need not sign. Minors or incompetents who are beneficiaries under the will must be represented by guardians.

C. The avoidance of a will contest constitutes adequate consideration to support the contractual aspects of a family settlement agreement.

D. Court approval of a family settlement agreement must be sought in the following situations:

1. When the will has been probated and the intent is to overturn the probated will;
2. When a minor is also an interested party;
3. When there are unknown remaindermen as interested parties; and,
4. If the settlement agreement modifies or terminates a testamentary trust without the agreement of all the trust beneficiaries.

E. Family settlement agreements are enforceable under contract law in Texas.

Practice tip: Be aware that family settlement agreement must meet with the requirements of a document to be filed in the real property records (i.e., be acknowledged) or the County Clerk will not accept the Agreement for filing in the deed records.

Five (5) Infrequently Used Ancillary Probate Procedures

VII. APPLICATION FOR ORDER OF NO ADMINISTRATION (TEXAS PROBATE CODE §139 THROUGH §142)

A. This formal ancillary probate procedure should not be confused with a Court’s finding of no necessity for administration in a §89A Muniment of Title or §48 Determination of Heirship proceeding.

B. Requirements

1. Here is an alternative that is available only if the decedent is survived by a spouse or minor child;
2. The value of the estate, exclusive of homestead and exempt property, cannot exceed the amount of the family allowance;
3. The application must include the names of the heirs or devisees, a list of creditors and known claims, a description of real and personal property, its value and mortgage thereon; and,
4. A prayer for the Court to establish a family allowance.

C. Hearing and Order Upon Application Pursuant to Texas Probate Code §140 (See Appendix Fifteen)

1. The court may hear the application for order of no administration with or without notice and 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 make a family allowance and if the entire assets of the estate, not including homestead and exempt property, are exhausted as a result, shall order that no administration be had of the estate and assign to the surviving spouse and minor children the entire estate.

D. Effect of Order (Texas Probate Code §141)

1. The order of no administration constitutes sufficient legal authority to all persons owing money, having custody of property, or acting as registrar or transfer agent of any estate property, and to persons purchasing from or otherwise dealing with the estate, for payment or transfer to persons described in the order as entitled to receive the estate without administration. These persons shall also be entitled to enforce their right to payment or transfer by suit.

E. Proceeding To Revoke Order (Texas Probate Code §142)

1. Within one year after the entry of an order of no administration, any interested person may file an application to revoke the order by alleging that other property has been discovered, or that property belonging to the estate was not included in the application for no administration, or that the property included in the application was incorrectly valued resulting in the situation that the total value of the estate as adjusted would exceed the amount necessary to justify the court in ordering no administration.
2. Upon proof of the allegations the court shall revoke the order of no administration.
3. If there is a contest to the value of the property, the court may appoint two appraisers, and the appraisement of these appraisers is to be received in evidence but is not conclusive.

VIII. SUMMARY PROCEEDINGS FOR ESTATE (TEXAS PROBATE CODE §143)

A. This alternative is available when:

1. An inventory, appraisement and list of claims has been filed;
2. The estate, exclusive of homestead, exempt property and family allowance, does not exceed claims in the first four classes;
3. After application, the personal representative shall upon order of the Court pay claims in the order provided and file a final account; and,
4. On approval of the final account, the personal representative is discharged and the administration closed.

IX. UNQUALIFIED COMMUNITY ADMINISTRATION (TEXAS PROBATE CODE §§155, 160, 177(B))

A. Administration of Community Property

1. When a husband or wife dies intestate and all children are born of the marriage, the community property passes to the survivor and no administration shall be necessary under the provisions of Texas Probate Code §§45 and 155.

B. Powers of Surviving Spouse When No Administration is Pending - §160

1. To present an affidavit to decedent’s employer evidencing surviving spouse’s role as unqualified administrator to collect decedent’s final paycheck. §160 T.P.C. specifically addresses this real world beneficial power of a surviving spouse.
2. To sue or be sued to recover community property.
3. To sell, mortgage or leave community property to pay community debts.
4. To collect community claims.
5. To exercise such other powers as shall be necessary to wind up community affairs.

Note! The powers of a surviving spouse are not terminated by remarriage.

C. Benefits

1. Essentially, a surviving spouse is receiving statutory authority to collect the decedent’s final paycheck, including sick pay and vacation pay and releasing the employer from liability for tendering same; and, allowing the survivor to collect and settle the estate’s assets and debts before obtaining a formal or ancillary probate procedure.

D. Disadvantages

1. Inevitably, some probate procedure will be required to transfer title to real or personal property.

X. QUALIFIED COMMUNITY ADMINISTRATION (TEXAS PROBATE CODE §§161 THROUGH 176)

A. Community Administration

Whenever an interest in community property passes to someone other than the surviving spouse, i.e. children from a former marriage, the surviving spouse may qualify as community administrator if:

1. The deceased spouse failed to name an executor;
2. If the executor named in the will of the deceased spouse is for any reason unable or unwilling to qualify as such; or
3. If the deceased spouse died intestate.

B. Application for Community Administration

(See Appendix Sixteen)

1. A surviving spouse who desires to qualify as a community administrator shall within four years after the death of the other spouse, file a written application in the court having venue over the estate of the deceased spouse stating the items set forth in Texas Probate Code §§162(a) through (e).

C. Appointment of Appraisers

1. If the appointment of appraisers is requested by the applicant, or by any interested person, the judge shall, without notice or citation, enter an order appointing appraisers to appraise the estate.

D. Inventory, Appraisal and List of Claims

1. Within ninety (90) days after qualifying, the community administrator must file an inventory, appraisal and list of claims. Additionally, a bond must be made in an amount determined to be adequate by the Court.

E. Order of Court

1. After the judge has signed the order approving inventory, appraisal and list of claims and bond, the order shall authorize the survivor as community administrator to control, manage, and dispose of the community property in accordance with the provisions of the Texas Probate Code.

F. Powers of Community Administrator

1. Section 167 allows the community administrator broad powers to control, manage and dispose of the community property without further Court action, as fully and completely as if he or she were the sole owner thereof.

G. Creditor May Require Exhibit

1. When a year has elapsed from the filing of the Inventory, any creditor not fully paid may require the administrator to file an accounting in the form of an exhibit evidencing the status of the estate. The creditor may thereafter receive an order for the debt’s payment. Should the administrator not pay the debt within thirty (30) days, the creditor may sue the administrator and surety.

H. Termination of Community Administration

1. The administrator may be terminated at any time, after one year has passed since the
filing of the bond, by the survivor or other interested party to the deceased’s estate.

I. Remarriage of Surviving Spouse

1. The remarriage of surviving spouse shall not terminate the surviving spouse’s powers or liabilities as a qualified community administrator.

J. Disadvantages

1. The Courts are reluctant to allow this ancillary probate procedure because there is no citation by posting requirement, i.e. an obvious notice problem regarding heirs; there is no legal determination as to whom is the surviving spouse, i.e. no formal heirship determination (although a determination of heirship could be done contemporaneously); and, applicants can rarely obtain a bond from a surety company.
APPENDIX ONE

IN THE ESTATE OF § IN THE PROBATE COURT
JOHN DOE, § NUMBER ONE OF
DECEASED § HARRIS COUNTY, TEXAS

APPLICATION TO PROBATE WILL AS A MUNIMENT OF TITLE

JANE DOE (the “Applicant”) files this Application to Probate Will as a Muniment of Title and respectfully shows the Court:

1. That Applicant is an individual interested in this Estate. Applicant’s domicile and address is _________________.

2. That John Doe (the “Decedent”) is dead, having died on September 16, 2004 at the age of 106 years in ________________, at which time Decedent was domiciled in Harris County, Texas.

3. That this Court has venue since the Decedent resided and had his domicile in Harris County, Texas at the time of Decedent’s death.

4. That Decedent owned real and personal property, generally described as real property situated in Harris County, Texas, and cash, automobiles, household furnishings and personal effects of a probable value in excess of $_________.

5. That Decedent left a written Will dated January 1, 2000 which was never revoked and is filed herewith.

6. The name and address of the executrix named in the Will is Matilda Doe who resides at 144 Moose Avenue, Bangor, Maine

7. The subscribing witnesses and their addresses are Buford Ford who resides at 101 Avenue C, Houston, Harris County, Texas and Beulah Smith who resides at 1234 Avenue A, Houston, Harris County, Texas. The Will has been made self-proved in the manner prescribed by law.

8. That no child or children were born to or adopted by Decedent after the making of said Will by Decedent.

9. That there are no unpaid debts owing by the Estate, excluding debts secured by liens against real estate, and no necessity exists for the administration of the estate.

10. That Decedent has never been divorced.

11. That no/the following charitable organization, state, or governmental agency has been named in Decedent’s Will as a devisee.

12. [Add if requesting waiver of Probate code Section 89C(d) Affidavit]

   Applicant _________ [is the sole beneficiary under the will or and __________ (names of other beneficiaries and their relationship to Applicant) are all of the beneficiaries under the Will] and Applicant requests the Court to waive the requirement under Section 89C(d) of the Texas Probate Code of filing an Affidavit stating the terms of the Will that have been fulfilled and the terms that remain unfulfilled.

WHEREFORE, PREMISES CONSIDERED, Applicant prays that citation be issued to all persons interested in the Estate of JOHN DOE, DECEASED, as required by law; that said Will be admitted to probate as a muniment of title only; and that such other and further orders be made as to the Court may seem proper.
Respectfully submitted,

Law Firm

BY:__________________________
Attorneys for Applicant

Additional Language Required if:
Will submitted after four years:
“That said Applicant is not in default for failure to present the Will within four years from the death of the Testator.”

Written Will Cannot Be Produced in Court:
“The original Will cannot be produced because... (must rebut presumption that Will was revoked if last seen in possession of Testator!)”
“A true and correct copy of the Will is attached to this application and incorporated by this reference.”
“The names, age, marital status, relationship to decedent and addresses of each devisee and of each person who would inherit as an heir in the absence of a valid will are:______________.”
APPENDIX TWO

Cause No. 000,000

IN THE ESTATE OF § IN THE PROBATE COURT
JOHN DOE, § NUMBER ONE OF
DECEASED § HARRIS COUNTY, TEXAS

TESTIMONY OF WITNESS

THE STATE OF TEXAS §
COUNTY OF HARRIS §

On this _____ day of _________________, 200__, I, ________________ personally appeared in open court and testified as follows:

1. That John Doe (the "Decedent") is dead, having died on September 16, 2004 at the age of 106 years in _________________, at which time Decedent was domiciled in Harris County, Texas.

2. That this Court has venue since the Decedent resided and had his domicile in Harris County, Texas at the time of Decedent’s death.

3. That Decedent owned real and personal property, generally described as real property situated in Harris County, Texas, and cash, automobiles, household furnishings and personal effects of a probable value in excess of $________.

4. That Decedent left a written Will dated January 1, 2000 which was never revoked and is filed herewith.

5. The name and address of the executrix named in the Will is Matilda Doe who resides at 144 Moose Avenue, Bangor, Maine

6. The subscribing witnesses and their addresses are Buford Ford who resides at 101 Avenue C, Houston, Harris County, Texas and Beulah Smith who resides at 1234 Avenue A, Houston, Harris County, Texas. The Will has been made self-proved in the manner prescribed by law.

7. That no child or children were born to or adopted by Decedent after the making of said Will by Decedent.

8. That there are no unpaid debts owing by the Estate, excluding debts secured by liens against real estate, and no necessity exists for the administration of the estate.

9. That Decedent has never been divorced.

10. That no/the following charitable organization, state, or governmental agency has been named in Decedent’s Will as a devisee.

WHEREFORE, PREMISES CONSIDERED, Applicant prays that citation be issued to all persons interested in the Estate of JOHN DOE, DECEASED, as required by law; that said Will be admitted to probate as a muniment of title only; and that such other and further orders be made as to the Court may seem proper.

Respectfully submitted,

Law Firm

BY:__________________________
Attorneys for Applicant

Additional Language Required if:
Will submitted after four years:
“That said Applicant is not in default for failure to present the Will within four years from the death of the Testator.”

Written Will Cannot Be Produced in Court:
“The original Will cannot be produced because.... (must rebut presumption that Will was revoked if last seen in possession of Testator!)
“A true and correct copy of the Will is attached to this application and incorporated by this reference.”
“The names, age, marital status, relationship to decedent and addresses of each devisee and of each person who would inherit as an heir in the absence of a valid will are:_________________.

”
APPENDIX THREE

IN THE ESTATE OF § IN THE PROBATE COURT
JOHN DOE, § NUMBER ONE OF
DECEASED § HARRIS COUNTY, TEXAS

ORDER ADMITTING WILL TO PROBATE AS A MUNIMENT OF TITLE

On this the ____ day of __________, 200_, came on to be heard the Application for Probate of Will as a Muniment of Title filed by ________________, (“Applicant”) in the Estate of __________ (“Decedent”).

The Court heard the evidence and reviewed the Will and other documents filed herein and finds that the allegations contained in the Application are true; that notice and citation have been given in the manner and for the length of time required by law; that Decedent is dead; that this Court has jurisdiction and venue of the Decedent’s Estate; that Decedent left a written Will dated January 1, 2000, executed with the formalities and solemnities and under the circumstances required by law to make it a valid Will; that on such date Decedent had attained the age of 18 years and was of sound mind; that such Will was not revoked by Decedent; that Applicant was not in default in failing to present Decedent’s Will for probate within four years of Decedent’s death; that such will is entitled to probate; that there are no unpaid debts owing by the Estate of Decedent other than those secured by liens on real estate; and that there is no necessity for administration of such Estate.

IT IS THEREFORE ORDERED that such Will is admitted to probate as a Muniment of Title only, and the Clerk of this Court is ORDERED to record the Will, together with the Application in the Minutes of this Court, and this order shall constitute sufficient legal authority to all persons owing any money to the estate of the decedent, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and to persons purchasing from or otherwise dealing with the estate, for payment or transfer, without liability, to the persons described in such will as entitled to receive the particular asset without administration.

IT IS FURTHER ORDERED that upon the payment of taxes, in any due, and the filing with the Clerk before the 181st day after the date that the Will is admitted to Probate a sworn affidavit stating specifically the terms of the Will that have been fulfilled and the terms of the Will that have been unfulfilled, this Estate be dropped from the Docket.

Signed this ________ day of ______________, 200_

___________________________________________
JUDGE PRESIDING
APPENDIX FOUR

NO. ______________

ESTATE OF § IN THE PROBATE COURT
§ NUMBER _____ (_____) OF
§ __________ COUNTY, TEXAS

APPLICATION FOR PROBATE OF WILL PURSUANT TO T.P.C. § 145C
AND ISSUANCE OF LETTERS TESTAMENTARY

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Applicant ________________________ (“Applicant”) and furnishes the following information to the Court for the probate of the written Will of _______________________ (“Decedent”) and for issuance of Letters Testamentary to Applicant pursuant to Texas Probate Code § 145 (c):

(1) Applicant is an individual interested in this Estate, domiciled in and residing at ____________________, ______________, ___________ County, Texas _____.

(2) Decedent died on ________________ in __________, ____________ County, Texas at the age of ______ years.

(3) This Court has jurisdiction and venue because Decedent was domiciled and had a fixed place of residence in _______________ County, Texas on his/her date of death.

(4) Decedent owned real and personal property described generally as cash, securities, household goods, and personal effects of a probable value in excess of $___________.

(5) Decedent left a valid, written will (“Will”), dated ________________, which was never revoked and wherein ________________ is named as Executor of Decedent’s Estate.

(6) The subscribing witnesses to the Will and their present resident addresses are listed as follows:
   ___________________________    ___________________________
   ___________________________    ___________________________
   ___________________________    ___________________________

(7) No child or children were born to or adopted by Decedent after the date of the Will.

(8) Decedent was married to __________________________ in or about ___________. Said marriage ended in divorce in or about _______________. The place of the divorce was _______________. In or about ____________, Decedent married _______________. Decedent remained married to ______________________ until ______________________ died on _______________.

(9) A necessity exists for the administration of this Estate.

(10) No state, governmental agency of the state or charitable organization is named as a devisee in the Decedents Will.

(11) By filing this Application, Applicant is requesting that the Court appoint him/her to be the Independent Executor of the Decedent’s Estate. Pleading further, Applicant would not be disqualified by law from serving as such or from accepting Letters Testamentary, and Applicant would be entitled to such Letters.

(12) Other than Applicant, the following two (2) individuals are the sole beneficiaries of the Estate:
   A. ______________________; and
B. ________________________

All Distributees agree on the advisability of having an independent administration and further agree that Applicant should be appointed as Independent Executor without bond. Waivers of Citation and Notice, Waivers and Renunciations of Rights to Serve, and Requests for Independent Administration which have been signed by _____________ and ________________ are attached to this Application as Exhibits A and B respectively.

Applicant prays that citation be issued as required by law to all persons interested in this Estate; that the Will be admitted to probate; that Letters Testamentary be issued to Applicant as Independent Executor pursuant to Texas Probate Code § 145(c); and that all other orders be entered as the Court may deem proper.

Respectfully submitted,

THOMPSON & KNIGHT LLP

By: __________________________
   W. CAMERON McCULLOCH
   State Bar Number 00788930
   333 Clay, Street, Suite 3300
   Houston, Texas  77002-4499
   (713) 654-8111
   (713) 654-1871 (FAX)

ATTORNEYS FOR APPLICANT
APPENDIX FIVE

ESTATE OF __________________________, NUMBER _____ (_____) OF ___________ COUNTY, TEXAS

APPLICATION FOR PROBATE OF WILL PURSUANT TO T.P.C.§ 145D AND ISSUANCE OF LETTERS OF INDEPENDENT ADMINISTRATION WITH WILL ANNEXED

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Applicant ________________________ ("Applicant") and furnishes the following information to the Court for the probate of the written Will of _______________________ ("Decedent") and for issuance of Letters of Independent Administration With Will Annexed to Applicant:

(1) Applicant is an individual interested in this Estate, domiciled in and residing at ____________________, ______________ County, Texas _____.

(2) Decedent died on ________________ in __________, ____________ County, Texas at the age of ______ years.

(3) This Court has jurisdiction and venue because Decedent was domiciled and had a fixed place of residence in ______________ County, Texas on his/her date of death.

(4) Decedent owned real and personal property described generally as cash, securities, household goods, and personal effects of a probable value in excess of $__________.

(5) Decedent left a valid, written will ("Will"), dated ____________________, which was never revoked and wherein ____________________ and ____________________ are named as Independent Co-Executors of Decedent’s Estate. ____________________ cannot serve because he/she passed away on ____________________. ____________________ (a.k.a. - the successor in interest to ____________________, Houston, Texas) is unwilling to serve as demonstrated by the Renunciation of Letters Testamentary which is attached to this Application as Exhibit A.

(6) The subscribing witnesses to the Will and their present resident addresses are listed as follows:

______________________    ________________________
______________________    ________________________

(7) No child or children were born to or adopted by Decedent after the date of the Will.

(8) Decedent was married to ____________________ in or about __________. Said marriage ended in divorce in or about __________. The place of the divorce was ______________. In or about ______________. Decedent married ______________. Decedent remained married to ____________________ until ________________ died on ________________.

(9) A necessity exists for the administration of this Estate.

(10) No state, governmental agency of the state or charitable organization is named as a devisee in the Decedents Will.

(11) By filing this Application, Applicant is requesting that the Court appoint him/her to be the Independent Administrator With Will Annexed of the Decedent’s Estate. Pleading further, Applicant would not be disqualified by law from serving as such or from accepting Letters of Independent Administration With Will Annexed, and Applicant would be entitled to such Letters.
(12) Other than Applicant, the following two (2) individuals are the sole beneficiaries of the Estate:

A. __________________; and
B. ______________________.

All Distributees agree on the advisability of having an independent administration and further agree that Applicant should be appointed as Independent Administrator With Will Annexed without bond. Waivers of Citation and Notice, Waivers and Renunciations of Rights to Serve, and Requests for Independent Administration which have been signed by _____________ and ________________ are attached to this Application as Exhibits A and B respectively.

Applicant prays that citation be issued as required by law to all persons interested in this Estate; that the Will be admitted to probate; that Letters of Independent Administration be issued to Applicant as Independent Administrator With Will Annexed Pursuant to Texas Probate Code § 145(d); and that all other orders be entered as the Court may deem proper.

Respectfully submitted,

THOMPSON & KNIGHT LLP

By: ________________________________

W. CAMERON McCulloch
State Bar Number 00788930
333 Clay, Street, Suite 3300
Houston, Texas 77002-4499
(713) 654-8111
(713) 654-1871 (FAX)

ATTORNEYS FOR APPLICANT
APPENDIX SIX

NO. ____________________

ESTATE OF § IN THE PROBATE COURT

________________________, § NUMBER ______ (___) OF

DECEASED § ______________ COUNTY, TEXAS

APPLICATION FOR ISSUANCE OF LETTERS OF INDEPENDENT
ADMINISTRATION PURSUANT TO § 145(e) AND APPLICATION
FOR WAIVER OF BOND PURSUANT TO § 145(p)

TO THE HONORABLE JUDGE OF SAID COURT:

_________________________ ("Applicant") furnishes the following information to the Court concerning the
Estate of ________________________, Deceased ("Decedent"), for the appointment of an Administrator and for the issuance of
Letters of Independent Administration pursuant to § 145(e) of the Texas Probate Code, and Application for Waiver of Bond
pursuant to § 145(p) of the Texas Probate Code and would respectfully show this Court the following:

1. Applicant is domiciled in and residing at ______________________, _____________, Texas _____________, and is
Decedent's ___________________. Applicant is not disqualified by law to act as Independent Administrator of Decedent's
Estate.

2. Decedent died intestate on __________________ in ______________, __________ County, Texas.

3. This Court has jurisdiction and venue because Decedent was domiciled and had a fixed place of residence in this County
on the date of death.

4. Decedent owned real and personal property described generally as [home, cash, automobile, securities, household
goods, and personal effects] of a probable value in excess of $___________.

5. The name, address and relationship of the heirs to the Decedent are as follows:

_______________________
_______________________
_______________________

6. Decedent was never married and never had any children.

7. A necessity exists for the administration of this Estate because there are at least two debts against the Estate and
because the Court should partition the Estate among the heirs.

8. The heirs request that the Court name ______________________ as Independent Administrator, as evidenced by the
attached Request for Independent Administration and Waiver of Citation signed by them. They request that no action be had in
the Probate Court in relation to the settlement of Decedent's Estate other than the return of an Inventory, Appraisement, and List
of Claims of the Decedent's Estate.

9. Applicant further requests that the Court waive the requirement of the bond if the Court appoints _________________
Independent Administrator of Decedent's Estate. The Estate's debts are such that the creditor's will be fully protected without an
Administrator's bond.

Applicant prays that notice be issued as required by law to all persons interested in this Estate; that an independent
administration be granted according to the Texas Probate Code; that Letters of Independent Administration be issued to
Applicant pursuant to § 145(e) of the Texas Probate Code; that the bond be waived pursuant to § 145(p) of the Texas Probate
Code; and that all other Orders be entered as the Court may deem proper.

Respectfully submitted,
THOMPSON & KNIGHT LLP

By: ________________________________
    GROVER S. GRIMES, JR.
    State Bar No. 08495600
    333 Clay Street, Suite 3300
    Houston, Texas 77002-4499
    (713) 654-8111
    (713) 654-1871 (FAX)

ATTORNEYS FOR THE ESTATE
APPENDIX SEVEN

NO. ____________________

ESTATE OF § IN THE PROBATE COURT
§ ________________.
§ NUMBER _______ (___) OF
§ ______________ COUNTY, TEXAS

REQUEST FOR INDEPENDENT ADMINISTRATION
AND WAIVER OF CITATION

I, ____________________, distributee/heir of __________________, Decedent, who died in ________________ County, Texas on ________________, leaving a valid/no last will and testament. As distribute/heir of the Decedent, I request the Court to appoint ____________ as Independent Executor/Independent Administrator With Will Annexed/Independent Administrator for the Decedent's Estate and that no action shall be had in the County Court in relation to the settlement of the Decedent's Estate other than the return of an Inventory, Appraisement, and List of Claims of the Decedent's Estate. Furthermore, I request that the Court waive the posting of a bond by Applicant.

I hereby waive the issuance and service of citation and notice of the Application for Issuance of Letters of Independent Administration pursuant to §145 c/d/e and Application for Waiver of Bond pursuant to § 145(p). (I further waive the issuance and service of citation and notice of the Application to Determine Heirship pursuant to § 50 (a).)

__________________________________________
SUBSCRIBED AND SWORN TO BEFORE ME by ____________________ on the _________ day of ____________________, 20_____, to certify which witness my hand and seal of office.

__________________________________________
Notary Public in and for the State of T E X A S
APPENDIX EIGHT

NO. __________________

ESTATE OF ___________________________ § IN THE PROBATE COURT

DECEASED ___________________________________ § NUMBER _______ (_____) OF

___________ COUNTY, TEXAS

ORDER AUTHORIZING ISSUANCE OF LETTERS TESTAMENTARY/OF INDEPENDENT ADMINISTRATION

ON THIS DAY came on to be heard the Application for Letters of Independent Administration pursuant to § 145(c)/(d)/(e) of the Texas Probate Code, and Application for Waiver of Bond pursuant to § 145(p) of the Texas Probate Code filed by ________________________ (“Applicant”), and after hearing the evidence in support of such Application, the Court finds that the allegations contained in such Application are true; that notice and citation have been given in the manner and for the length of time required by law; that Decedent is dead and that four years have not elapsed since the date of Decedent’s death; that this Court has jurisdiction and venue of the Decedent’s Estate; that Decedent died intestate; that no objection or contest has been filed; that all of the necessary proof required has been made; that pursuant to Section 145(c)/(d)/(e) and 145(p) of the Texas Probate Code, all of the distributees/heirs agree it is advisable and in the best interest of the Estate that __________________ be appointed Independent Executor/Administrator Will Will Annexed/Administrator and to serve without bond; that Applicant is duly qualified and not disqualified by law to act as such or to receive Letters Testamentary/of Independent Administration; that a necessity exists for the administration of this Estate; and that no interested person has applied for the appointment of appraisers and none are deemed necessary by the Court. It is, therefore,

ORDERED that no bond or other security is required and that upon the taking and filing of the Oath required by law by ________________________, the Clerk of the Court shall issue, Letters Testamentary/of Independent Administration to ________________________, who is appointed as Independent Executor/Administrator With Will Annexed/Administrator pursuant to Section 145(c)/(d)/(e) of the Texas Probate Code of the Decedent’s Estate, and no other actions shall be had in this Court other than the return of the Inventory, Appraisement, and List of Claims as required by law.

SIGNED this ______ day of __________________________, 20_____.

________________________________________
JUDGE PRESIDING

APPROVED:

THOMPSON & KNIGHT LLP

By: _________________________________
GROVER S. GRIMES, JR.
State Bar No. 09495600
333 Clay Street, Suite 3300
Houston, Texas 77002-4499
(713) 654-8111
(713) 654-1871 (FAX)

ATTORNEYS FOR THE ESTATE
APPENDIX NINE

ESTATE OF § IN THE PROBATE COURT
____________________, § NUMBER _____ (__) OF
DECEASED § _______________ COUNTY, TEXAS

APPLICATION TO DETERMINE AND DECLARE HEIRSHIP

_______________________, ("Applicant"), who resides at __________________________, _______________, Texas _________, furnishes the following information to the Court:

1. ____________________ ("Decedent") died intestate on or about ___________________, in _____________,
   _____________ County, Texas at the age of _________ years.

2. An administration is pending upon Decedent's Estate in the above numbered and entitled cause/no administration is pending upon the Decedent’s estate and none appears necessary, and it is necessary and in the best interest of the Estate for the Court to determine who are the heirs and only heirs of Decedent.

3. At the time of Decedent's death, Decedent resided in and had domiciled in _____________, _____________ County, Texas. This Court has venue since Decedent resided in _____________ County, Texas.

4. Decedent owned real and personal property described generally as [home, cash, automobile, securities, household goods, and personal effects] of a probable value in excess of $__________________.

5. Decedent was never married.

6. No children were born to or adopted by Decedent during his/her lifetime.

7. The name, address, true interest in Decedent's property and relationship of each known heir to the Decedent are as follows:

<table>
<thead>
<tr>
<th>Name and Address</th>
<th>Relationship</th>
<th>True Interest</th>
</tr>
</thead>
</table>

8. To the best of Applicants’ knowledge, Decedent died intestate.

9. This Application does not omit any information required by § 49 of the Texas Probate Code.

WHEREFORE, PREMISES CONSIDERED, Applicant prays as follows:
1. That citation be issued to all parties in these proceedings as required by the Texas Probate Code unless waived;
2. That, on final hearing hereof, this Court determine and declare who are the heirs of ____________________;
3. That this Court determine and declare the respective shares and interests of such heirs of the Estate of ____________________, Deceased under the laws of descent and distribution of the State of Texas;
4. That an attorney ad litem be appointed to represent the interests of any heirs whose names and whereabouts are unknown or who are suffering from a legal disability;
5. That this Court issue its Order for such other and further relief to which Applicant may show himself/herself justly entitled and as to the Court may seem necessary and proper.

Respectfully submitted,

THOMPSON & KNIGHT LLP

By: _______________________________________
GROVER S. GRIMES, JR.
State Bar No. 08495600
333 Clay Street, Suite 3300
Houston, Texas 77002-4499
(713) 654-8111
(713) 654-1871 (FAX)

ATTORNEYS FOR THE ESTATE

AFFIDAVIT

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF ____________ §

BEFORE ME, the undersigned authority, on this day personally appeared ________________, and after being duly sworn, stated that insofar as is known to me, all the allegations of the foregoing Application to Determine and Declare Heirship are true in substance and in fact and that no material fact or circumstance has, within my knowledge, been omitted from such Application.

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, by __________________________ this ________ day of _____________________, 20___, to certify which witness my hand and seal of office.

Notary Public in and for the State of Texas
APPENDIX TEN

NO. ________________

ESTATE OF § IN THE PROBATE COURT

_____________________. § NUMBER _____ (___) OF

DECEASED § ________________ COUNTY, TEXAS

MOTION TO APPOINT ATTORNEY AD LITEM

__________________________, Applicant for the determination and declaration of heirship herein, request the Court to appoint an attorney ad litem to represent Decedent's heirs whose names and/or whereabouts are unknown and heirs who are suffering legal disability.

ORDER APPOINTING ATTORNEY AD LITEM

ON THIS DAY, the Motion to Appoint Attorney Ad Litem was considered by this Court, and the Court finds that the heirs of ________________, Deceased, whose names and/or whereabouts are unknown, or who are suffering legal disability, have not answered or entered an appearance herein, and that an attorney ad litem should be appointed. It is therefore,

ORDERED that _______________________________, an attorney licensed to practice before this Court, be appointed to defend the interests of those Defendants and that this suit proceed and be defended by his attorney as in other causes where service is made by publication.

SIGNED this _________ day of _________________________ _, 20_____.

________________________________________
JUDGE PRESIDING
APPENDIX ELEVEN

NO. ______________

ESTATE OF § IN THE PROBATE COURT
§ § NUMBER _______(__) OF
§ § _______________ COUNTY, TEXAS

DECEASED §

JUDGMENT DETERMINING AND DECLARING HEIRSHIP

On this day came on to be heard the sworn Application to Determine and Declare Heirship of the Estate of ________________, Deceased ("Decedent"), wherein ______________, is the Applicant, and Decedent's living heirs whose names and/or whereabouts are unknown and heirs suffering legal disability are Defendants, and it appears to the Court, and the Court so finds, that all parties interested in the Estate of Decedent have been duly and legally served with citation as required by law; that the Court appointed an attorney ad litem to appear and answer and to represent Defendants, and such attorney ad litem did so appear and filed an answer for Defendants; that this Court has jurisdiction of the subject matter and all persons and parties; that the evidence presented and admitted fully and satisfactorily proves each and every issue presented to the Court; and that Decedent died intestate and that the heirship of Decedent has been fully and satisfactorily proved, as well as the identity of the interest and shares of each of the heirs therein.

The Court finds, and it is ORDERED and DECREED by the Court, that the names and places of residence of the heirs of Decedent and their respective shares and interests in the real and personal property of Decedent are as follows:

<table>
<thead>
<tr>
<th>Name and Address</th>
<th>Relationship</th>
<th>True Interest</th>
</tr>
</thead>
</table>

It is further ORDERED and DECREED, that ________________, the Attorney Ad Litem, is awarded $__________ for attorney’s fees and expenses and is hereby discharged as Attorney Ad Litem.

The Court finds that there exists no necessity for administration of the Estate of Decedent, none is ordered, and upon payment of all costs of Court, no further proceedings be had in this cause.

SIGNED this _______ day of _____________________, 20___.

________________________________________
JUDGE PRESIDING
AFFIDAVIT OF FACTS CONCERNING THE IDENTITY OF HEIRS

Before me, the undersigned authority, on this day personally appeared ____________ (“Affiant”) who, being first duly sworn, upon his/her oath states:

1. My name is ________, and I live at _______. I am personally familiar with the family and marital history of _____________ (“Decedent”), and I have personal knowledge of the facts stated in this affidavit.

2. I knew decedent from ___________ until ____________. Decedent died on ___________. Decedent’s place of death was ___________. At the time of decedent’s death, decedent’s residence was ___________.

3. Decedent’s marital history was as follows: (Insert marital history and, if decedent’s spouse is deceased, insert date and place of spouse’s death.)

4. Decedent had the following children: (Insert name, birth date, name of other parent, and current address of child or date of death of child and descendants of deceased child, as applicable, for each child.)

5. Decedent did not have or adopt any other children and did not take any other children into decedent’s home or raise any other children, except: (insert name of child/children or state “none”.)

6. (Include if decedent was not survived by descendants.) Decedent’s mother was: (insert name, birth date, and current address or date of death of mother, if applicable.)

7. (Include if decedent was not survived by descendants.) Decedent’s father was: (insert name, birth date, and current address or date of death of father, if applicable.)

8. (Include if decedent was not survived by descendants or by both mother and father.) Decedent had the following siblings: (insert name, birth date, and current address or date of death of each sibling and parents of each sibling and descendants of each deceased sibling, as applicable or state “none”.)

9. (Optional) The following persons have knowledge regarding the decedent, the identity of decedent’s children, if any, parents, or siblings, if any: (insert names of persons with knowledge, or state “none”.)

10. Decedent died without leaving a written will. (Modify statement if decedent left a written will.)

11. There has been no administration of decedent’s estate. (Modify statement if there has been administration of decedent’s estate.)

12. Decedent left no debts that are unpaid, except: (insert list of debts or state “none”.)

13. There are no unpaid estate or inheritance taxes, except: (insert list of unpaid taxes or state “none”.)

14. To the best of my knowledge, decedent owned an interest in the following real property: (insert list of real property in which decedent owned an interest or state “none”.)

15. (Optional) The following were the heirs of decedent: (insert names of heirs).

16. (Insert additional information as appropriate, such as the size of decedent’s estate.)

Signed this __________ day of ____________________, 200__.

_____________________________
(signature of affiant)

State of Texas
County of Harris

Sworn to and subscribed to before me on ___day of ________, 200-, by ______________

_____________________________
Seal
Notary

commission expires:
APPENDIX THIRTEEN

Cause No. 000,000

ESTATE OF BUFORD JOHNSON § IN THE PROBATE COURT NO. 1
DECEASED § HARRIS COUNTY TEXAS

RULE 11 AND FAMILY SETTLEMENT AGREEMENT

1. The “Parties” to this Rule 11 and Family Settlement Agreement (“Agreement”) are:


   B. Gladys Smith, Guardian of the Person and Estate of Kitty Wells Johnson, An Incapacitate Person, Decedent’s surviving spouse and Contestant herein.

   C. Fred Johnson, Bubba Johnson, Ernie Johnson, Zoey Johnson and Elmo Johnson, Beneficiaries of the Estate of Buford Johnson pursuant to the December 28, 1996 Will.

2. Each of the Parties to this Agreement for and in consideration of the promises, agreements, terms, warranties, and representations contained herein, and in consideration of other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged and confessed, hereby releases, acquits, and forever discharges each of the other parties individually and in all capacities to this Agreement and their attorneys in any capacity from any and all liability, damages and/or causes of action, whether same be known or unknown, anticipated or unanticipated, arising out of and/or in any way relating to this action and the will, property and estates of the Deceased and Contestant. The foregoing release, acquittal and discharge includes and extends to, but is not limited to, any and all claims arising from federal and/or state law, from statutory and/or common law, in contract and/or in tort, at law and/or in equity, including specifically, but not limited to, any and all claims arising from federal and/or state law, from statutory and/or common law, in contract and/or in tort, at law and/or in equity.

3. The mutual promises and other consideration set forth in this Agreement mentioned above are accepted by the Parties as described above and their respective attorneys in full satisfaction and settlement of all claims, counterclaims, third-party claims, demands, allegations, cross-action, actions, fee disputes and/or causes of action of any whatsoever that any of them have against each other which have been asserted, which might have or could have been asserted and/or which might be or could be asserted in the future, whether the same be known or unknown, anticipated or unanticipated, for any type of injuries and/or damages whatsoever alleged to arise from and/or in any way related to this action and the will, property and estates of the Deceased and Contestant. The foregoing release, acquittal and discharge includes and extends to, but is not limited to, any and all claims arising from federal and/or state law, from statutory and/or common law, in contract and/or in tort, at law and/or in equity.

4. Notwithstanding the foregoing terms, provisions, promises, and/or agreements, the Parties do not release, acquit or discharge each other from any obligations, liabilities, claims, demands, allegations, actions, causes of action, injuries, and/or damages arising from any promise, agreement, term warranty, and/or representation or any breach thereof contained in this Agreement which is contractual.

5. The Parties represent and warrant that each are fully authorized to enter into this Agreement and to sign this Agreement in their stated capacities and that this is a binding, enforceable agreement on the Parties.

6. This is a binding and enforceable Agreement and includes all of the essential terms of the Agreement between the Parties. The terms of the Agreement are as follows:

7. The parties warrant and represent to one another the following:
a. They have entered into this agreement voluntarily and of their own free will, and not as a result of any undue influence and/or duress.
b. They have not relied on anything that any other party said or omitted to say in choosing to enter into this agreement
c. They have relied exclusively on their own due diligence and the advice of their own legal counsel, and have reviewed the terms of this agreement carefully with their legal counsel; and
d. They are fully authorized and qualified to enter into this agreement.

8. This is an integrated agreement, the terms of which are fully and completely reflected on its face. This document constitutes the entire agreement between and among the parties. Any modifications or amendments to this Agreement must be in writing and signed by all parties.
APPLICATION FOR ORDER OF NO ADMINISTRATION PURSUANT TO T.P.C. § 139

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Applicant ________________________ ("Applicant") and furnishes the following information to the Court for an Order of No Administration Pursuant to Texas Probate Code § 139:

(1) Applicant is the surviving spouse of Decedent/is filing this application on behalf of the surviving spouse and minor children of the Decedent, domiciled in and residing at ____________________, ______________, __________ County, Texas _____.

(2) Decedent died on __________ in __________, ____________ County, Texas at the age of ______ years.

(3) This Court has jurisdiction and venue because Decedent was domiciled and had a fixed place of residence in __________ County, Texas on his/her date of death.

(4) Decedent owned real and personal property subject to any liens and encumbrances as set forth below of a probable value according to the best knowledge and information of the Applicant of $___________:
   A. Describe property, value and liens and encumbrances attached thereto

(5) Decedent died intestate/left a valid, written will ("Will"), dated ________________, which was never revoked and wherein ________________ is named as Executor of Decedent's Estate.

(6) The subscribing witnesses to the Will and their present resident addresses are listed as follows:
   ________________    ________________
   ________________    ________________
   ________________    ________________

(7) No child or children were born to or adopted by Decedent after the date of the Will.

(8) Decedent was married to ________________ in or about ____________. Said marriage ended in divorce in or about ________________. The place of the divorce was ________________. In or about _____________. Decedent married _________________. Decedent remained married to ________________ until ________________ died on _________________.

(9) As the value of the entire assets of the estate, not including homestead and exempt property, does not exceed the amount to which the surviving spouse and minor children of the decedent are entitled as a family allowance, there is no necessity exists the administration of this Estate.

(10) No state, governmental agency of the state or charitable organization is named as a devisee in the Decedents Will.

(11) The following constitute all of the distributees/heirs of the estate:
   A.
   B.
(12) The following are all of the creditors and the amounts of their claims so far as same are known:

A.
B.

Applicant prays that citation be issued as required by law to all persons interested in this Estate; that the Will be admitted to probate; that the Court make a family allowance and that, if the entire assets of the estate, not including the homestead and exempt property are thereby exhausted, the same be set aside to the surviving spouse and minor children.
APPENDIX FIFTEEN

NO. _____________

ESTATE OF § IN THE PROBATE COURT
§ § NUMBER _____ (_____) OF
§ § __________ COUNTY, TEXAS

DECEASED §

APPLICATION FOR PROBATE OF WILL AND
APPOINTMENT OF COMMUNITY ADMINISTRATOR

______________, ("Applicant") files this Application for Probate of Will and Appointment of Community Administrator for the Estate of ____________, ("Decedent") pursuant to Texas Probate Code § 162 and respectfully shows the Court the following:

1) Decedent died on ________________ in __________, ____________ County, Texas at the age of ______ years.

2) This Court has jurisdiction and venue because Decedent was domiciled and had a fixed place of residence in ______________ County, Texas on his/her date of death.

3) Applicant is the surviving spouse of Decedent. The domicile of Applicant is ____________, Texas.

4) Decedent died intestate/left a valid, written will ("Will"), dated ________________, which was never revoked and wherein _____________________ is named as Executor of Decedent's Estate.

5) No executor is named in the Will/Bob Smith is named as executor of the Will, but he has declined to serve as indicated by his attached affidavit and declination/Decedent died intestate.

6) No child or children were born to or adopted by Decedent after the date of the Will.

7) No state, governmental agency of the state or charitable organization is named as a devisee in the Decedent's Will.

8) Decedent was married to _____________________ in or about __________. Said marriage ended in divorce in or about ____________. The place of the divorce was ______________. In or about ____________, Decedent married _______________. Decedent remained married to _______________ until ______________ died on ________________.

9) At the time of Decedent’s death, there was a community estate owned by Decedent and Applicant consisting of real and personal property having a probable value in excess of $___________. Decedent owned no separate property.

10) An interest in said community property passes to someone other than Applicant, the surviving spouse of the Decedent. The name and residence of each person entitled to an interest in the community property estate under the terms of the Will/intestacy are as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Share</th>
<th>Age</th>
<th>Residence</th>
<th>Relationship to Decedent</th>
</tr>
</thead>
</table>

11) Applicant as the surviving spouse of Decedent, is entitled to be appointed community administrator of this Estate, and Applicant is not disqualified by law from being appointed such community administrator.

Wherefore, Applicant prays that citation be issued and served as required by law, the Will be admitted to probate, the court, after approving the Inventory, Appraisalment and List of Claims enter an order authorizing Applicant to control, manage and dispose of the community property in accordance with the Texas Probate Code, and such further orders as the Court may deem necessary.