

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

Bastrop County Probate Court

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 the Court's 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.

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 Court recommends (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, this Court requires 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, please submit an heirship setting request form. The current forms are always available on the Court's website.
- County Court only hears uncontested matters. If your matter is contested, please file in County Court at Law.
- 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. Both affidavits of citation by publication. (Clerk prepares citation; you publish and then file affidavits.)
 4. Section 202.057 affidavit or certificate. See the statute; don't forget 202.057(a)(2)(A)!

4. Do one week before a probate prove-up hearing.

For ALL probate prove-ups:

- Please email all proposed hearing documents to the Court at least one week before the hearing.
- Put the cause number and estate name in the subject line of the email.
- 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 sheila.cantwell@co.bastrop.tx.us or cynthia.dickey@co.bastrop.tx.us
- 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)
 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 for more information.

For heirships:

- Email all proposed documents to sheila.cantwell@co.bastrop.tx.us or cynthia.dickey@co.bastrop.tx.us
- Email the following documents at a minimum.
 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)

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.

If you have questions about Will probate prove-ups, please email the Court Coordinator at samantha.kana@co.bastrop.tx.us, or call her at (512) 332-7201.