

ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE G. INITIAL APPOINTMENT OF PERSONAL REPRESENTATIVE AND
OPENING OF ADMINISTRATION

CHAPTER 301. APPLICATION FOR LETTERS TESTAMENTARY OR OF
ADMINISTRATION

SUBCHAPTER A. PERIOD FOR APPLICATION FOR LETTERS

Sec. 301.001. ADMINISTRATION BEFORE DEATH VOID. The administration of an estate of a living person is void.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 301.002. PERIOD FOR FILING APPLICATION FOR LETTERS TESTAMENTARY OR OF ADMINISTRATION. (a) Except as provided by Subsection (b) and Section 501.006 with respect to a foreign will, an application for the grant of letters testamentary or of administration of an estate must be filed not later than the fourth anniversary of the decedent's death.

(b) This section does not apply if administration is necessary to:

(1) receive or recover property due a decedent's estate; or

(2) prevent real property in a decedent's estate from becoming a danger to the health, safety, or welfare of the general public and the applicant for the issuance of letters testamentary or of administration is a home-rule municipality that is a creditor of the estate.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 576 (H.B. 3160), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 27, eff. September 1, 2015.

SUBCHAPTER B. APPLICATION REQUIREMENTS

Sec. 301.051. ELIGIBLE APPLICANTS FOR LETTERS. An executor named in a will, an administrator designated as authorized under Section 254.006, an independent administrator designated by all of the distributees of the decedent under Section 401.002(b) or 401.003, or an interested person may file an application with the court for:

- (1) the appointment of the executor named in the will;
 - (1-a) the appointment of the designated administrator; or
- (2) the appointment of an administrator, if:
 - (A) there is a will, but:
 - (i) no executor is named in the will;
 - (ii) the executor named in the will is disqualified, refuses to serve, is dead, or resigns;
 - (iii) a person designated to serve as administrator under Section 254.006 is disqualified, refuses to serve, is dead, or resigns; or
 - (iv) an authorized person other than the executor has not designated any person to serve as administrator under Section 254.006 as of the date of the filing of the application and the applicant notifies the court that the authorized person has no intention of doing so; or
 - (B) there is no will.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 28, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1141 (H.B. 2782), Sec. 17, eff. September 1, 2019.

Sec. 301.052. CONTENTS OF APPLICATION FOR LETTERS OF ADMINISTRATION. (a) An application for letters of administration when no will is alleged to exist must state:

- (1) the applicant's name, domicile, and, if any,

relationship to the decedent;

(1-a) the last three numbers of:

(A) the applicant's driver's license number, if the applicant has been issued one; and

(B) the applicant's social security number, if the applicant has been issued one;

(2) the decedent's name and that the decedent died intestate;

(2-a) if known by the applicant at the time the applicant files the application, the last three numbers of the decedent's driver's license number and social security number;

(3) the fact, date, and place of the decedent's death;

(4) facts necessary to show that the court with which the application is filed has venue;

(5) whether the decedent owned property and, if so, include a statement of the property's probable value;

(6) the name and address, if known, whether the heir is an adult or minor, and the relationship to the decedent of each of the decedent's heirs;

(7) if known by the applicant at the time the applicant files the application, whether one or more children were born to or adopted by the decedent and, if so, the name, birth date, and place of birth of each child;

(8) if known by the applicant at the time the applicant files the application, whether the decedent was ever divorced and, if so, when and from whom;

(9) that a necessity exists for administration of the decedent's estate and an allegation of the facts that show that necessity; and

(10) that the applicant is not disqualified by law from acting as administrator.

(b) If an applicant does not state the last three numbers of the decedent's driver's license number or social security number under Subsection (a)(2-a), the application must state the reason the numbers are not stated.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. [2502](#)), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 29, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1039 (H.B. 1814), Sec. 3, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1141 (H.B. 2782), Sec. 18, eff. September 1, 2019.

SUBCHAPTER C. OPPOSITION TO CERTAIN APPLICATIONS

Sec. 301.101. OPPOSITION TO APPLICATION FOR LETTERS OF ADMINISTRATION. An interested person may, at any time before an application for letters of administration is granted, file an opposition to the application in writing and may apply for the grant of letters to the interested person or any other person. On the trial, the court, considering the applicable provisions of this code, shall grant letters to the person that seems best entitled to the letters without notice other than the notice given on the original application.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. REQUIRED PROOF FOR ISSUANCE OF LETTERS

Sec. 301.151. GENERAL PROOF REQUIREMENTS. An applicant for the issuance of letters testamentary or of administration of an estate must prove to the court's satisfaction that:

(1) the person whose estate is the subject of the application is dead;

(2) except as provided by Sections 301.002(b)(1) and (2) with respect to administration necessary to receive or recover property or to prevent real property of the estate from becoming a danger, and Section 501.006 with respect to a foreign will, four years have not elapsed since the date of the decedent's death and before the application;

(3) the court has jurisdiction and venue over the estate;

(4) citation has been served and returned in the manner and for the period required by this title; and

(5) the person for whom letters testamentary or of administration are sought is entitled by law to the letters and is not disqualified.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 576 (H.B. 3160), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 949 (S.B. 995), Sec. 30, eff. September 1, 2015.

Reenacted and amended by Acts 2019, 86th Leg., R.S., Ch. 1141 (H.B. 2782), Sec. 19, eff. September 1, 2019.

Sec. 301.152. ADDITIONAL PROOF REQUIRED FOR LETTERS TESTAMENTARY. If letters testamentary are to be granted, it must appear to the court that:

(1) the proof required for the probate of the will has been made; and

(2) the person to whom the letters are to be granted is named as executor in the will.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 301.153. ADDITIONAL PROOF REQUIRED FOR LETTERS OF ADMINISTRATION; EFFECT OF FINDING NO NECESSITY FOR ADMINISTRATION EXISTS. (a) If letters of administration are to be granted, the applicant for the letters must prove to the court's satisfaction that a necessity for an administration of the estate exists.

(b) If an application is filed for letters of administration but the court finds that no necessity for an administration of the estate exists, the court shall recite in the court's order refusing the application that no necessity for an administration exists.

(c) A court order containing a recital that no necessity for an administration of the estate exists constitutes sufficient legal authority for each person who owes money, has custody of property,

or acts as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and to each person purchasing or otherwise dealing with the estate, for payment or transfer to the distributees.

(d) A distributee is entitled to enforce by suit the distributee's right to payment or transfer described by Subsection (c).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 301.154. PROOF REQUIRED WHEN LETTERS HAVE PREVIOUSLY BEEN GRANTED. If letters testamentary or of administration have previously been granted with respect to an estate, an applicant for the granting of subsequent letters must show only that the person for whom the letters are sought is entitled by law to the letters and is not disqualified.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 301.155. AUTHORIZED METHODS OF PROOF. A fact contained in an application for issuance of letters testamentary or of administration or any other fact required to be proved by this subchapter may be proved by the sworn testimony of a witness with personal knowledge of the fact that is:

(1) taken in open court; or

(2) if proved under oath to the satisfaction of the court that the witness is unavailable, taken by deposition on written questions in accordance with Section 51.203 or the Texas Rules of Civil Procedure.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 34, eff. January 1, 2014.

SUBCHAPTER E. PREVENTION OF ADMINISTRATION

Sec. 301.201. METHOD OF PREVENTING ADMINISTRATION REQUESTED BY CREDITOR. (a) If a creditor files an application for letters of administration of an estate, another interested person who does not

desire the administration can defeat the application by:

(1) paying the creditor's claim;

(2) proving to the court's satisfaction that the creditor's claim is fictitious, fraudulent, illegal, or barred by limitation; or

(3) executing a bond that is:

(A) payable to, and to be approved by, the judge in an amount that is twice the amount of the creditor's claim; and

(B) conditioned on the obligors paying the claim on the establishment of the claim by suit in any court in the county having jurisdiction of the amount.

(b) A bond executed and approved under Subsection (a)(3) must be filed with the county clerk.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 301.202. SUIT ON BOND. Any creditor for whose protection a bond is executed under Section 301.201(a)(3) may sue on the bond in the creditor's own name to recover the creditor's claim.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 301.203. BOND SECURED BY LIEN. If a bond is executed and approved under Section 301.201(a)(3), a lien exists on all of the estate in the possession of the distributees, and those claiming under the distributees with notice of the lien, to secure the ultimate payment of the bond.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.