

**POLICY GUIDELINES AND REQUIREMENTS FOR APPLICATION
FOR COURT CREATED INDEPENDENT ADMINISTRATIONS
PURSUANT TO TEXAS ESTATES CODE §§401.002 AND 401.003
(formerly Texas Probate Code 145(c), 145(d) AND 145(e))**

Except under special circumstances, the Court will not grant a TEC §401.002 or §401.003 (formally TPC §145(c), (d), or (e)) if a minor or incapacitated adults are among the distributees or heirs-at-law. In individual situation where the Court may grant an independent administration when minors or incapacitated adults are among the distributees or heirs-at-law, the Court will require a bond.

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A. APPLICATION:

The application should be filed by an interested person [as defined in §22.018 of the Texas Estates Code (formally §3(r) of the Texas Probate Code)] and shall set forth the following information:

1. The distributees, legatees and/or heirs have agreed it is in the best interest of the estate to have an Independent Executor/Administrator, and designate the person so designated in the application to be appointed Independent Executor/Administrator.
2. The value of every asset of the estate and specifically listing:
 - a. Each asset;
 - b. The Decedent's interest in each asset;
 - c. The value of each asset; and
 - d. The basis of valuation of each asset.
3. The amount of all debts of Decedent and specifically listing:
 - a. The name and address of each creditor;
 - b. The amount of each debt; and, if known;
 - c. The date each debt was incurred and whether there is any mortgage or security agreement securing any debt with details.
4. A statement that a necessity exists for an administration of the estate.
5. Whether there is a will, and, if so, the names and addresses of each distributee, their ages and whether or not they are incapacitated. If Decedent died intestate,

the names, addresses, ages, and capacity of all heirs-at-law. (*Please see TEC §202.051, §202.052, §202.053, §202.054, §202.055, and §202.056 (formally TPC §50 - Notice requirements)*) **NOTE:** A Determination of Heirship proceeding will be required either before or simultaneously with the hearing to establish a Court Created Independent Administration. An ad litem will be appointed upon the return of published notice to unknown heirs. ***Publisher will NOT return the published notice until they are paid in full.***

6. A statement requesting no other action shall be had by the Probate Court other than the filing and approval of an Inventory, Appraisal and List of Claims.
7. A statement that all distributees, legatees and/or heirs request an exception from bond.

B. FILING:

When the application for Court Created Independent Administration is filed, the following procedure should be followed:

1. The application for a TEC §401.002 or §401.003 (formally TPC §145(c), 145(d), or 145(e)) should be sent to the designated Court.
This is the attorney's responsibility to see this is done.
2. The application will be reviewed for compliance with the Policy Guidelines and Procedures as soon as reasonably convenient and prior to the hearing. If any deficiencies are found or modifications required, the attorney will be notified and required to file an amended or supplemented application.

If, and when, the application is sufficient, and in the case of TEC §401.003 (formally TPC §145(e)) matters, the published notice is published and returned and the ad litem has been appointed, the attorney may set the matter for a special hearing to be heard in open court before the Presiding Judge.

C. AD LITEM APPOINTMENTS:

In intestacies, an ad litem appointment for unknown heirs must be made by the Court prior to the hearing.¹ Appointments will not be made until published notice is returned to the probate clerk.² A separate ad litem will be appointed for known heirs whose whereabouts are unknown or for any incapacitated heir as required by law and prior to the hearing establishing an Independent Administration.

D. MATTERS PRIOR TO HEARING:

Prior to the date of the hearing, the following items must be filed with the probate clerk:

1. Sworn waivers of notice and consents of all distributees, legatees and/or heirs- at-law and their agreement to the establishment of a Court Created Independent Administration naming the individual seeking the appointment as Independent Executor/Administrator. Additionally, if it is sought to have the Court waive the bond, the distributees, legatees and/or heirs-at-law must specifically request the Court to do so.¹
2. Perfected service and/or published notice must be in the file.² *[It is the attorney's responsibility to insure all required notice(s) have been published and/or posted correctly.]*

E. REQUIRED TESTIMONY AT SPECIALLY SET HEARING:

At the hearing, the attorney should be prepared to prove the following:

1. If Decedent died intestate, the Court must hear clear and convincing proof of heirship offered by **two (2) disinterested witnesses** with the testimony given in open Court, reduced to writing and sworn to before the Court.
2. All TEC §256.151, §256.152, §256.153, §256.154, §256.155, §301.151, §301.152, §301.153, and §301.154 (formally TPC §84 and §88) proof.
3. Testimony establishing the value of Decedent's estate including all assets **and debts**. *(May be proven by documentary evidence such as income tax returns, ad valorem tax statements and/or recent appraisals, and current invoices).*
4. Testimony that all persons before the Court agree to the establishment of a Court created Independent Administration, to the appointment of person seeking appointment as Independent Executor/Administrator, that such creation and appointment is in the best interest of the estate, and, if requested, that the Court waive any bond.¹
5. Testimony that no intervenors have filed an objection.
6. Any additional testimony or evidence that is sufficient to the Court to determine the necessity of or waiver from a bond.

The Court will determine on a case-by-case basis whether a Court Created Independent Administration is in the best interested of the estate, whether it should be bonded and the amount of such bond. At the written consent of all the heirs and devisees of an estate, and at their request for a waiver of bond, the applicant seeks to administer the estate independently and free of court supervision. The Court has the authority to grant this request, but will do so only when all heirs have filed, prior to or at the hearing, a sworn consent to the appointment of the applicant and a

request for no bond. The attorney and his client should be aware that the remedy available for closing a Court Created Independent Administration is the filing of an affidavit pursuant to TEC §405.005 or §405.006 (formally TPC §151) which, when filed, automatically releases the sureties on a bond from all liability for the future acts of the principal. **In no case** will a TEC §401.002 or §401.003 (formally TPC §145(c), (d) or (e)) be granted where the estate of Decedent is **insolvent**.

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