

DENTON COUNTY PROBATE COURT
SUGGESTIONS FOR ACCOUNTINGS ON
SUPERVISED ESTATES

(Decedent's Estates & Guardianships)

ANNUAL ACCOUNTS

A. **Where Required:**

1. **Administrator/Guardian of the Estate** – Personal representatives of Estates have the responsibility upon the expiration of twelve (12) months from the date of qualification to return to the court a sworn accounting reflecting the condition of the Estate and the activities of the Estate (§§ 359.001, 1163). The annual accounts of executors, administrators and guardians of the estate are due not later than 60 days after the anniversary of qualification (§§ 359.001, 359.002, 1163.002) (1) (a)).

2. **Initial Accounting Required by Trustee of Guardianship Management Trust** - When the court creates management trust where a guardianship proceeding is pending (even *if* no guardian has been appointed) the trustee must not, later than 30 days after the trustee receives property into the trust, file with the court "a report describing all property held in the trust on the date of the report and specifying the value of *the* property on that date" (§1301.1535). While styled an "Initial Accounting," this is really an inventory and appraisal of trust assets.

3. **Annual Accounts Required by Trustee of Guardianship Management Trust** - Other than trustees of management trusts created for person with only a physical disability, trustees of Guardianship Management Trusts must prepare and file annual accountings with the court in the same manner and form required of guardians of the estate (§1301.154).

4. **Continuing Duty** - The duty to file annual accounts continues throughout the administration of the decedent's estate, guardianship estate or management trust (§§ 359.002, 1163.002, 1301.154).

B. **Contents of the Annual Account** –

The required contents of the annual account are enumerated in considerable detail by the Probate Code (§§ 359.001, 1163.001); however, just following the 'bare bones' requirements set forth in the code does not yield a comprehensible accounting. Some additional suggestions for more understandable accounts have been included:

1. **Accounting Period** - Clearly show the **period for which the account is made**. Reviewing an account merely styled "Seventh Annual Account" does not sufficiently identify the period for which the account is returned. There are a number of ways to quickly ascertain the accounting period.

EXAMPLES:

Reflected in the title, such as:

**ANNUAL ACCOUNTING
March 8, 2020 to March 7, 2021**

or:

This Annual Account covers the period from March 8, 2020 the date of Guardian's qualification, to March 7, 2021.

2. **Opening Figures** - Restate and total the property on hand at the **beginning** of the period covered, either with reference to the Inventory (if this is the first Annual Account) or to the closing values of the previous Annual Account. It is preferred to recapitulate the asset listing briefly rather than merely giving an opening balance. Asset tracking is made much easier.

EXAMPLES:

The assets of the estate at the beginning of this accounting period, according to the Inventory, Appraisalment and List of Claims approved on March 8, 2020, were as follows:

or

The assets of the estate at the beginning of this accounting period, according to the Annual Account for the period from March 8, 2019 to March 7, 2020 were as follows:

This not only gives you and the court a quick reference within the accounting but also provides an opening balance to reconcile the accounting.

3. **Property Not Previously Inventoried** -§§359.001(b)(1), 1163.001(b)(1) –List any property not previously inventoried or accounted for which has come to the knowledge or into the possession of the guardian. Real Property, Personal property and claims should be grouped for clarity.

4. **Changes**- §359.001 (b)(2), 1163.001 (b)(2)- Changes in the property of the estate not previously reported. This category would include such items as:

- a. Sales of estate property
- b. Receipt of claims owed to the estate,
- c. Compromise of Disputed claims.
- d. Fluctuations in investments.

If these changes were as a result of actions taken with court approval, it is helpful to reflect the date of the related court's order. If they were the result of fluctuations in investments, a schedule listing the changes per asset should be included to clearly support this number if possible.

EXAMPLES:

Sale of Real Estate By Order signed Nov. 3. 2020 sale of real estate of this Estate

was confirmed.

Market Value on last accounting or inventory: (\$35,500.00)

Fluctuations in Investments – An exhibit with a detailed list of the unrealized and realized gain/loss should be attached. The change in market value of the investments from the value at the first of the year to the end of the year should be listed. The realized gain/loss will list the investments sold during the year and reflect the realized gain or loss as compared to the value of the investment at the first of the accounting period.

1) Unrealized net gain/loss	(1,625.00)
2) Realized net gain/loss	<u>3,650.00</u>
Total Fluctuations in investments:	2,025.00

Total Changes: (\$33,475.00)

5. **Receipts and Disbursements** - §§ 359.001(b)(3), 1163.00 l(b)(3) - Receipts should be separated by principal and income and itemized by date and source. Similarly, disbursements should be itemized by date and payee, purpose (support and maintenance, medical expenses, attorney's fees and expenses, etc.) and supported by vouchers (attached as an exhibit).

PRACTICE POINTER: If possible, indicate whether the disbursements were made with or without court approval. Disbursements made without prior approval will require ratification. All disbursements will require supporting evidence.

EXAMPLES:

RECEIPTS of the Estate are as follows:

1. Proceeds from sale of real estate (Order dtd. 11.03.20):	
	\$34,549.23
2. Interest on deposit accounts:	
Texas Natl Bank, South Fork, Texas	
MM Acct #1234	\$1,260.09
NOW Acct #1234	\$29.00
CD #1234	<u>\$3,565.47</u>
TOTAL RECEIPTS	\$39,403.79

DISBURSEMENTS of the Estate are as follows:

1. Claims paid (Order 3/29/2020)	\$3,039.32
2. Reimbursement of expenses & attorney's fees (Order Date)	\$6,080.91
3. Expenses per Order Setting Allowance (Order Date):	
Entertainment	\$220.00
Insurance	\$445.00
Utilities	\$2,133.74
Food	\$3,150.00

Home Care \$21,620.00 \$27,568.74

4. Other disbursements:

-ck printing \$19.00

-Bank charges \$20.00

-Bond Premium \$660.00 \$669.00

TOTAL DISBURSEMENTS **\$37,387.97**

6. PROPERTY CURRENTLY BEING ADMINISTERED- This should follow the same format as the opening figure (*supra*), with the information specified as follows:

a) REAL PROPERTY- §§ 359.001(b)(4)(A)-(C), 1163.001(b)(4)(A)-(C)

1) Identify the property as shown on the inventory.

2) Indicate its condition

3) Its current use, and if being rented, the rental terms.

b) PERSONAL PROPERTY- §§ 359.001(b)(5)-(7), 359.001(c)(1)-(6), 1163.001(b)(5)-(6), (c)(1)-(6)

1) Identify property by showing the name of the institution, last four digits of the account number, type of account and balance on closing date verified by each institution.

- Stock and Bonds
- Cash and Bank Accounts
- Insurance
- Miscellaneous personal property

8. FUNDS HELD IN SAFEKEEPING- §§ 359.001(b)(7), 1163.001(b)(7) Funds of the estate held under safekeeping or “freeze” agreements are to be accounted for in the same manner as Cash on Hand and with a verification from each Depository. *This includes the funds held in the registry of the court.* The County Clerk of the Probate Court can provide this information for you to print and attach to the accounting.

9. CLAIMS, DEBTS, AND OBLIGATIONS OF THE ESTATE- §§359.001(a)(1-4), 1163.001(a)(1-2) - Now that the cash and property is generally accounted for, changes in the net value of the Estate should be shown. Claims against the estate, which have arisen in the normal course of affairs (i.e. debts and obligations not in dispute or for which formal claims have not been presented) may simply be reflected under receipts and disbursements. Formal or disputed claims which have been presented for allowance and approval should be scheduled showing:

a) A brief description of each claim.

b) Whether the claims were

- ◆ Allowed and/or paid
- ◆ Rejected & the date of rejection
- ◆ Sued upon & the status of the suite (e.g. pending judgment for claimants, etc.)

c) Explain why differences between amounts claimed & amounts allowed or adjudged to the claimant, unpaid debts, obligations, and liabilities of the Estate should also be shown, with sufficient information to allow the court to determine the solvency or insolvency of the estate, Paid Claims should also reference under

disbursements.

EXAMPLE:

The Claims which have been presented against the Estate are as follows:

Claimant	Nature	Allowed/approved	Rejected	Paid
CitiBank	Chg Card	03/29		\$2,755.40
BancOhio	Chg Acct	03/29		\$1,284.92
		Total reflected in Disbursements:		\$3,039.32

The following debts and obligations are due and owing by the Estate and have not been paid.

Attorney Fees \$ 1,244.00

CAVEAT: Be careful not to count paid claims under both claims and disbursements.

10. **RECONCILIATION**- a reconciliation of the foregoing, can refer to the items by paragraph number and category. The reconciled amount should then balance with the cash and other property on hand. Property values will balance if changes in the estate property have been accurately shown. Cash balances will balance if receipts and disbursements have been accurately recorded. Subtracting claims and unpaid debts of the Estate will then give a net value for the Estate for the end of the accounting period.

The following is a summary and reconciliation of the foregoing:

EXAMPLE:

Opening Figures 03/08	\$63,437.65
Property not previously reported	\$0.00
Changes in Property	(\$33,475.00)
Receipts	\$39,403.79
Disbursements	(\$37,387.97)
	<u>\$31,978.47</u>

Property & Cash on Hand 03/07	
Real Property	\$0.00
Personal Property	\$0.00
Cash on Hand	\$31,978.47
Assets in Safekeeping/Registry	\$0.00
Reconciled Balance	<u>\$31,978.47</u>
Total Claims	\$0.00
Total unpaid debts	<u>\$1,244.00</u>
Net Value of Estate	\$30,734.47

11. **AFFIDAVIT OF PERSONAL REPRESENTATIVE** - §§ 359.005, 1163.005- The Personal Representative must sign an affidavit attached to the Account that:

- a) The account contains a true, correct and complete statement of the matters to which the account relates;
- b) All tax returns due have been filed;
- c) All taxes due and owing have been paid;
- d) A complete account of;
 - 1) The amount of the taxes,
 - 2) The date the taxes were paid, and
 - 3) The entity receiving the taxes.
- e) The bond premium for the next accounting period has been paid.

12. **EXHIBITS-** Several attachments or exhibits must accompany the account:

- a) **Vouchers-** (invoices) §§ 359.003,1163.003- to support each disbursements.
- b) **Verification of Funds on Deposit-** §§ 359.004,1163.004 from each bank or depository
 - 1. For all cash on hand and funds held subject to safekeeping agreements.
 - 2. Signed by an authorized officer of the bank or other depository.
 - 3. If the same bank is serving as the personal representative, the verification must be signed by an officer **other than** the officer swearing to the Account. If a verification is simply impossible or impractical to obtain, determine if the court auditor will accept examining the most recent bank or saving statements on the account.
- c) **Verification of Securities-** §§ 359.003 (a) (3),359.004,1163.003(a) (3), 1163.004- For securities (including bonds and notes) of the Estate, proof of existence and current possession of the securities is required in one of the following forms:
 - 1. a confirmation of safekeeping from the depository where the securities are held.
 - 2. a certificate by an authorized representative of the where the bonds are held.
 - 3. a certificate of a court clerk or,
 - 4. an affidavit of a reputable person designated by the court upon request of the personal representative or some other interested party.
- d) **Delinquent Taxes-** §§359.001 (b) (8,9) 1163.005- If the personal representative has been delinquent in paying or filing any taxes or tax returns, a statement must be attached with a description of any delinquency in paying or filing any taxes or tax returns due and the reason for the delinquency. This could easily be incorporated into the required affidavit.

C. **Court Action On Annual Accounts -** §§359.051, 1163.051

- 1) **Filing-** Annual accounts shall be filed with the county clerk.
- 2) **Action Only After Ten Days-** After 10 days has expired, the court may act upon the annual account, but should not approve it until satisfied as to all items of the account, especially possession of cash, listed securities, or other assets held in safekeeping or on deposit under court order.
- 3) **Corrections-** Incorrect information on the account may be corrected by supplement or amendment. When corrected to the satisfaction of the court, the order approving the annual account can be signed. (§§359.052, 1163.052).
- 4) **Actions on Claims-** Unpaid claims may be dealt with by the court as follows:

- A. If the estate is solvent and the personal representative has sufficient funds to pay every claim made, the court shall order immediate payment made of all claims allowed and approved or established by judgment.(§§ 359.053, 1163.053).
- B. If insufficient funds are on hand for the payment of claims, or if the estate is insolvent, but the personal representative has some funds on hand, the court shall order the funds to be applied:
 - 1) To the payment of all claims having a preference in the order of their priority (§§ 355.102,1157.103), then:
 - 2) To the payment *pro rata* of the other claims allowed and approved or established by final judgment, taking into consideration also the claims that were presented before the first anniversary of the date administration was granted and claims that are in litigation or on which a lawsuit may be filed.
 - 3)

D. Failure To File Annual Accountings- §359-101 (a),

- A. If the personal representative (including a guardian) of an estate does not file an annual account or any other report, any interested person in the estate on written complaint, or the court on the court’s own motion, may have the representative cited to appear an show cause why the personal representative should not file the account or report. §359.101(a), 359.102(a), 1163.151(a).
- B. After a hearing if the report is still not filed and no good cause for the failure is shown the court has the option to:
 - 1. Revoke the representatives letters testamentary, letters of administration, or letters of guardianship and
 - 2. Fine the personal representative - up to \$500 in decedent’s estates and up to \$1000 in guardianships. §§ 359.101 (b), 1163.151(b)
 - 3. The personal representative and the representative’s sureties are liable for any fine imposed and for all damages and costs sustained by the representative’s failure. The fines, damages, and costs may be recovered in any court of competent jurisdiction.

E. Waiver of Accountings

- 1. In guardianships only (i.e. not in decedent’s estates), where the ward’s estate produces fixed or negligible income, the court has the power to waive annual accounts and may permit the guardian to receive all income and apply it to support, maintenance, and education of the ward.

F. Common Problems with Annual Accounts

- 1. Account does not show the period covered or does not cover a 12 month period or has the incorrect reporting period.
- 2. Failure to itemize receipts and disbursements.
- 3. Failure to seek ratification for actions taken without obtaining court approval.
- 4. Failure to balance, no reconciliation presented.
- 5. Cash balances on hand not verified.

6. Verification of cash balances on hand verified for date other than closing date of accounting period.
7. Failure to provide Confirmation of Safekeeping on accounts deposited subject to safekeeping agreements.
8. Failure to provide verifications on securities owned by the estate.
9. Failure to reflect assets remaining on hand at the end of the accounting period.
10. Audit reflects bond is insufficient.
11. Failure to include required statements regarding payment of taxes and bond premiums.
12. Failure to properly show changes in value and provide supporting documentation.

ACCOUNT FOR FINAL SETTLEMENT

A. When required

- 1) **Decedent's Estate**- §362.001- Administration of the decedent's estate are to be settled and closed when all the debts known to exist against the estate have been paid, or paid so far as the assets of the estate will permit, and when there is no further need for administration.
- 2) **Guardianship of the Estate of Wards shall be settled and closed when:**
(§1204.001)
 - A ward dies;
 - A minor ward become 18
 - An adult ward is restored to full capacity, the spouse of married ward qualifies as survivor in community and the ward owns no separate property.
 - The ward's estate is exhausted;
 - The foreseeable income accruing to the ward or to the ward's estate is so negligible that maintaining the guardianship in force would be burdensome.
 - All assets of the estate have been paid into a guardianship management trust and guardianship is no longer necessary;
 - The estate of a minor ward consists only of cash or cash equivalents in the amount of \$100,000 or less, the guardianship of the estate may be terminated and the assets paid into the registry of the court, and the clerk shall manage the funds as provided by §1355.001;
 - The court determines for some other reason a guardianship is no longer necessary.
- 3) **Accounting by Temporary Guardian Upon Expiration-** §1251.152(b)- At the expiration of a temporary guardianship, the temporary guardian has a mandatory duty to file a final accounting with the court clerk. The court is then to act on the accounting as it would an account for final settlement under §1204.106.
- 4) **Guardianship Management Trust are to be terminated.**
 - A. For a minor beneficiary, the earlier of :
 - 1) The beneficiary's death
 - 2) The beneficiary's eighteen birthday, or
 - 3) A date provided by court order (not later than the age of 25)
 - B. For an adult beneficiary:
 - 1) The beneficiary's death, or

- 2) The date the court determines continuing the trust is no longer in the beneficiary's best interest, subject to §1301.202(c).

B. Contents of the Final Accounting

The Account for Final Settlement is very similar to the Annual Accounts. For that reason, the specific items required will not be repeated. Here are a few additions that may apply depending on the type of account.

1) **Distributees** The names of the persons entitled to receive the estate, their relationship to the Decedent or Ward, their addresses, if known, and whether or not they are minors or incapacitated (if so, the names of their guardians, if any, should also be included). All advancements or payments which have been made from the estate to any distributee should be indicated. Attorneys ad litem should be appointed for minors or incapacitated persons without guardians where their interest should be protected but no necessity for guardianship is evident.

2) **Citation §362.005, §1204.105**

A major difference between the Annual and Final Accounts is the requirement of citation on the Final Account. Upon the filing of a final account, the clerk shall issue citation stating that the final account has been filed, when and where it will be considered by the court, and requiring the person cited to appear and contest the final account if they wish.

On ***Guardianships***, Personal Service of citation shall be required upon either: 1. A ward who is a Texas resident and has a known residence. 2. The Personal Representative of a deceased ward's estate (unless the Personal Representative and the guardian are the same person).

On ***Estates***, Posting is required along with notice to each distributee of the decedent by certified mail, return receipt requested per §362.005. This should be followed up with a §362.005(f) affidavit sworn to by the personal representative or attorney.

C. Common Problems with Final Accounts

1. Trying to close estate administration without first determining heirship.
2. Failure to secure and file citation on or waivers of citation from heirs, distributees, or ward.
3. Failure to balance. No reconciliation presented.
4. Failure to reflect the assets in the estate remaining for distribution.
5. Failure to indicate reason for closing estate.
6. The order is improperly worded.

APPLICATION TO CLOSE AND DISCHARGE

The Application to Close and Discharge should begin with the ending balance on the Final Accounting. All disbursements must be documented. Distributions to beneficiaries should be documented by a receipt and release filed with the Case. It should be clear to the court auditor that the balance of the account is now zero.