

**Attorney Ad Litem for “Unknown Heirs”
In Heirship Determinations**

DUE DILIGENCE CHECKLIST

Effective September 1, 2001, the appointment of an Attorney Ad Litem and Citation by Publication is mandatory in all heirship determinations. TEX. PROB. CODE ANN. §§50, 53(b),(c)

Your Clients: “a person having a legal disability, a nonresident, an unborn or unascertained person, or an unknown heir” (hereafter “§53 heirs”)

You will receive a fee of **\$350** unless the Court has previously determined that additional time is required due to the circumstances of the particular matter. If so, you are required to file an itemized Sworn Statement of Services and Expenses with a narrative of time expended and services rendered.

In an heirship proceeding, the Attorney Ad Litem should, at a minimum:

1. **Obtain and review all relevant pleadings and the published citation.**
2. **Contact the applicant’s attorney** to obtain names of persons who might be knowledgeable of the facts of heirship.
3. **Personally interview the Applicant** to verify the heirship facts and obtain the names and whereabouts of persons knowledgeable of the heirship facts.
4. **Contact at least two disinterested persons** (if not all) of the persons known to have knowledge of the heirship facts and verify the information provided.
5. **Make an independent determination** (if appropriate) whether the information provided is sufficient, whether there are persons not listed in the application, whether intentionally or unintentionally omitted, who may be minors, otherwise incapacitated or whose identity or whereabouts may be unknown. It is always necessary for the Ad Litem to ask the impolite questions: whether there were any other marriages, whether there were any other children, etc. (the ‘Smell Test’)
6. **Send a letter by certified mail, return receipt requested to disabled or previously unknown heirs whom you are able to locate**, informing them of the heirship proceeding, that they may have an interest in the decedent’s estate and to contact you or obtain a waiver of citation from;
7. If there is an allegation that there are heirs whose whereabouts or identities are unknown, you have just become a genealogist/skip tracer. Using appropriate forms to record your data, obtain as much additional information as possible to build a family tree, including identity and location information on all family members (not just heirs), with dates and explore your leads;
8. Check back with the Court periodically. The Court should give you some guidance as to how much time should be spent, even in a complicated case. In an appropriate case, consider seeking security for costs. TEX. PROB. CODE ANN. § 12
9. **File a written report** of your findings when you have completed your investigation, **including a distribution chart** for the court (see form provided). If you locate a §53 heir whom you believe to be an adult with capacity, file a report with the court, listing the contact information for each individual so located, with a copy of the report to all counsel.
10. **File an Answer** on behalf of your clients.
11. Confer with applicant’s attorney as to an appropriate date for the hearing on the application.
12. **Attend the hearing and represent your clients.** Make sure the attorney for the Applicant has accurately reflected the names and locations of the heirs and has correctly calculated the distribution in the proposed judgment.
13. **File an Application for Payment of Fees and Order** and seek discharge of the appointment as Attorney Ad Litem.