

# Independent Administration Checklist for New (and Old!) Practitioners

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HON. GUY HERMAN, TRAVIS COUNTY PROBATE COURT  
AUSTIN, TX

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## This Paper

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Mr. Helman was a founding partner of Osborne, Helman, Knebel & Scott, LLP. Mr. Helman graduate from University of Texas School of Law (Class of 1978). After graduation from law school, he specialized in probate and estate planning law with Austin as his base of operations. He began practicing with Graves Dougherty Hearon & Moody, then became a founding partner of Osborne, Helman, Knebel, & Scott, LLP. He also served as one of four attorneys responsible for drafting and grading the Texas Board of Legal Specialization's annual examination in estate planning and probate law. Mr. Helman was regularly listed in The Best Lawyers in America for his practice areas and is now retired from the practice of law.



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# Nature and Creation of Independent Administration

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- Independent administration is the administration of an estate without judicial supervision.
- In most circumstances, it is a far less costly alternative to court-supervised dependent administration.
- Independent administration in Texas, like the community property system and the homestead exemption, is an outgrowth of Spanish civil law, which recognized a number of extrajudicial procedures for administering estates.

# Nature and Creation of Independent Administration

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- The practice has existed in its present form in Texas since 1843 when the Seventh Congress of the Republic of Texas enacted a statute permitting testators to provide that the probate of a will would be the only action of the probate court in the administration of the estate.
- The Uniform Probate Code, which almost one-third of the states have adopted, allows for independent administration. Prior to the development of the Uniform Code, however, only Texas and Washington used independent administration extensively.
- Historically, there were eight community property states, primarily in those states that were formally the territory of Mexico or France. The original eight were: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington. In 1986, Wisconsin amended its statutes to make the state a community property state. In addition, Alaska is an "opt-in" community property state.

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- Jurisdiction Chapter 32 (Texas Estates Code)
  - Generally speaking, there are three types of Texas courts that have probate jurisdiction. Which court has jurisdiction depends on the type of court and the court setup in a particular county
    - 1) In the ten statutory probate court counties (in the counties of: Bexar, Collin, Dallas, Denton, El Paso, Galveston, Harris, Hidalgo, Tarrant, and Travis), only the statutory probate court has jurisdiction over probate matters
    - 2) In non-statutory probate court counties (244 Texas counties), original probate jurisdiction lies with both with the statutory county court (county court at law), if one exists, and the constitutional county court. If there is no statutory county court, the constitutional county court is the sole court with original jurisdiction over probate matters.
    - 3) In a county without a statutory county court, a district court may have jurisdiction over probate matters only if there is a contest and the case has been transferred by the constitutional county court to the district court. The contested matter in the constitutional county court may be transferred by the county court on its own motion or upon motion of a party to a statutory probate court in lieu of transfer to a district court.

# Nature and Creation of Independent Administration

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- Methods of Creating an Independent Administration
  1. By Will;
  2. By the Probate Court with consent of all distributees when the will does not create an independent administration; or
  3. By the Probate Court with the consent of all distributees in an intestate situation.

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"Independent Administration Checklist for New Practitioners"