

PROBATE CODE

Chapter I. General Provisions

Statutes in Context § 1

Although called a “Code,” the Probate Code is *not* a true “code” because it was enacted in 1955 which was before the 1963 Legislature began the process of codifying Texas law into 27 codes. The 2009 Legislature began the process of codifying the current Probate Code into a “real” code, the Estates Code.

The portion of the Estates Code passed by the 2009 Legislature focuses on intestacy, wills, and estate administration. The guardianship and durable power of attorney provisions were added in 2011. The 2011 Legislature also made changes to the previously enacted portions of the Estates Code to be consistent with Probate Code amendments. The 2013 Legislature will have the opportunity to make certain everything fits together nicely and that any substantive changes to the Probate Code are properly integrated into the Estates Code.

The entire Estates Code is slated to become effective on January 1, 2014.

§ 1. Short Title

This Act shall be known, and may be cited, as the “Texas Probate Code.”

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

§ 2. Effective Date and Application

(a) **Effective Date.** This Code shall take effect and be in force on and after January 1, 1956. The procedure herein prescribed shall govern all probate proceedings in county and probate courts brought after the effective date of this Act, and also all further procedure in proceedings in probate then pending, except to the extent that in the opinion of the court, with respect to proceedings in probate then pending, its application in particular proceedings or parts thereof would not be feasible or would work injustice, in which event the former procedure shall apply.

(b) **Rights Not Affected.** No act done in any proceeding commenced before this Code takes effect, and no accrued right, shall be impaired by the provisions of this Code. When a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provision of any statute in force before this Code takes effect, such provision shall remain in force and be

deemed a part of this Code with respect to such right. All things properly done under any previously existing statute prior to the taking effect of this Code shall be treated as valid. Where citation or other process or notice is issued and served in compliance with existing statutes prior to the taking effect of this Code, the party upon whom such citation or other process has been served shall have the time provided for under such previously existing statutes in which to comply therewith.

(c) **Subdivisions Have No Legal Effect.** The division of this Code into Chapters, Parts, Sections, Subsections, and Paragraphs is solely for convenience and shall have no legal effect.

(d) **Severability.** If any provision of this Code, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable, and the Legislature hereby states that it would have enacted such portions of the Code which can lawfully be given effect regardless of the possible invalidity of other provisions of the Code.

(e) **Nature of Proceeding.** The administration of the estate of a decedent, from the filing of the application for probate and administration, or for administration, until the decree of final distribution and the discharge of the last personal representative, shall be considered as one proceeding for purposes of jurisdiction. The entire proceeding is a proceeding in rem.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 2, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 2, eff. Jan. 1, 2014 and amended to retain only existing subsection (e) by Acts 2009, 81st Leg., ch. 680, § 6, eff. Jan. 1, 2014. Subsection (e) transferred to Estates Code § 32.001(d) by Acts 2013, 83rd Leg., ch. 1136, § 2, eff. Jan. 1, 2014.

Statutes in Context § 3

The definitions in § 3 apply to the entire Probate Code except as otherwise provided by Chapter XIII which governs guardianships.

Some terms are defined contrary to their traditional meanings. For example, the term “devise,” which usually refers to a gift of real property in a will, is defined to encompass gifts of both real and personal property in subsection (h). Likewise, “legacy,” which normally refers to a gift of money (personal property) in a will, is deemed

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to include gifts of real property as well by subsection (s).

"Heirs" include anyone who is entitled to property under intestate succession under subsection (o). The surviving spouse is considered an heir even though at common law, the surviving spouse was not an heir (not a blood relative). A person who takes under a will is not properly called an heir.

The term "will" is defined in subsection (ff) to include a variety of testamentary instruments including codicils and instruments which do not actually make at-death distributions of property such as documents which merely appoint an executor or guardian, revoke another will, or direct how property may not be distributed.

Courts will sometimes ignore the plain language of the definitions. For example, in *Heien v. Crabtree*, 369 S.W.2d 28 (Tex. 1963), the Texas Supreme Court refused to treat a child who was adopted by estoppel as a "child" under subsection (b) despite the language of the definition stating that the term includes a child adopted "by acts of estoppel."

The definitions apply to these terms as used in the Probate Code. The definitions do not necessarily apply when they are used in a will or other estate planning document.

§ 3. Definitions and Use of Terms

Except as otherwise provided by Chapter XIII of this Code, when used in this Code, unless otherwise apparent from the context:

(a) "Authorized corporate surety" means a domestic or foreign corporation authorized to do business in the State of Texas for the purpose of issuing surety, guaranty or indemnity bonds guaranteeing the fidelity of executors and administrators.

(b) "Child" includes an adopted child, whether adopted by any existing or former statutory procedure or by acts of estoppel, but, unless expressly so stated herein, does not include a child who has no presumed father.

(c) "Claims" include liabilities of a decedent which survive, including taxes, whether arising in contract or in tort or otherwise, funeral expenses, the expense of a tombstone, expenses of administration, estate and inheritance taxes, and debts due such estates.

(d) "Corporate fiduciary" means a financial institution as defined by Section 201.101, Finance Code, having trust powers, existing or doing business under the laws of this state, another state, or the United States, which is authorized by law to act under the order or appointment of any court of record, without giving bond, as receiver, trustee, executor, administrator, or, although without general depository powers, depository for any moneys paid into court, or to become sole

guarantor or surety in or upon any bond required to be given under the laws of this state.

(e) "County Court" and "Probate Court" are synonymous terms and denote county courts in the exercise of their probate jurisdiction, courts created by statute and authorized to exercise original probate jurisdiction, and district courts exercising probate jurisdiction in contested matters.

(f) "County Judge," "Probate Judge," and "Judge" denote the presiding judge of any court having original jurisdiction over probate proceedings, whether it be a county court in the exercise of its probate jurisdiction, a court created by statute and authorized to exercise probate jurisdiction, or a district court exercising probate jurisdiction in contested matters.

(g) "Court" denotes and includes both a county court in the exercise of its probate jurisdiction, a court created by statute and authorized to exercise original probate jurisdiction, or a district court exercising original probate jurisdiction in contested matters.

(h) "Devise," when used as a noun, includes a testamentary disposition of real or personal property, or of both. When used as a verb, "devise" means to dispose of real or personal property, or of both, by will.

(i) "Devisee" includes legatee.

(j) "Distributee" denotes a person entitled to the estate of a decedent under a lawful will, or under the statutes of descent and distribution.

(k) "Docket" means the probate docket.

(l) "Estate" denotes the real and personal property of a decedent, both as such property originally existed and as from time to time changed in form by sale, reinvestment, or otherwise, and as augmented by any accretions and additions thereto (including any property to be distributed to the representative of the decedent by the trustee of a trust which terminates upon the decedent's death) and substitutions therefor, and as diminished by any decreases therein and distributions therefrom.

(m) "Exempt property" refers to that property of a decedent's estate which is exempt from execution or forced sale by the Constitution or laws of this State, and to the allowance in lieu thereof.

(n) (repealed)

(o) "Heirs" denote those persons, including the surviving spouse, who are entitled under the statutes of descent and distribution to the estate of a decedent who dies intestate.

(p) "Incapacitated" or "Incapacitated person" means:

(1) a minor;

(2) an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs; or

(3) a person who must have a guardian appointed to receive funds due the person from any governmental source.

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(q) “Independent executor” means the personal representative of an estate under independent administration as provided in Section 145 of this Code. The term “independent executor” includes the term “independent administrator.”

(r) “Interested persons” or “persons interested” means heirs, devisees, spouses, creditors, or any others having a property right in, or claim against, the estate being administered; and anyone interested in the welfare of an incapacitated person including a minor.

(s) “Legacy” includes any gift or devise by will, whether of personalty or realty. “Legatee” includes any person entitled to a legacy under a will.

(t) “Minors” are all persons under eighteen years of age who have never been married or who have not had disabilities of minority removed for general purposes.

(u) *repealed*

(v) “Mortgage” or “Lien” includes deed of trust, vendor’s lien, chattel mortgage, mechanic’s, materialman’s or laborer’s lien, judgment, attachment or garnishment lien, pledge by hypothecation, and Federal or State tax liens.

(w) “Net estate” means the real and personal property of a decedent, exclusive of homestead rights, exempt property, the family allowance and enforceable claims against the estate.

(x) “Person” includes natural persons and corporations.

(y) *repealed*

(z) “Personal property” includes interests in goods, money, choses in action, evidence of debts, and chattels real.

(aa) “Personal representative” or “Representative” includes executor, independent executor, administrator, independent administrator, temporary administrator, together with their successors. The inclusion of independent executors herein shall not be held to subject such representatives to control of the courts in probate matters with respect to settlement of estates except as expressly provided by law.

(bb) “Probate proceeding” is synonymous with the terms “Probate matter,” “Proceeding in probate,” and “Proceedings for probate.” The term means a matter or proceeding related to the estate of a decedent and includes:

(1) the probate of a will, with or without administration of the estate;

(2) the issuance of letters testamentary and of administration;

(3) an heirship determination or small estate affidavit, community property administration, and homestead and family allowances;

(4) an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent;

(5) a claim arising from an estate administration and any action brought on the claim;

(6) the settling of a personal representative’s account of an estate and any other matter related to

the settlement, partition, or distribution of an estate; and

(7) a will construction suit.

(cc) “Property” includes both real and personal property.

(dd) “Real property” includes estates and interests in lands, corporeal or incorporeal, legal or equitable, other than chattels real.

(ee) “Surety” includes both personal and corporate sureties.

(ff) “Will” includes codicil; it also includes a testamentary instrument which merely:

(1) appoints an executor or guardian;

(2) directs how property may not be disposed of; or

(3) revokes another will.

(gg) The singular number includes the plural; the plural number includes the singular.

(hh) The masculine gender includes the feminine and neuter.

(ii) “Statutory probate court” means a statutory court designated as a statutory probate court under Chapter 25, Government Code. A county court at law exercising probate jurisdiction is not a statutory probate court under this Code unless the court is designated a statutory probate court under Chapter 25, Government Code.

(jj) “Next of kin” includes an adopted child or his or her descendants and the adoptive parent of the adopted child.

(kk) “Charitable organization” means:

(1) a nonprofit corporation, trust, community chest, fund, foundation, or other entity that is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986¹ because the entity is organized and operated exclusively for religious, charitable, scientific, educational, or literary purposes, testing for public safety, prevention of cruelty to children or animals, or promotion of amateur sports competition; or

(2) any other entity or organization that is organized and operated exclusively for the purposes listed in Section 501(c)(3) of the Internal Revenue Code of 1986.

(ll) “Governmental agency of the state” means:

(1) an incorporated city or town, a county, a public school district, a special-purpose district or authority, or a district, county, or justice of the peace court;

(2) a board, commission, department, office, or other agency in the executive branch of state government, including an institution of higher education as defined by Section 61.003, Education Code;

(3) the legislature or a legislative agency; and

(4) the supreme court, the court of criminal appeals, a court of appeals, or the State Bar of

¹ 26 U.S.C. § 501(c)(3)

Texas or another judicial agency having statewide jurisdiction.

(mm) "Ward" is a person for whom a guardian has been appointed.

Subsec. (n) amended by Acts 1985, 69th Leg., ch. 591, § 1, eff. Sept. 1, 1985; Subsec. (p) amended by Acts 1985, 69th Leg., ch. 159, § 1, eff. Sept. 1, 1985; Subsec. (y) amended by Acts 1985, 69th Leg., ch. 159, § 2, eff. Sept. 1, 1985; Subsec. (b) amended by Acts 1989, 71st Leg., ch. 375, § 33, eff. Sept. 1, 1989; Subsecs. (kk), (ll) added by Acts 1989, 71st Leg., ch. 1035, § 1, eff. Sept. 1, 1989; subsec. (n) amended by Acts 1991, 72nd Leg., ch. 14, § 284(96), eff. Sept. 1, 1991; Subsec. (ff) amended by Acts 1991, 72nd Leg., ch. 895, § 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 957, § 3, eff. Sept. 1, 1993; Subsec. (n) repealed by Acts 1995, 74th Leg., ch. 1039, § 73(1), eff. Sept. 1, 1995; Subsec. (p) amended by Acts 1995, 74th Leg., ch. 1039, § 4, eff. Sept. 1, 1995; Subsec. (y) repealed by Acts 1995, 74th Leg., ch. 1039, § 73(1), eff. Sept. 1, 1995; Subsec. (mm) added by Acts 1995, 74th Leg., ch. 1039, § 4, eff. Sept. 1, 1995; Subsec. (ii) amended by Acts 1997, 75th Leg., ch. 52, § 1, eff. Sept. 1, 1997; Subsec. (d) amended by Acts 1999, 76th Leg., ch. 344, § 6.001, eff. Sept. 1, 1999; Subsec. (p) amended by Acts 1999, 76th Leg., ch. 379, § 1, eff. Sept. 1, 1999; Subsec. ® amended by Acts 2007, 80th Leg., ch. 1170, § 1.01, eff. Sept. 1, 2007. Subsec. (u) repealed by Acts 2009, 81st Leg., ch. 602, § (19)(2), eff. June 19, 2009; Subsec. (bb) amended by Acts 2009, 81st Leg., ch. 1351, § 12(a), eff. Sept. 1, 2009. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context §§4A-4H

Ascertaining which court has jurisdiction to hear matters relating to intestate succession, wills, and estate administration depends on the type of courts that exist in the county. There are three possibilities.

First, if the county has only a constitutional county court (that is, no statutory probate court and no statutory court exercising probate jurisdiction) estate matters are filed in the constitutional county court. § 4C(a). This situation is common in rural (low population) counties.

Second, if the county has a statutory court exercising probate jurisdiction, but no statutory probate court, then the parties may file in either the constitutional county court or the statutory court with probate jurisdiction. § 4C(b).

Third, if the county has a statutory probate court, all probate proceedings are filed with the statutory probate court. § 4C(c). Counties with statutory probate courts include Bexar (2), Collin, Dallas (3), Denton, El Paso (2), Galveston, Harris (4), Hidalgo, Tarrant (2), and Travis. A statutory probate court also has concurrent jurisdiction with

the district court in the situations listed in § 4H which includes all actions involving inter vivos and testamentary trusts or in which a trustee is a plaintiff or defendant. Section 4G also describes additional actions over which a statutory probate court has jurisdiction such as those involving powers of attorney.

If the action is brought in a constitutional county court in a county with no statutory probate court or statutory court exercising probate jurisdiction and a dispute arises, the parties may demand that the action be transferred to the district court or request the assignment of a statutory probate court judge. § 4D. After resolving the specific dispute, the district court or the statutory probate court judge will normally return the case to the constitutional county court. The 2011 Legislature added § 4D(b-1) to permit the statutory probate court to handle the entire case upon request of the parties or the constitutional county court judge.

If the estate is probated in a constitutional county court in a county with a statutory court exercising probate jurisdiction (not a statutory probate court), then the parties may demand a transfer to the statutory court. § 4E. If the entire action is transferred, then the statutory court hears the rest of the case. However, if only the contested matter is transferred, then upon resolution of the contested matter, the county court at law returns the case to the constitutional county court.

If the estate is probated in a statutory probate court, all estate matters remain with that court; transfer is not available.

A final order (but not an interlocutory order) of any court exercising probate jurisdiction is appealable to the court of appeals. § 4A(c). In *Crowson v. Wakeham*, 897 S.W.2d 779 (Tex. 1995), the Supreme Court of Texas held that an order in a probate case is final for appellate purposes when (1) a statute declares that a specified phase of the probate proceedings are final and appealable, (2) the order disposes of all issues in the phase of the proceeding for which it was brought, or (3) a particular order is made final by a severance order meeting the usual severance criteria.

§ 4A. General Probate Court Jurisdiction; Appeals

(a) All probate proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the probate proceeding as specified in Section 4B of this code for that type of court.

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(b) A probate court may exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.

(c) A final order issued by a probate court is appealable to the court of appeals.

Added by Acts 2009, 81st Leg., ch. 1351, § 12(b), eff. Sept. 1, 2009. Repealed by Acts 2009, 81st Leg., ch. 1351, § 13(b), eff. Jan. 1, 2014.

§ 4B. Matters Related to Probate Proceeding

(a) For purposes of this code, in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes:

(1) an action against a personal representative or former personal representative arising out of the representative's performance of the duties of a personal representative;

(2) an action against a surety of a personal representative or former personal representative;

(3) a claim brought by a personal representative on behalf of an estate;

(4) an action brought against a personal representative in the representative's capacity as personal representative;

(5) an action for trial of title to real property that is estate property, including the enforcement of a lien against the property; and

(6) an action for trial of the right of property that is estate property.

(b) For purposes of this code, in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes:

(1) all matters and actions described in Subsection (a) of this section;

(2) the interpretation and administration of a testamentary trust if the will creating the trust has been admitted to probate in the court; and

(3) the interpretation and administration of an inter vivos trust created by a decedent whose will has been admitted to probate in the court.

(c) For purposes of this code, in a county in which there is a statutory probate court, a matter related to a probate proceeding includes:

(1) all matters and actions described in Subsections (a) and (b) of this section; and

(2) any cause of action in which a personal representative of an estate pending in the statutory probate court is a party in the representative's capacity as personal representative.

Added by Acts 2009, 81st Leg., ch. 1351, § 12(b), eff. Sept. 1, 2009. Repealed by Acts 2009, 81st Leg., ch. 1351, § 13(b), eff. Jan. 1, 2014.

§ 4C. Original Jurisdiction for Probate Proceedings

(a) In a county in which there is no statutory probate court or county court at law exercising original

probate jurisdiction, the county court has original jurisdiction of probate proceedings.

(b) In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, the county court at law exercising original probate jurisdiction and the county court have concurrent original jurisdiction of probate proceedings, unless otherwise provided by law. The judge of a county court may hear probate proceedings while sitting for the judge of any other county court.

(c) In a county in which there is a statutory probate court, the statutory probate court has original jurisdiction of probate proceedings.

Added by Acts 2009, 81st Leg., ch. 1351, § 12(b), eff. Sept. 1, 2009. Repealed by Acts 2009, 81st Leg., ch. 1351, § 13(b), eff. Jan. 1, 2014.

§ 4D. Jurisdiction of Contested Probate Proceeding in County with No Statutory Probate Court or Statutory County Court

(a) In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, when a matter in a probate proceeding is contested, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, according to the motion:

(1) request the assignment of a statutory probate court judge to hear the contested matter, as provided by Section 25.0022, Government Code; or

(2) transfer the contested matter to the district court, which may then hear the contested matter as if originally filed in the district court.

(b) If a party to a probate proceeding files a motion for the assignment of a statutory probate court judge to hear a contested matter in the proceeding before the judge of the county court transfers the contested matter to a district court under this section, the county judge shall grant the motion for the assignment of a statutory probate court judge and may not transfer the matter to the district court unless the party withdraws the motion.

(b-1) If a judge of a county court requests the assignment of a statutory probate court judge to hear a contested matter in a probate proceeding on the judge's own motion or on the motion of a party to the proceeding as provided by this section, the judge may request that the statutory probate court judge be assigned to the entire proceeding on the judge's own motion or on the motion of a party.

(c) A party to a probate proceeding may file a motion for the assignment of a statutory probate court judge under this section before a matter in the proceeding becomes contested, and the motion is given effect as a motion for assignment of a statutory probate court judge under Subsection (a) of this section if the matter later becomes contested.

(d) Notwithstanding any other law, a transfer of a contested matter in a probate proceeding to a district

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court under any authority other than the authority provided by this section:

(1) is disregarded for purposes of this section; and

(2) does not defeat the right of a party to the proceeding to have the matter assigned to a statutory probate court judge in accordance with this section.

(e) A statutory probate court judge assigned to a contested matter in a probate proceeding or to the entire proceeding under this section has the jurisdiction and authority granted to a statutory probate court by this code. A statutory probate court judge assigned to hear only the contested matter in a probate proceeding shall, on resolution of the matter, including any appeal of the matter, return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable. A statutory probate court judge assigned to the entire probate proceeding as provided by Subsection (b-1) of this section shall, on resolution of the contested matter in the proceeding, including any appeal of the matter, return the entire proceeding to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable.

(f) A district court to which a contested matter is transferred under this section has the jurisdiction and authority granted to a statutory probate court by this code. On resolution of a contested matter transferred to the district court under this section, including any appeal of the matter, the district court shall return the matter to the county court for further proceedings not inconsistent with the orders of the district court or court of appeals, as applicable.

(g) If only the contested matter in a probate proceeding is assigned to a statutory probate court judge under this section, or if the contested matter in a probate proceeding is transferred to a district court under this section, the county court shall continue to exercise jurisdiction over the management of the estate, other than a contested matter, until final disposition of the contested matter is made in accordance with this section. Any matter related to a probate proceeding in which a contested matter is transferred to a district court may be brought in the district court. The district court in which a matter related to the proceeding is filed may, on its own motion or on the motion of any party, find that the matter is not a contested matter and transfer the matter to the county court with jurisdiction of the management of the estate.

(h) If a contested matter in a probate proceeding is transferred to a district court under this section, the district court has jurisdiction of any contested matter in the proceeding that is subsequently filed, and the county court shall transfer those contested matters to the district court. If a statutory probate court judge is assigned under this section to hear a contested matter in a probate proceeding, the statutory probate court judge

shall be assigned to hear any contested matter in the proceeding that is subsequently filed.

(i) The clerk of a district court to which a contested matter in a probate proceeding is transferred under this section may perform in relation to the contested matter any function a county clerk may perform with respect to that type of matter.

Added by Acts 2009, 81st Leg., ch. 1351, § 12(b), eff. Sept. 1, 2009. Repealed by Acts 2009, 81st Leg., ch. 1351, § 13(b), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.01, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 4E. Jurisdiction of Consented Probate Proceeding in County with No Statutory Probate Court

(a) In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, when a matter in a probate proceeding is contested, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, transfer the contested matter to the county court at law. In addition, the judge of the county court, on the judge's own motion or on the motion of a party to the proceeding, may transfer the entire proceeding to the county court at law.

(b) A county court at law to which a proceeding is transferred under this section may hear the proceeding as if originally filed in that court. If only a contested matter in the proceeding is transferred, on the resolution of the matter, the matter shall be returned to the county court for further proceedings not inconsistent with the orders of the county court at law.

Added by Acts 2009, 81st Leg., ch. 1351, § 12(b), eff. Sept. 1, 2009. Repealed by Acts 2009, 81st Leg., ch. 1351, § 13(b), eff. Jan. 1, 2014.

§ 4F. Exclusive Jurisdiction of Probate Proceeding in County with Statutory Probate Court

(a) In a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all probate proceedings, regardless of whether contested or uncontested. A cause of action related to the probate proceeding must be brought in a statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by Section 4H of this code or with the jurisdiction of any other court.

(b) This section shall be construed in conjunction and in harmony with Section 145 of this code and all other sections of this code relating to independent executors, but may not be construed to expand the court's control over an independent executor.

Added by Acts 2009, 81st Leg., ch. 1351, § 12(b), eff. Sept. 1, 2009. Repealed by Acts 2009, 81st Leg., ch. 1351, § 13(b), eff. Jan. 1, 2014.

§ 4G. Jurisdiction of Statutory Probate Court With Respect to Trusts and Powers of Attorney

In a county in which there is a statutory probate court, the statutory probate court has jurisdiction of:

- (1) an action by or against a trustee;
- (2) an action involving an inter vivos trust, testamentary trust, or charitable trust;
- (3) an action against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and
- (4) an action to determine the validity of a power of attorney or to determine an agent's rights, powers, or duties under a power of attorney.

Added by Acts 2009, 81st Leg., ch. 1351, § 12(b), eff. Sept. 1, 2009. Repealed by Acts 2009, 81st Leg., ch. 1351, § 13(b), eff. Jan. 1, 2014.

§ 4H. Concurrent Jurisdiction with District Court

A statutory probate court has concurrent jurisdiction with the district court in:

- (1) a personal injury, survival, or wrongful death action by or against a person in the person's capacity as a personal representative;
- (2) an action by or against a trustee;
- (3) an action involving an inter vivos trust, testamentary trust, or charitable trust, including a charitable trust as defined by Section 123.001, Property Code;
- (4) an action involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate;
- (5) an action against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and
- (6) an action to determine the validity of a power of attorney or to determine an agent's rights, powers, or duties under a power of attorney.

Added by Acts 2009, 81st Leg., ch. 1351, § 12(b), eff. Sept. 1, 2009. Repealed by Acts 2009, 81st Leg., ch. 1351, § 13(b), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.02, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

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A statutory probate court judge may transfer a case pending in a district, county, or statutory court to the statutory probate court if it is related to a probate proceeding already pending in the statutory probate court as defined in § 4B. The judge is not, however, obligated to make the transfer; it is discretionary. *In re Azle Manor, Inc.*, 83 S.W.3d 410 (Tex. App. — Fort Worth 2002, no pet.).

§ 5B. Transfer to Statutory Probate Court of Proceeding Related to Probate Proceeding

(a) A judge of a statutory probate court, on the motion of a party to the action or on the motion of a person interested in an estate, may transfer to the judge's court from a district, county, or statutory court a cause of action related to a probate proceeding pending in the statutory probate court or a cause of action in which a personal representative of an estate pending in the statutory probate court is a party and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to that estate.

(b) Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

Added by Acts 1983, 68th Leg., p. 5228, ch. 958, § 1, eff. Sept. 1, 1983. Amended by Acts 1999, 76th Leg., ch. 1431, § 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 204, § 3.06, eff. Sept. 1, 2003. Subsec. (a) amended by Acts 2009, 81st Leg., ch. 1351, § 12(c), eff. Sept. 1, 2009. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 2, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.03, eff. Sept. 1, 2011

§ 5C. Actions to Collect Delinquent Property Taxes

(a) This section applies only to a decedent's estate that:

- (1) is being administered in a pending probate proceeding;
- (2) owns or claims an interest in property against which a taxing unit has imposed ad valorem taxes that are delinquent; and
- (3) is not being administered as an independent administration under Section 145 of this code.

(b) Notwithstanding any provision of this code to the contrary, if the probate proceedings are pending in a foreign jurisdiction or in a county other than the county in which the taxes were imposed, a suit to foreclose the lien securing payment of the taxes or to enforce personal liability for the taxes must be brought under Section 33.41, Tax Code, in a court of competent jurisdiction in the county in which the taxes were imposed.

(c) If the probate proceedings have been pending for four years or less in the county in which the taxes were imposed, the taxing unit may present a claim for the delinquent taxes against the estate to the personal representative of the estate in the probate proceedings.

(d) If the taxing unit presents a claim against the estate under Subsection (c) of this section:

- (1) the claim of the taxing unit is subject to each applicable provision in Parts 4 and 5, Chapter VIII,¹

¹ V.A.T.S. Probate Code, §294 et seq. or §331 et seq.

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of this code that relates to a claim or the enforcement of a claim in a probate proceeding; and

(2) the taxing unit may not bring a suit in any other court to foreclose the lien securing payment of the taxes or to enforce personal liability for the delinquent taxes before the first day after the fourth anniversary of the date the application for the probate proceeding was filed.

(e) To foreclose the lien securing payment of the delinquent taxes, the taxing unit must bring a suit under Section 33.41, Tax Code, in a court of competent jurisdiction for the county in which the taxes were imposed if:

(1) the probate proceedings have been pending in that county for more than four years; and

(2) the taxing unit did not present a delinquent tax claim under Subsection (c) of this section against the estate in the probate proceeding.

(f) In a suit brought under Subsection (e) of this section, the taxing unit:

(1) shall make the personal representative of the decedent's estate a party to the suit; and

(2) may not seek to enforce personal liability for the taxes against the estate of the decedent.

Added by Acts 1999, 76th Leg., ch. 1481, § 36, eff. Sept. 1, 1999. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 2, eff. Jan. 1, 2014.

Statutes in Context § 6 & § 8

The venue rules provided in § 6, as applied to probating wills and opening testate and intestate administrations, trump the normal venue rules found in the Rules of Civil Procedure. Proper venue is based on the decedent's domicile at death.

If the decedent was domiciled or had a fixed place of residence in Texas, the appropriate venue is the county of the decedent's domicile or residence at the time of death. It is not relevant where the decedent died, where the decedent's heirs or beneficiaries live, or where the decedent's real or personal property is located.

If the decedent dies in Texas but has no place of residence in Texas, then the appropriate venue is either in the county (1) where the decedent's principal property is located, or (2) where the decedent died. The county in which the application for probate is filed first has priority under Probate Code § 8.

If the decedent did not die in Texas and did not reside in Texas, the appropriate venue is in the county where the nearest next of kin reside. If the decedent has no next of kin in Texas, then the appropriate venue is the county in which the decedent's principal estate is located. The typical reason for probate proceedings in Texas for a

person who did not reside or die in Texas is because the decedent owned real property located in Texas.

Section 6C, enacted in 2011, governs venue in heirship proceedings.

§ 6. Venue: Probate of Wills and Granting of Letters Testamentary and of Administration

Wills shall be admitted to probate, and letters testamentary or of administration shall be granted:

(1) in the county where the decedent resided, if the decedent had a domicile or fixed place of residence in this State;

(2) if the decedent had no domicile or fixed place of residence in this State but died in this State, then either in the county where the decedent's principal estate was at the time of the decedent's death, or in the county where the decedent died; or

(3) if the decedent had no domicile or fixed place of residence in this State, and died outside the limits of this State:

(A) in any county in this State where the decedent's nearest of kin reside; or

(B) if there are no kindred of the decedent in this State, then in the county where the decedent's principal estate was situated at the time of the decedent's death.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 2, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.04, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 6A. Venue: Action Related to Probate Proceeding in Statutory Probate Court

Except as provided by Section 6B of this code, venue for any cause of action related to a probate proceeding pending in a statutory probate court is proper in the statutory probate court in which the decedent's estate is pending.

Added by Acts 2011, 82nd Leg., ch. 1338, § 1.05, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 6B. Venue: Certain Actions Involving Personal Representative

Notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

Added by Acts 2011, 82nd Leg., ch. 1338, § 1.05, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 6C. Venue: Heirship Proceedings

(a) Venue for a proceeding to determine a decedent's heirs is in:

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(1) the court of the county in which a proceeding admitting the decedent's will to probate or administering the decedent's estate was most recently pending; or

(2) the court of the county in which venue would be proper for commencement of an administration of the decedent's estate under Section 6 of this code if:

(A) no will of the decedent has been admitted to probate in this state and no administration of the decedent's estate has been granted in this state; or

(B) the proceeding is commenced by the trustee of a trust holding assets for the benefit of the decedent.

(b) Notwithstanding Subsection (a) of this section and Section 6 of this code, if there is no administration pending of the estate of a deceased ward who died intestate, venue for a proceeding to determine the deceased ward's heirs is in the probate court in which the guardianship proceedings with respect to the ward's estate were pending on the date of the ward's death. A proceeding described by this subsection may not be brought as part of the guardianship proceedings with respect to the ward's estate, but rather must be filed as a separate cause in which the court may determine the heirs' respective shares and interests in the estate as provided by the laws of this state.

Added by Acts 2011, 82nd Leg., ch. 1338, § 1.05, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 6D. Venue: Certain Actions Involving Breach of Fiduciary Duty

Notwithstanding any other provision of this chapter, venue for a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust is determined under Section 123.005, Property Code.

Added by Acts 2011, 82nd Leg., ch. 1338, § 1.05, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 8. Concurrent Venue in Probate Proceeding

(a) **Concurrent Venue.** When two or more courts have concurrent venue of a probate proceeding, the court in which the application for the proceeding is first filed shall have and retain jurisdiction of the proceeding to the exclusion of the other court or courts. The proceeding shall be deemed commenced by the filing of an application averring facts sufficient to confer venue; and the proceeding first legally commenced shall extend to all of the property of the decedent or the decedent's estate. Provided, however, that a bona fide purchaser of real property in reliance on any such subsequent proceeding, without knowledge of its invalidity, shall be protected in such purchase unless before the purchase the decree admitting the will to probate, determining

heirship, or granting administration in the prior proceeding is recorded in the office of the county clerk of the county in which such property is located.

(b) **Proceedings in More Than One County.** Probate Proceedings in More Than One County. If probate proceedings involving the same estate are commenced in more than one county, each proceeding commenced in a county other than the county in which a proceeding was first commenced is stayed until final determination of venue by the court in the county where first commenced. If the proper venue is finally determined to be in another county, the clerk, after making and retaining a true copy of the entire file in the case, shall transmit the original file to the proper county, and the proceeding shall thereupon be had in the proper county in the same manner as if the proceeding had originally been instituted therein.

(c) **Jurisdiction to Determine Venue.** Subject to Subsections (a) and (b) of this section, a court in which an application for a probate proceeding is filed has jurisdiction to determine venue for the proceeding and for any matter related to the proceeding. A court's determination under this subsection is not subject to collateral attack.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Subsec. (c)(2) amended by Acts 1983, 68th Leg., p. 4754, ch. 833, § 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 786, § 1, eff. Aug. 31, 1987. Amended by Acts 2003, 78th Leg., ch. 1060, § 5, eff. Sept. 1, 2003. Subsecs (a), (b), (c), & (e) amended by 80th Leg., ch. 1170, § 2.01, eff. Sept. 1, 2007. Subsec. (c) amended by Acts 2009, 81st Leg., ch. 602, § 1, eff. June 19, 2009. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 2, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.06, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 8A. Transfer of Venue in Probate Proceeding

(a) **Transfer for Want of Venue.** If it appears to the court at any time before the final decree in a probate proceeding that the proceeding was commenced in a court which did not have priority of venue over such proceeding, the court shall, on the application of any interested person, transfer the proceeding to the proper county by transmitting to the proper court in such county the original file in such case, together with certified copies of all entries in the judge's probate docket theretofore made, and the proceeding in such county shall be completed in the same manner as if the proceeding had originally been instituted therein; but, if the question as to priority of venue is not raised before final decree in the proceedings is announced, the finality of such decree shall not be affected by any error in venue.

(b) **Transfer for Convenience.** If it appears to the court at any time before a probate proceeding is concluded that it would be in the best interest of the estate or, if there is no administration of the estate, that it would be in the best interest of the heirs or

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beneficiaries of the decedent's will, the court, in its discretion, may order the proceeding transferred to the proper court in any other county in this State. The clerk of the court from which the proceeding is transferred shall transmit to the court to which the proceeding is transferred the original file in the proceeding and a certified copy of the index.

Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.06, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 8B. Validation of Prior Proceedings

When a probate proceeding is transferred to another county under any provision of Section 8 or 8A of this Code, all orders entered in connection with the proceeding shall be valid and shall be recognized in the second court, provided such orders were made and entered in conformance with the procedure prescribed by this Code.

Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.06, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 9. Defects in Pleading

No defect of form or substance in any pleading in probate shall be held by any court to invalidate such pleading, or any order based upon such pleading, unless the defect has been timely objected to and called to the attention of the court in which such proceedings were or are pending.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 10

An individual may have a strong motivation to have a testator's will deemed invalid and ineffective to dispose of the testator's property. First, this person could be an heir who would receive more under intestacy than the will. Or, second, this person could be a beneficiary of a prior will who would receive a smaller gift under the more recent will.

A person must have a pecuniary interest in the estate to contest the proceedings. *Logan v. Thomason*, 202 S.W.2d 212, 215 (Tex. 1947) ("An interest resting on sentiment or sympathy, or any other basis other than gain or loss of money or its equivalent, is insufficient."). See also Probate Code § 3® defining "person interested."

The timing of a will contest is of particular importance. First, the timing determines which party has the burden of proof. If the contest action is brought before the probate of the will, then the party admitting the will to probate has the burden to prove that the will is valid. On the other hand, if

the contest action is brought after the will has been admitted to probate, the party contesting the will has the burden to prove that there is a deficiency in the will. Second, will contests are subject to the statute of limitations set forth in Probate Code § 93.

§ 10. Persons Entitled to Contest Proceedings

Any person interested in an estate may, at any time before any issue in any proceeding is decided upon by the court, file opposition thereto in writing and shall be entitled to process for witnesses and evidence, and to be heard upon such opposition, as in other suits.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 10A

Unlike many states, Texas law does not expressly require that the beneficiaries of a will be given notice or made a party to a will contest action except for certain schools and charities as provided in § 10A. See *Wojcik v. Wesolick*, 97 S.W.3d 335 (Tex. App. — Houston [14th Dist.] 2003, no pet.), but see, *Kotz v. Kotz*, 613 S.W.2d 760, 761 (Tex. Civ. App. — Beaumont 1981, no writ), and *Jennings v. Srp*, 521 S.W.2d 326, 328-29 (Tex. Civ. App. — Corpus Christi 1975, no writ).

§ 10A. Necessary Party

(a) An institution of higher education as defined by Section 61.003, Education Code, a private institution of higher education, or a charitable organization is a necessary party to a will contest or will construction suit involving a will in which the institution or organization is a distributee.

(b) If an institution or organization is a necessary party under Subsection (a) of this section, the court shall serve the institution or organization in the manner provided for service on other parties by this code.

Added by Acts 1989, 71st Leg., ch. 1035, § 4, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 675, § 1, eff. Sept. 1, 1991. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 10B

The ability of litigants to obtain evidence of a decedent's testamentary capacity was greatly enhanced by the legislature's enactment of Probate Code § 10B in 1997. This section provides that a party to a will contest, or a proceeding in which a party relies on the mental or testamentary capacity of a decedent as part of the party's claim or defense, is entitled to production of all

communications or records that are relevant to the decedent's condition.

§ 10B. Communications or Records Relating to Decedent's Condition Before Death

Notwithstanding the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), a person who is a party to a will contest or a proceeding in which a party relies on the mental or testamentary capacity of a decedent before the decedent's death as part of the party's claim or defense is entitled to production of all communications or records relevant to the decedent's condition before the decedent's death. On receipt of a subpoena of communications or records under this section and proof of filing of the will contest or proceeding, by file-stamped copy, the appropriate physician, hospital, medical facility, custodian of records, or other person in possession of the communications or records shall release the communications or records to the party requesting the records without further authorization.

Added by Acts 1997, 75th Leg., ch. 1302, § 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 855, § 1, eff. Sept. 1, 1999. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

**Statutes in Context
§ 10C**

The lower courts of Texas have recognized the tort of tortious interference with inheritance rights. See *King v. Acker*, 725 S.W.2d 750 (Tex. App. — Houston [1st Dist.] 1987, no writ). However, the courts have not delineated exactly what actions would constitute tortious interference. Taking an opposite approach, the 2003 Legislature enacted § 10C which declares that certain specified actions may not be considered tortious interference, that is, the filing or contesting in probate court of any pleading relating to a decedent's estate will not constitute tortious interference.

§ 10C. Effect of Filing or Contesting Pleading

(a) The filing or contesting in probate court of any pleading relating to a decedent's estate does not constitute tortious interference with inheritance of the estate.

(b) This section does not abrogate any rights of a person under Rule 13, Texas Rules of Civil Procedure, or Chapter 10, Civil Practice and Remedies Code.

Added by Acts 2003, 78th Leg., ch. 1060, § 6, eff. Sept. 1, 2003. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 11. Applications and Other Papers to be Filed With Clerk

All applications for probate proceedings, complaints, petitions and all other papers permitted or

required by law to be filed in the court in probate matters, shall be filed with the county clerk of the proper county who shall file the same and endorse on each paper the date filed and the docket number, and his official signature.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 11A. Exemption from Probate Fees for Estates of Certain Military Servicemembers

(a) In this section, "combat zone" means an area that the president of the United States by executive order designates for purposes of 26 U.S.C. Section 112 as an area in which armed forces of the United States are or have engaged in combat.

(b) Notwithstanding any other law, the clerk of a county court may not charge, or collect from, the estate of a decedent any of the following fees if the decedent died while in active service as a member of the armed forces of the United States in a combat zone:

- (1) a fee for or associated with the filing of the decedent's will for probate; and
- (2) a fee for any service rendered by the probate court regarding the administration of the decedent's estate.

Added by Acts 2007, 80th Leg., ch. 940, § 1, eff. June 15, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 11B. Exemption from Probate Fees for Estates of Certain Law Enforcement Officers, Firefighters, and Others

(a) In this section:

- (1) "Eligible decedent" means an individual listed in Section 615.003, Government Code.
- (2) "Line of duty" and "personal injury" have the meanings assigned by Section 615.021(e), Government Code.

(b) Notwithstanding any other law, the clerk of a court may not charge, or collect from, the estate of an eligible decedent any of the following fees if the decedent died as a result of a personal injury sustained in the line of duty in the individual's position as described by Section 615.003, Government Code:

- (1) a fee for or associated with the filing of the decedent's will for probate; and
- (2) a fee for any service rendered by the court regarding the administration of the decedent's estate.

Added by Acts 2011, 82nd Leg., ch. 614, §1.01, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 614, §2.02, eff. Jan. 1, 2014.

§ 12. Costs and Security

(a) **Applicability of Laws Regulating Costs.** The provisions of law regulating costs in ordinary civil cases shall apply to all matters in probate when not expressly provided for in this Code.

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(b) Security for Costs Required. When. When any person other than the personal representative of an estate files an application, complaint, or opposition in relation to the estate, he may be required by the clerk to give security for the probable cost of such proceeding before filing the same; or any one interested in the estate, or any officer of the court, may, at any time before the trial of such application, complaint, or opposition, obtain from the court, upon written motion, an order requiring such party to give security for the probable costs of such proceeding. The rules governing civil suits in the county court respecting this subject shall control in such cases.

(c) Suit for Fiduciary. No security for costs shall be required of an executor or administrator appointed by a court of this state in any suit brought by him in his fiduciary character.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Subsec. (c) added by Acts 1985, 69th Leg., ch. 959, § 4, eff. Sept. 1, 1985; amended by Acts 1993, 73rd Leg., ch. 957, § 7, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 13. Judge's Probate Docket

The county clerk shall keep a record book to be styled "Judge's Probate Docket," and shall enter therein:

- (a) The name of each person upon whose person or estate proceedings are had or sought to be had.
- (b) The name of the executor or administrator or of the applicant for letters.
- (c) The date of the filing of the original application for probate proceedings.
- (d) A notation of each order, judgment, decree, and proceeding had in each estate, with the date thereof.
- (e) A number for each estate upon the docket in the order in which proceedings are commenced, and each paper filed in an estate shall be given the corresponding docket number of the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 8, eff. Sept. 1, 1993. Subsec. (d) amended by Acts 2009, 81st Leg., ch. 602, § 2, eff. June 19, 2009. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 14. Claim Docket

The county clerk shall also keep a record book to be styled "Claim Docket," and shall enter therein all claims presented against an estate for approval by the court. This docket shall be ruled in sixteen columns at proper intervals from top to bottom, with a short note of the contents at the top of each column. One or more pages shall be assigned to each estate. The following information shall be entered in the respective columns beginning with the first or marginal column: The names of claimants in the order in which their claims are filed; the amount of the claim; its date; the date of filing; when due; the date from which it bears interest; the rate of interest; when allowed by the executor or

administrator; the amount allowed; the date of rejection; when approved; the amount approved; when disapproved; the class to which the claim belongs; when established by judgment of a court; the amount of such judgment.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 9, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 15. Case Files

The county clerk shall maintain a case file for each decedent's estate in which a probate proceeding has been filed. The case file must contain all orders, judgments, and proceedings of the court and any other probate filing with the court, including all:

- (1) applications for the probate of wills and for the granting of administration;
- (2) citations and notices, whether published or posted, with the returns thereon;
- (3) wills and the testimony upon which the same are admitted to probate, provided that the substance only of depositions shall be recorded;
- (4) bonds and official oaths;
- (5) inventories, appraisements, and lists of claims;
- (5-a) affidavits in lieu of inventories, appraisements, and lists of claims;
- (6) exhibits and accounts;
- (7) reports of hiring, renting, or sale;
- (8) applications for sale or partition of real estate and reports of sale and of commissioners of partition;
- (9) applications for authority to execute leases for mineral development, or for pooling or unitization of lands, royalty, or other interest in minerals, or to lend or invest money; and
- (10) reports of lending or investing money.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 10, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 67, § 1, eff. Sept. 1, 1999. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.07, eff. Sept. 1, 2011.

§ 16. Probate Fee Book

The county clerk shall keep a record book styled "Probate Fee Book," and shall enter therein each item of costs which accrues to the officers of the court, together with witness fees, if any, showing the party to whom the costs or fees are due, the date of the accrual of the same, the estate or party liable therefor, and the date on which any such costs or fees are paid.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 17. Maintaining Records in Lieu of Record Books

In lieu of keeping the record books described by Sections 13, 14, and 16 of this code, the county clerk may maintain the information relating to a person's or estate's probate proceedings maintained in those record books on a computer file, on microfilm, in the form of a digitized optical image, or in another similar form of data compilation.

Added by Acts 1999, 76th Leg., ch. 67, § 1, eff. Sept. 1, 1999. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 17A. Index

The county clerk shall properly index each record book, and shall keep it open for public inspection, but shall not let it out of his custody.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Renumbered from V.A.T.S. Probate Code, § 17 and amended by Acts 1999, 76th Leg., ch. 67, § 1, eff. Sept. 1, 1999. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 18. Use of Records as Evidence

The record books or individual case files, including records on a computer file, on microfilm, in the form of a digitized optical image, or in another similar form of data compilation described in preceding sections of this code, or certified copies or reproductions of the records, shall be evidence in any court of this state.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1999, 76th Leg., ch. 67, § 1, eff. Sept. 1, 1999. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 19. Call of the Dockets

The judge of the court in which probate proceedings are pending, at such times as he shall determine, shall call the estates of decedents in their regular order upon both the probate and claim dockets and make such orders as shall be necessary.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 11, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 20. Clerk May Set Hearings

Whenever, on account of the county judge's absence from the county seat, or his being on vacation, disqualified, ill, or deceased, such judge is unable to designate the time and place for hearing a probate matter pending in his court, authority is hereby vested in the county clerk of the county in which such matter is pending to designate such time and place, entering such setting on the judge's docket and certifying thereupon why such judge is not acting by himself. If, after service of such notices and citations as required by law with reference to such time and place of hearing has been perfected, no qualified judge is present for the hearing,

the same shall automatically be continued from day to day until a qualified judge is present to hear and determine the matter.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 21

Any party has the right to a jury trial in a contested probate action under § 21.

§ 21. Trial by Jury

In all contested probate and mental illness proceedings in the district court or in the county court or statutory probate court, county court at law or other statutory court exercising probate jurisdiction, the parties shall be entitled to trial by jury as in other civil actions.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1973, 63rd Leg., p. 1685, ch. 610, § 2. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 22. Evidence

In proceedings arising under the provisions of this Code, the rules relating to witnesses and evidence that govern in the District Court shall apply so far as practicable except that where a will is to be probated, and in other probate matters where there is no opposing party or attorney of record upon whom notice and copies of interrogatories may be served, service may be had by posting notice of intention to take depositions for a period of ten days as provided in this Code governing posting of notices. When such notice is filed with the clerk, a copy of the interrogatories shall also be filed, and at the expiration of ten days, commission may issue for taking the depositions, and the judge may file cross-interrogatories where no one appears, if he so desires.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 23. Decrees

All decisions, orders, decrees, and judgments of the county court in probate matters shall be rendered in open court except in cases where it is otherwise specially provided.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 2009, 81st Leg., ch. 602, § 3, eff. June 19, 2009. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 24. Enforcement of Orders

The county or probate judge may enforce obedience to all his lawful orders against executors and

administrators by attachment and imprisonment, but no such imprisonment shall exceed three days for any one offense, unless otherwise expressly so provided in this Code.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 12, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 25. Executions

Executions in probate matters shall be directed “to any sheriff or any constable within the State of Texas,” made returnable in sixty days, and shall be attested and signed by the clerk officially under the seal of the court. All proceedings under such executions shall be governed by the laws regulating proceedings under executions issued from the District Court so far as applicable. Provided, however, that no execution directed to the sheriff or any constable of a specific county within this State shall be held defective if such execution was properly executed within such county by such officer.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 26. Attachments for Property

Whenever complaint in writing, under oath, shall be made to the county or probate judge by any person interested in the estate of a decedent that the executor or administrator is about to remove said estate, or any part thereof, beyond the limits of the State, such judge may order a writ to issue, directed “to any sheriff or any constable within the State of Texas,” commanding him to seize such estate, or any part thereof, and hold the same subject to such further orders as such judge shall make on such complaint. No such writ shall issue unless the complainant shall give bond, in such sum as the judge shall require, payable to the executor or administrator of such estate, conditioned for the payment of all damages and costs that shall be recovered for the wrongful suing out of such writ. Provided, however, that no writ of attachment directed to the sheriff or any constable of a specific county within this State shall be held defective if such writ was properly executed within such county by such officer.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 13, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 27. Enforcement of Specific Performance

When any person shall sell property and enter into bond or other written agreement to make title thereto, and shall depart this life without having made such title, the owner of such bond or written agreement or his legal representatives, may file a complaint in writing in the court of the county where the letters testamentary or of administration on the estate of the deceased obligor

were granted, and cause the personal representative of such estate to be cited to appear at a date stated in the citation and show cause why specific performance of such bond or written agreement should not be decreed. Such bond or other written agreement shall be filed with such complaint, or good cause shown under oath why the same cannot be filed; and if it cannot be so filed, the same or the substance thereof shall be set forth in the complaint. After the service of the citation, the court shall hear such complaint and the evidence thereon, and, if satisfied from the proof that such bond or written agreement was legally executed by the testator or intestate, and that the complainant has a right to demand specific performance thereof, a decree shall be made ordering the personal representative to make title to the property, according to the tenor of the obligation, fully describing the property in such decree. When a conveyance is made under the provisions of this Section, it shall refer to and identify the decree of the court authorizing it, and, when delivered, shall vest in the person to whom made all the right and title which the testator or intestate had to the property conveyed; and such conveyance shall be prima facie evidence that all requirements of the law have been complied with in obtaining the same.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 28. Personal Representative to Serve Pending Appeal of Appointment

Pending appeals from orders or judgments appointing administrators or temporary administrators, the appointees shall continue to act as such and shall continue the prosecution of any suits then pending in favor of the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, § 3, eff. June 21, 1975. Amended by Acts 1993, 73rd Leg., ch. 957, § 14, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 29

While appeal bonds are normally required, no bond is required when an appeal is made by the personal representative unless the appeal personally concerns the personal representative.

§ 29. Appeal Bonds of Personal Representatives

When an appeal is taken by an executor or administrator, no bond shall be required, unless such appeal personally concerns him, in which case he must give the bond.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 15, eff.

Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 31

A bill of review is filed for the purpose of getting a decision revised or corrected upon a showing of error. It may be filed by an interested party and is filed in the court where the estate was administered. A bill of review may be filed within two years of the date of the decision. Thus, a bill of review may be filed even though it is too late to appeal.

§ 31. Bill of Review

Any person interested may, by a bill of review filed in the court in which the probate proceedings were had, have any decision, order, or judgment rendered by the court, or by the judge thereof, revised and corrected on showing error therein; but no process or action under such decision, order or judgment shall be stayed except by writ of injunction, and no bill of review shall be filed after two years have elapsed from the date of such decision, order, or judgment.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 16, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 32. Common Law Applicable

The rights, powers and duties of executors and administrators shall be governed by the principles of the common law, when the same do not conflict with the provisions of the statutes of this State.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 17, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 33

Section 33 provides extensive instructions on how notice and citations are to be given using a variety of delivery methods including personal service, posting, publication, and mailing.

§ 33. Issuance, Contents, Service, and Return of Citation, Notices, and Writs in Probate Matters

(a) When Citation or Notice Necessary. No person need be cited or otherwise given notice except in situations in which this Code expressly provides for citation or the giving of notice; provided, however, that even though this Code does not expressly provide for citation, or the issuance or return of notice in any probate matter, the court may, in its discretion, require

that notice be given, and prescribe the form and manner of service and return thereof.

(b) Issuance by the Clerk or by Personal Representative. The county clerk shall issue necessary citations, writs, and process in probate matters, and all notices not required to be issued by personal representatives, without any order from the court, unless such order is required by a provision of this Code.

(c) Contents of Citation, Writ, and Notice. Citation and notices issued by the clerk shall be signed and sealed by him, and shall be styled "The State of Texas." Notices required to be given by a personal representative shall be in writing and shall be signed by the representative in his official capacity. All citations and notices shall be directed to the person or persons to be cited or notified, shall be dated, and shall state the style and number of the proceeding, the court in which it is pending, and shall describe generally the nature of the proceeding or matter to which the citation or notice relates. No precept directed to an officer is necessary. A citation or notice shall direct the person or persons cited or notified to appear by filing a written contest or answer, or to perform other acts required of him or them and shall state when and where such appearance or performance is required. No citation or notice shall be held to be defective because it contains a precept directed to an officer authorized to serve it. All writs and other process except citations and notices shall be directed "To any sheriff or constable within the State of Texas," but shall not be held defective because directed to the sheriff or any constable of a specific county if properly served within the named county by such officer.

(d) Where No Specific Form of Notice, Service, or Return is Prescribed, or When Provisions Are Insufficient or Inadequate. In all situations in which this Code requires that notice be given, or that a person be cited, and in which a specific method of giving such notice or of citing such person, or a specific method of service and return of such citation or notice is not given, or an insufficient or inadequate provision appears with respect to any of such matters, or when any interested person so requests, such notice or citation shall be issued, served, and returned in such manner as the court, by written order, shall direct in accordance with this Code and the Texas Rules of Civil Procedure, and shall have the same force and effect as if the manner of service and return had been specified in this Code.

(e) Service of Citation or Notice Upon Personal Representatives. Except in instances in which this Code expressly provides another method of service, any notice or citation required to be served upon any personal representative or receiver shall be served by the clerk issuing such citation or notice. The clerk shall serve the same by sending the original thereof by registered or certified mail to the attorney of record for the personal representative or receiver, but if there is no attorney of record, to the personal representative or receiver.

(f) Methods of Serving Citations and Notices.

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(1) Personal Service. Where it is provided that personal service shall be had with respect to a citation or notice, any such citation or notice must be served upon the attorney of record for the person to be cited. Notwithstanding the requirement of personal service, service may be made upon such attorney by any of the methods hereinafter specified for service upon an attorney. If there is no attorney of record in the proceeding for such person, or if an attempt to make service upon the attorney was unsuccessful, a citation or notice directed to a person within this State must be served by the sheriff or constable upon the person to be cited or notified, in person, by delivering to him a true copy of such citation or notice at least ten (10) days before the return day thereof, exclusive of the date of service. Where the person to be cited or notified is absent from the State, or is a nonresident, such citation or notice may be served by any disinterested person competent to make oath of the fact. Said citation or notice shall be returnable at least ten (10) days after the date of service, exclusive of the date of service. The return of the person serving the citation or notice shall be endorsed on or attached to same; it shall show the time and place of service, certify that a true copy of the citation or notice was delivered to the person directed to be served, be subscribed and sworn to before some officer authorized by the laws of this State to take affidavits, under the hand and official seal of such officer, and returned to the county clerk who issued same. If in either case such citation or notice is returned with the notation that the person sought to be served, whether within or without this State, cannot be found, the clerk shall issue a new citation or notice directed to the person or persons sought to be served and service shall be by publication.

(2) Posting. When citation or notice is required to be posted, it shall be posted by the sheriff or constable at the courthouse door of the county in which the proceedings are pending, or at the place in or near the courthouse where public notices customarily are posted, for not less than ten (10) days before the return day thereof, exclusive of the date of posting. The clerk shall deliver the original and a copy of such citation or notice to the sheriff or any constable of the proper county, who shall post said copy as herein prescribed and return the original to the clerk, stating in a written return thereon the time when and the place where he posted such copy. The date of posting shall be the date of service. When posting of notice by a personal representative is authorized or required, the method herein prescribed shall be followed, such notices to be issued in the name of the representative, addressed and delivered to, posted and returned by, the proper officer, and filed with the clerk.

(3) Publication. When a person is to be cited or notified by publication, the citation or notice shall be published once in a newspaper of general circulation in the county in which the proceedings are pending, and said publication shall be not less than ten (10) days before the return day thereof, exclusive of the date of publication. The date of publication which said newspaper bears shall be the date of service. If no newspaper is published, printed, or of general circulation, in the county where citation or notice is to be had, service of such citation or notice shall be by posting.

(4) Mailing.

(A) When any citation or notice is required or permitted to be served by registered or certified mail, other than notices required to be given by personal representatives, the clerk shall issue such citation or notice and shall serve the same by sending the original thereof by registered or certified mail. Any notice required to be given by a personal representative by registered or certified mail shall be issued by him, and he shall serve the same by sending the original thereof by registered or certified mail. In either case the citation or notice shall be mailed with instructions to deliver to the addressee only, and with return receipt requested. The envelope containing such citation or notice shall be addressed to the attorney of record in the proceeding for the person to be cited or notified, but if there is none, or if returned undelivered, then to the person to be cited or notified. A copy of such citation or notice, together with the certificate of the clerk, or of the personal representative, as the case may be, showing the fact and date of mailing, shall be filed and recorded. If a receipt is returned, it shall be attached to the certificate.

(B) When any citation or notice is required or permitted to be served by ordinary mail, the clerk, or the personal representative when required by statute or by order of the court, shall serve the same by mailing the original to the person to be cited or notified. A copy of such citation or notice, together with a certificate of the person serving the same showing the fact and time of mailing, shall be filed and recorded.

(C) When service is made by mail, the date of mailing shall be the date of service. Service by mail shall be made not less than twenty (20) days before the return day thereof, exclusive of the date of service.

(D) If a citation or notice served by mailing is returned undelivered, a new citation or notice shall be issued, and such citation or notice shall be served by posting.

(g) Return of Citation or Notice. All citations and notices issued by the clerk and served by personal service, by mail, by posting, or by publication, shall be

returnable to the court from which issued on the first Monday after the service is perfected.

(h) Sufficiency of Return in Cases of Posting. In any probate matter where citation or notice is required to be served by posting, and such citation or notice is issued in conformity with the applicable provision of this Code, the citation or notice and the service and return thereof shall be sufficient and valid if any sheriff or constable posts a copy or copies of such citation or notice at the place or places prescribed by this Code on a day which is sufficiently prior to the return day named in such citation or notice for the period of time for which such citation or notice is required to be posted to elapse before the return day of such citation or notice, and the fact that such sheriff or constable makes his return on such citation or notice and returns same into court before the period of time elapses for which such citation or notice is required to be posted, shall not affect the sufficiency or validity of such citation or notice or the service or return thereof, even though such return is made, and such citation or notice is returned into court, on the same day it is issued.

(i) Proof of Service. Proof of service in all cases requiring notice or citation, whether by publication, posting, mailing, or otherwise, shall be filed before the hearing. Proof of service made by a sheriff or constable shall be made by the return of service. Service made by a private person shall be proved by the affidavit of the person. Proof of service by publication shall be made by the affidavit of the publisher or that of an employee of the publisher, which affidavit shall show the date the issue of the newspaper bore, and have attached to or embodied in it a copy of the published notice or citation. In the case of service by mail, proof shall be made by the certificate of the clerk, or the affidavit of the personal representative or other person making such service, stating the fact and time of mailing. In the case of service by registered or certified mail, the return receipt shall be attached to the certificate, if a receipt has been returned.

(j) Request for Notice. At any time after an application is filed for the purpose of commencing any proceeding in probate, including, but not limited to, a proceeding for the probate of a will, grant of letters testamentary or of administration and determination of heirship, any person interested in the estate may file with the clerk a request in writing that he be notified of any and all, or of any specifically designated, motions, applications, or pleadings filed by any person, or by any particular persons specifically designated in the request. The fees and costs for such notices shall be borne by the person requesting them, and the clerk may require a deposit to cover the estimated costs of furnishing such person with the notice or notices requested. The clerk shall thereafter send to such person by ordinary mail copies of any of the documents specified in the request. Failure of the clerk to comply with the request shall not invalidate any proceeding.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 1, eff. Aug. 22, 1957; Acts 1971, 62nd Leg., p. 967, ch. 173, § 1, eff. Jan. 1, 1972. Subsec. (j) amended by Acts 1993, 73rd Leg., ch. 957, § 18, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 34

If a party has an attorney of record in a case, all notices are to be served on the attorney rather than the party under § 34.

§ 34. Service on Attorney

If any attorney shall have entered his appearance of record for any party in any proceeding in probate, all citations and notices required to be served on the party in such proceeding shall be served on the attorney, and such service shall be in lieu of service upon the party for whom the attorney appears. All notices served on attorneys in accordance with this section may be served by registered or certified mail or by delivery to the attorney in person. They may be served by a party to the proceeding or his attorney of record, or by the proper sheriff or constable, or by any other person competent to testify. A written statement by an attorney of record, or the return of the officer, or the affidavit of any other person showing service shall be prima facie evidence of the fact of service.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 970, ch. 173, § 2, eff. Jan. 1, 1972. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 34A

Normally, a judge has the discretion whether to appoint an attorney ad litem to represent an unborn, unascertained, unknown, nonresident, or incompetent party. However, in a determination of heirship proceeding, the judge is required to appoint an attorney ad litem under Probate Code § 53(c).

§ 34A. Attorneys Ad Litem

Except as provided by Section 53(c) of this code, the judge of a probate court may appoint an attorney ad litem to represent the interests of a person having a legal disability, a nonresident, an unborn or unascertained person, or an unknown heir in any probate proceeding. Each attorney ad litem appointed under this section is entitled to reasonable compensation for services in the amount set by the court and to be taxed as costs in the proceeding.

Added by Acts 1983, 68th Leg., p. 747, ch. 178, § 1, eff. Aug. 29, 1983. Amended by Acts 1987, 70th Leg., ch.

467, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 957, § 19, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 664, § 1, eff. Sept. 1, 2001. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 35. Waiver of Notice

Any person legally competent who is interested in any hearing in a proceeding in probate may, in person or by attorney, waive in writing notice of such hearing. A trustee may make such a waiver on behalf of the beneficiary of his trust. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of any person residing in a foreign country, may make such waiver of notice on behalf of such person. Any person who submits to the jurisdiction of the court in any hearing shall be deemed to have waived notice thereof.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 20, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context § 36

The judge has the duty to use reasonable diligence to make certain that personal representatives in dependent administrations are performing their duties properly. The judge, however, does not have this responsibility with respect to independent personal representatives who are not supervised by the court.

§ 36. Duty and Responsibility of Judge

(a) It shall be the duty of each county and probate court to use reasonable diligence to see that personal representatives of estates being administered under orders of the court and other officers of the court perform the duty enjoined upon them by law pertaining to such estates. The judge shall annually, if in his opinion the same be necessary, examine the condition of each of said estates and the solvency of the bonds of personal representatives of estates. He shall, at any time he finds that the personal representative's bond is not sufficient to protect such estate, require such personal representatives to execute a new bond in accordance with law. In each case, he shall notify the personal representative, and the sureties on the bond, as provided by law; and should damage or loss result to estates through the gross neglect of the judge to use reasonable diligence in the performance of his duty, he shall be liable on his bond to those damaged by such neglect.

(b) The court may request an applicant or court-appointed fiduciary to produce other information identifying an applicant, decedent, or personal representative, including social security numbers, in addition to identifying information the applicant or fiduciary is required to produce under this code. The court shall maintain the information required under this

subsection, and the information may not be filed with the clerk.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 979, ch. 375, § 1, eff. June 19, 1975. Amended by Acts 1993, 73rd Leg., ch. 957, § 21, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1302, § 3, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context §§ 36B–36F

A testator often protects the will and other important documents by placing them in a safe deposit box. Sections 36B–36F provide guidelines for certain parties, such as a spouse, parent, adult decedent, or executor, to gain access to the safe deposit box for the purpose of obtaining the decedent's will as well as a burial plot deed and life insurance policies. These provisions provide procedures for both court and non-court ordered access.

§ 36B. Examination of Documents or Safe Deposit Box with Court Order

(a) A judge of a court having probate jurisdiction of a decedent's estate may order a person to permit a court representative named in the order to examine a decedent's documents or safe deposit box if it is shown to the judge that:

(1) the person may possess or control the documents or that the person leased the safe deposit box to the decedent; and

(2) the documents or safe deposit box may contain a will of the decedent, a deed to a burial plot in which the decedent is to be buried, or an insurance policy issued in the decedent's name and payable to a beneficiary named in the policy.

(b) The court representative shall examine the decedent's documents or safe deposit box in the presence of:

(1) the judge ordering the examination or an agent of the judge; and

(2) the person who has possession or control of the documents or who leased the safe deposit box or, if the person is a corporation, an officer of the corporation or an agent of an officer.

Added by Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, § 1, eff. Sept. 1, 1981. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 36C. Delivery of Document with Court Order

(a) A judge who orders an examination by a court representative of a decedent's documents or safe deposit box under Section 36B of this code may order the person who possesses or controls the documents or who leases the safe deposit box to permit the court representative to take possession of the following documents:

PROBATE CODE

- (1) a will of the decedent;
- (2) a deed to a burial plot in which the decedent is to be buried; or

(3) an insurance policy issued in the decedent's name and payable to a beneficiary named in the policy.

(b) The court representative shall deliver:

(1) the will to the clerk of a court that has probate jurisdiction and that is located in the same county as the court of the judge who ordered the examination;

(2) the burial plot deed to the person designated by the judge in the order for the examination; or

(3) the insurance policy to a beneficiary named in the policy.

(c) A court clerk to whom a will is delivered under Subsection (b) of this section shall issue a receipt for the will to the court representative who delivers it.

Added by Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, § 1, eff. Sept. 1, 1981. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 36D. Examination of Document or Safe Deposit Box Without Court Order

(a) A person who possesses or controls a document delivered by a decedent for safekeeping or who leases a safe deposit box to a decedent may permit any of the following persons to examine the document or the contents of the safe deposit box:

- (1) the spouse of the decedent;
- (2) a parent of the decedent;
- (3) a descendant of the decedent who is at least 18 years old; or

(4) a person named as executor of the decedent's estate in a copy of a document that the person has and that appears to be a will of the decedent.

(b) The examination shall be conducted in the presence of the person who possesses or controls the document or who leases the safe deposit box or, if the person is a corporation, an officer of the corporation.

Added by Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, § 1, eff. Sept. 1, 1981. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 36E. Delivery of Document Without Court Order

(a) A person who permits an examination of a decedent's document or safe deposit box under Section 36D of this code may deliver:

(1) a document appearing to be the decedent's will to the clerk of a court that has probate jurisdiction and that is located in the county in which the decedent resided or to the person named in the document as an executor of the decedent's estate;

(2) a document appearing to be a deed to a burial plot in which the decedent is to be buried or appearing to give burial instructions to the person making the examination; or

(3) a document appearing to be an insurance policy on the decedent's life to a beneficiary named in the policy.

(b) A person who has leased a safe deposit box to the decedent shall keep a copy of a document appearing to be a will that the person delivers under Subsection (a) of this section. The person shall keep the copy for four years after the day of delivery.

(c) A person may not deliver a document under Subsection (a) of this section unless requested to do so by the person examining the document and unless the person examining the document issues a receipt for the document to the person who is to deliver it.

Added by Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, § 1, eff. Sept. 1, 1981. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 36F. Restriction on Removal of Contents of Safe Deposit Box

A person may not remove the contents of a decedent's safe deposit box except as provided by Section 36C or 36E of this code or except as provided by another law.

Added by Acts 1981, 67th Leg., 1st C.S., p. 193, ch. 17, art. 3, § 1, eff. Sept. 1, 1981. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Chapter II. Descent and Distribution

Statutes in Context Chapter II

The new owner of a person's property upon death depends on two main factors — first, the type of asset and, second, whether the decedent made a valid will. Certain property, commonly referred to as non-probate assets, is controlled by the terms of the property arrangement itself. Examples of these arrangements include land held in joint tenancy with survivorship rights and contractual arrangements which specify the at-death owner such as life insurance and pay on death accounts at banks, savings and loan associations, and other financial institutions. The passage of the remaining property, the probate estate, depends on whether the decedent died after executing a valid will which disposed of all of the decedent's probate property.

Chapter II of the Probate Code governs what happens when a person dies without a valid will or dies with a valid will which does not encompass all of the person's probate estate. When this happens, the person's probate property which is not covered by a valid will is distributed through a process called intestate succession. A person may die totally intestate, that is, intestate as to the person, if the person did not leave any type of valid will. A person may also die partially intestate, that

is, intestate as to property, if the person's valid will fails to dispose of all of the person's probate estate.

Statutes in Context
§ 37

Title to the decedent's property passes to the heirs or beneficiaries immediately upon the decedent's death regardless of the length of time occupied by the administration process. See *Welder v. Hitchcock*, 617 S.W.2d 294 (Tex. Civ. App. — Corpus Christi 1981, writ ref'd n.r.e.) (declaring that "there is no shorter interval of time than between the death of a decedent and the vesting of his estate in his heirs"). This title is, however, subject to the claims of the decedent's creditors.

However, if a personal representative is appointed, that person has a superior right to possess all of the decedent's probate assets owned at the time of death. It may be difficult for the personal representative to collect this property because family members often take the decedent's property, especially personal property in the decedent's home, shortly after death despite having no authority to do so.

§ 37. Passage of Title Upon Intestacy and Under a Will

When a person dies, leaving a lawful will, all of his estate devised or bequeathed by such will, and all powers of appointment granted in such will, shall vest immediately in the devisees or legatees of such estate and the donees of such powers; and all the estate of such person, not devised or bequeathed, shall vest immediately in his heirs at law; subject, however, to the payment of the debts of the testator or intestate, except such as is exempted by law, and subject to the payment of court-ordered child support payments that are delinquent on the date of the person's death; and whenever a person dies intestate, all of his estate shall vest immediately in his heirs at law, but with the exception aforesaid shall still be liable and subject in their hands to the payment of the debts of the intestate and the delinquent child support payments; but upon the issuance of letters testamentary or of administration upon any such estate, the executor or administrator shall have the right to possession of the estate as it existed at the death of the testator or intestate, with the exception aforesaid; and he shall recover possession of and hold such estate in trust to be disposed of in accordance with the law.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1703, ch. 556, § 2, eff. June 10, 1969. Amended by Acts 1981, 67th Leg., p. 2537, ch. 674, § 3, eff. Sept. 1, 1981. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 37A

Under modern law, an heir, will beneficiary, life insurance beneficiary, or beneficiary of a survivorship agreement may disclaim or renounce the person's interest. In the normal course of events, heirs and beneficiaries do not disclaim. Most people like the idea of getting something for free. However, there are many good reasons why a person may desire to forego the offered bounty. Four of the most common reasons are as follows: (1) the property may be undesirable or accompanied by an onerous burden (e.g., littered with leaky barrels of toxic chemical waste or subject to back taxes exceeding the value of the land); (2) the heir or beneficiary may believe that it is wrong to benefit from the death of another and refuse the property on moral or religious grounds; (3) an heir or beneficiary who is in debt may disclaim the property to prevent the property from being taken by the person's creditors; and (4) the heir or beneficiary may disclaim to reduce the person's transfer tax burden (a "qualified disclaimer" under I.R.C. § 2518).

Section 37A provides the formal requirements for effectuating a disclaimer. The heir or beneficiary must disclaim in a written and acknowledged (notarized) document. The writing must be filed in the court handling the estate of the decedent not later than 9 months after the deceased's death (except if the decedent died in 2010, in which case the deadline is extended to September 17, 2011). The heir must give notice of disclaimer to the executor or administrator of the estate by personal service or by registered or certified mail.

The heir or beneficiary may "pick and choose" which assets to disclaim but if the person accepts the property, the right to disclaim is waived. Even a relatively small exercise of dominion or control over the property may prevent disclaimer. See *Badouh v. Hale*, 22 S.W.3d 392 (Tex. 2000) (holding that a beneficiary who used property she expected to receive under a will as collateral for a loan prior to the testator's death could not disclaim because such a use was the exercise of dominion and control).

"[T]o be effective, a disclaimer of an inheritance is enforceable against the maker only when it has been made with adequate knowledge of that which is being disclaimed." *McCuen v. Huey*, 255 S.W.3d 716, 731 (Tex. App.—Waco 2008, no pet.).

Once a valid disclaimer is made, the disclaimant is treated as predeceasing the person from whom the disclaimant is taking. The disclaimed property then passes under intestacy,

the will, or the contract as if the disclaimant had died first. The disclaimant cannot specify the new owner of the disclaimed property. See *Welder v. Hitchcock*, 617 S.W.2d 294 (Tex. Civ. App. — Corpus Christi 1981, writ ref'd n.r.e.) (holding that the disclaimed property passes as if the disclaiming person is dead vis-à-vis the disclaimed property, not the entire estate). A disclaimer may be effective even if the disclaimant is mistaken about to whom the disclaimed property would pass. *Nat'l Cas. Co. v. Doucette*, 817 S.W.2d 396 (Tex. App.—Fort Worth 1991, writ denied).

Once made, a disclaimer is irrevocable.

Disclaimers are an effective method for a debtor to prevent property to be inherited, received under a will, or taken under a survivorship agreement from falling into the hands of a creditor. The disclaimer is not a fraudulent conveyance and thus it may not be set aside by the disclaimant's creditors. However, the United States Supreme Court has held that a disclaimer will not defeat a federal tax lien. *Drye v. United States*, 528 U.S. 49 (1999).

§ 37A. Means of Evidencing Disclaimer or Renunciation of Property or Interest Receivable from a Decedent

(a) Persons Who May Disclaim. Any person, or the guardian of an incapacitated person, the personal representative of a deceased person, or the guardian ad litem of an unborn or unascertained person, with prior court approval of the court having, or which would have, jurisdiction over such guardian, personal representative, or guardian ad litem, or any independent executor of a deceased person, without prior court approval, or an attorney in fact or agent appointed under a durable power of attorney authorizing disclaimers that is executed by a principal, who may be entitled to receive any property as a beneficiary and who intends to effect disclaimer irrevocably on or after September 1, 1977, of the whole or any part of such property shall evidence same as herein provided.

(b) Effective Date of Disclaimer. A disclaimer evidenced as provided by this section shall be effective as of the death of decedent and shall relate back for all purposes to the death of the decedent and is not subject to the claims of any creditor of the disclaimant.

(c) Effect of Disclaimer. Unless the decedent's will provides otherwise, the property subject to the disclaimer shall pass as if the person disclaiming or on whose behalf a disclaimer is made had predeceased the decedent and a future interest that would otherwise take effect in possession or enjoyment after the termination of the estate or interest that is disclaimed takes effect as if the disclaiming beneficiary had predeceased the decedent.

(d) Ineffective Disclaimer. Failure to comply with the provisions of this section shall render such

disclaimer ineffective except as an assignment of such property to those who would have received same had the person attempting the disclaimer died prior to the decedent.

(e) Definitions. The term "property" as used in this section shall include all legal and equitable interests, powers, and property, whether present or future, whether vested or contingent, and whether beneficial or burdensome, in whole or in part. The term "disclaimer" as used in this section shall include "renunciation." In this section "beneficiary" includes a person who would have been entitled, if the person had not made a disclaimer, to receive property as a result of the death of another person by inheritance, under a will, by an agreement between spouses for community property with a right of survivorship, by a joint tenancy with a right of survivorship, or by any other survivorship agreement, account, or interest in which the interest of the decedent passes to a surviving beneficiary, by an insurance, annuity, endowment, employment, deferred compensation, or other contract or arrangement, or under a pension, profit sharing, thrift, stock bonus, life insurance, survivor income, incentive, or other plan or program providing retirement, welfare, or fringe benefits with respect to an employee or a self-employed individual.

(f) Subsequent Disclaimers. Nothing in this section shall be construed to preclude a subsequent disclaimer by any person who shall be entitled to property as a result of a disclaimer.

(g) Form of Disclaimer. In the case of property receivable by a beneficiary, the disclaimer shall be evidenced by a written memorandum, acknowledged before a notary public or other person authorized to take acknowledgements of conveyances of real estate.

(h) Time for Filing of Disclaimer. Unless the beneficiary is a charitable organization or governmental agency of the state, a written memorandum of disclaimer disclaiming a present interest shall be filed not later than nine months after the death of the decedent and a written memorandum of disclaimer disclaiming a future interest may be filed not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. If the beneficiary is a charitable organization or a governmental agency of the state, a written memorandum of disclaimer disclaiming a present or future interest shall be filed not later than the later of:

(1) the first anniversary of the date the beneficiary receives the notice required by Section 128A of this code; or

(2) the expiration of the six-month period following the date the personal representative files:

(A) the inventory, appraisal, and list of claims due or owing to the estate; or

(B) the affidavit in lieu of the inventory, appraisal, and list of claims.

(h-1) Filing of Disclaimer. The written memorandum of disclaimer shall be filed in the probate

court in which the decedent's will has been probated or in which proceedings have been commenced for the administration of the decedent's estate or which has before it an application for either of the same; provided, however, if the administration of the decedent's estate is closed, or after the expiration of one year following the date of the issuance of letters testamentary in an independent administration, or if there has been no will of the decedent probated or filed for probate, or if no administration of the decedent's estate has been commenced, or if no application for administration of the decedent's estate has been filed, the written memorandum of disclaimer shall be filed with the county clerk of the county of the decedent's residence, or, if the decedent is not a resident of this state but real property or an interest therein located in this state is disclaimed, a written memorandum of disclaimer shall be filed with the county clerk of the county in which such real property or interest therein is located, and recorded by such county clerk in the deed records of that county.

(i) Notice of Disclaimer. Unless the beneficiary is a charitable organization or governmental agency of the state, copies of any written memorandum of disclaimer shall be delivered in person to, or shall be mailed by registered or certified mail to and received by, the legal representative of the transferor of the interest or the holder of legal title to the property to which the disclaimer relates not later than nine months after the death of the decedent or, if the interest is a future interest, not later than nine months after the date the person who will receive the property or interest is finally ascertained and the person's interest is indefeasibly vested. If the beneficiary is a charitable organization or government agency of the state, the notices required by this section shall be filed not later than the later of:

(1) the first anniversary of the date the beneficiary receives the notice required by Section 128A of this code; or

(2) the expiration of the six-month period following the date the personal representative files:

(A) the inventory, appraisalment, and list of claims due or owing to the estate; or

(B) the affidavit in lieu of the inventory, appraisalment, and list of claims.

(j) Power to Provide for Disclaimer. Nothing herein shall prevent a person from providing in a will, insurance policy, employee benefit agreement, or other instrument for the making of disclaimers by a beneficiary of an interest receivable under that instrument and for the disposition of disclaimed property in a manner different from the provisions hereof.

(k) Irrevocability of Disclaimer. Any disclaimer filed and served under this section shall be irrevocable.

(l) Partial Disclaimer. Any person who may be entitled to receive any property as a beneficiary may disclaim such property in whole or in part, including but not limited to specific powers of invasion, powers of

appointment, and fee estate in favor of life estates; and a partial disclaimer or renunciation, in accordance with the provisions of this section, shall be effective whether the property so renounced or disclaimed constitutes a portion of a single, aggregate gift or constitutes part or all of a separate, independent gift; provided, however, that a partial disclaimer shall be effective only with respect to property expressly described or referred to by category in such disclaimer; and provided further, that a partial disclaimer of property which is subject to a burdensome interest created by the decedent's will shall not be effective unless such property constitutes a gift which is separate and distinct from undisclaimed gifts.

(m) Partial Disclaimer by Spouse. Without limiting Subsection (l) of this section, a disclaimer by the decedent's surviving spouse of a transfer by the decedent is not a disclaimer by the surviving spouse of all or any part of any other transfer from the decedent to or for the benefit of the surviving spouse, regardless of whether the property or interest that would have passed under the disclaimed transfer passes because of the disclaimer to or for the benefit of the surviving spouse by the other transfer.

(n) Disclaimer After Acceptance. No disclaimer shall be effective after the acceptance of the property by the beneficiary. For the purpose of this subsection, acceptance shall occur only if the person making such disclaimer has previously taken possession or exercised dominion and control of such property in the capacity of beneficiary.

(o) Interest in Trust Property. A beneficiary who accepts an interest in a trust is not considered to have a direct or indirect interest in trust property that relates to a licensed or permitted business and over which the beneficiary exercises no control. Direct or indirect beneficial ownership of not more than five percent of any class of equity securities that is registered under the Securities Exchange Act of 1934 shall not be deemed to be an ownership interest in the business of the issuer of such securities within the meaning of any statute, pursuant thereto.

(p) Extension of Time for Certain Disclaimers. Notwithstanding the periods prescribed by Subsections (h) and (i) of this section, a disclaimer with respect to an interest in property passing by reason of the death of a decedent dying after December 31, 2009, but before December 17, 2010, may be executed and filed, and notice of the disclaimer may be given, not later than nine months after December 17, 2010. A disclaimer filed and for which notice is given during this extended period is valid and shall be treated as if the disclaimer had been filed and notice had been given within the periods prescribed by Subsections (h) and (i) of this section. This subsection does not apply to a disclaimer made by a beneficiary that is a charitable organization or governmental agency of the state.

Added by Acts 1971, 62nd Leg., p. 2954, ch. 979, § 1, eff. Aug. 30, 1971. Amended by Acts 1977, 65th Leg., p. 1918, ch. 769, § 1, eff. Aug. 29, 1977; Acts 1979, 66th

Leg., p. 1741, ch. 713, § 4, eff. Aug. 27, 1979. Amended by Acts 1987, 70th Leg., ch. 467, § 2, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 895, § 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 846, § 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1039, § 5, eff. Sept. 1, 1995; 80th Leg., ch. 1170, § 3.01, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.08, eff. Sept. 1, 2011.

Statutes in Context
§ 37B

Once an heir or beneficiary receives the property through intestate succession, by will, or as the beneficiary of a life insurance policy, the person may assign his/her interest in the property to a third person. Unlike with a disclaimer under § 37A, the heir or beneficiary will be liable for transfer taxes and the property will become subject to the creditors of the heir or beneficiary. See Property Code § 112.035 for a discussion of the “spendthrift provision” mentioned in subsection (e).

§ 37B. Assignment of Property Received from a Decedent

(a) A person entitled to receive property or an interest in property from a decedent under a will, by inheritance, or as a beneficiary under a life insurance contract, and who does not disclaim the property under Section 37A of this code, may assign the property or interest in property to any person.

(b) The assignment may, at the request of the assignor, be filed as provided for the filing of a disclaimer under Section 37A(h) of this code. The filing requires the service of notice under Section 37A(i) of this code.

(c) Failure to comply with the provisions of Section 37A of this code does not affect an assignment under this section.

(d) An assignment under this section is a gift to the assignee and is not a disclaimer or renunciation under Section 37A of this code.

(e) An assignment that would defeat a spendthrift provision imposed in a trust may not be made under this section.

Added by Acts 1985, 69th Leg., ch. 880, § 1, eff. Sept. 1, 1985. Subsec. (b) amended by 80th Leg., ch. 1170, § 3.02, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 37C

The 2003 Texas Legislature enacted § 37C to explain when an inter vivos gift will be treated as being in satisfaction of a testamentary gift. The provision is analogous to the existing provision

dealing with advancements in an intestacy context under Probate Code § 44.

An inter vivos gift will be considered in partial or total satisfaction of a testamentary gift only if one of the following three conditions is satisfied:

1. The testator's will expressly indicates that the inter vivos gift is to be deducted from the testamentary gift.

2. The testator declares in a contemporaneous writing that the inter vivos gift is either (a) to be deducted from the testamentary gift or (b) is in satisfaction of the testamentary gift.

3. The beneficiary acknowledges in writing that the inter vivos gift is in satisfaction of the testamentary gift.

The value of property the testator gives in partial satisfaction of a testamentary gift is determined at the earlier of the date when (a) the beneficiary acquires possession of or enjoys the property or (b) when the testator dies.

Note the “interesting” placement of this new provision. The Legislature included the section in the intestacy chapter (Chapter II – Descent and Distribution) rather than in the chapter dealing with wills (Chapter IV – Execution and Revocation of Wills).

§ 37C. Satisfaction of Devise

(a) Property given to a person by a testator during the testator's lifetime is considered a satisfaction, either wholly or partly, of a devise to the person if:

(1) the testator's will provides for deduction of the lifetime gift;

(2) the testator declares in a contemporaneous writing that the lifetime gift is to be deducted from or is in satisfaction of the devise; or

(3) the devisee acknowledges in writing that the lifetime gift is in satisfaction of the devise.

(b) Property given in partial satisfaction of a devise shall be valued as of the earlier of the date on which the devisee acquires possession of or enjoys the property or the date on which the testator dies.

Added by Acts 2003, 78th Leg., ch. 1060, § 7, eff. Sept. 1, 2003. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 38

Early in the evolution of civilization, societies developed customs and laws to control the transmission of a person's property after death. Our modern intestacy laws are traced originally to the Anglo-Saxons. The Norman Conquest of 1066 A.D. played a significant role in the development of these rules. William the Conqueror was irritated

that English landowners refused to recognize his right to the English Crown after his victory. Accordingly, William took ownership of all land by force and instituted the Norman form of feudalism. Under this system, the Crown was the true owner of all real property with others holding the property in a hierarchical scheme under which lower-ranked holders owed various financial and service-oriented duties to higher-ranked holders.

As a result, real property became the most essential element in the political, economic, and social structure of the Middle Ages. The Crown and its tough royal courts controlled the descent of real property. The basic features of descent included the following rules. (1) Male heirs inherited real property to the exclusion of female heirs unless no male heir existed. The reason underlying this discriminatory preference for male over female heirs was based on the feudal incidents of ownership. One of the primary duties of lower-ranked holders of property was to provide military service to higher-ranked holders. Under the then existing social climate, women were deemed unable to perform these services and thus were not able to inherit realty if a male heir existed. (2) If two or more males were equally related to the decedent, the oldest male would inherit all of the land to the total exclusion of the younger males. This is the rule of primogeniture. Primogeniture was applied because the Crown thought it was too impractical to divide the duty to provide military services as well as to subdivide the property. (3) If there were no male heirs and several female heirs, each female heir shared equally.

Before the industrial revolution, personal property was of lesser importance. There were no machines or corporate securities about which to worry. Instead, most chattels were of relatively little value such as clothing, furniture, jewelry, and livestock. Thus, the Crown permitted the church and its courts to govern the distribution of personal property. The ecclesiastical courts based distribution on canon law which had its foundation in Roman law. In general, personal property was distributed equally among equally related heirs. There was no preference for male heirs and the ages of the heirs were irrelevant.

After centuries of movement toward a unified system, the English Parliament passed the Administration of Estates Act in 1925 which abolished primogeniture and the preference for male heirs as well as providing uniform rules for all types of property. Most intestacy statutes in the United States make no distinction based on the age and sex of the heirs nor between the descent of real property and the distribution of personal property. However, Texas and a few other states retain this latter common law principle and provide

different intestacy schemes for real and personal property under certain circumstances.

The intestate distribution scheme in Texas is derived mainly from three sections of the Probate Code: § 38 (distribution of property of a single decedent and the separate property of a married decedent), § 45 (distribution of the community property of a married decedent), and § 43 (determination of the type of distribution). Below is a summary of these sections assuming that the decedent died on or after September 1, 1993.

A. Individual Property Distribution (Unmarried Intestate)

The distribution of the property of an unmarried intestate is governed by Probate Code § 38(a). Real and personal property are treated the same.

1. Descendants Survive

If the unmarried intestate is survived by one of more descendants (e.g., children or grandchildren), then all of the intestate's property passes to the descendants. See § D, below, for a discussion of how this distribution is done.

2. No Descendants Survive But a Parent Survives

The following distributions occur if the unmarried intestate has no surviving descendants but does have at least one surviving parent.

a. Both Parents Survive

If both parents survived the intestate, each parent inherits one-half of the estate.

b. One Parent Survives Along With a Sibling or a Sibling's Descendants

If only one parent survives and the intestate is also survived by at least one sibling or a descendant of a sibling (e.g., niece or nephew), then the surviving parent receives one-half of the estate with the remaining one-half passing to the siblings and their descendants. See § D, below, for a discussion of how this distribution is done.

c. One Parent Survives but No Sibling or Descendant of a Sibling Survives

If one parent survives and there is no surviving sibling or a descendant of a sibling, then the surviving parent inherits the entire estate.

3. No Surviving Descendants or Parents

If the unmarried intestate is survived by neither descendants nor parents, then the entire estate passes to siblings and their descendants. See § D, below, for a discussion of how this distribution is done.

4. No Surviving Descendants, Parents, Siblings or Their Descendants

If the unmarried intestate has no surviving descendants, parents, siblings or their descendants, the estate is divided into two halves (moieties) with one half going to paternal grandparents, uncles, cousins, etc. and the other half to the maternal side. Texas does not have a laughing heir statute preventing these remote relatives from inheriting. If one side of the family has completely died out, the entire estate will pass to the surviving side. See *State v. Estate of Loomis*, 553 S.W.2d 166 (Tex. Civ. App.—Tyler 1977, writ ref'd).

5. No Surviving Heir

If the unmarried intestate has no surviving heir, the property will escheat to the state of Texas under Property Code § 71.001.

B. Distribution of Community Property of Married Intestate

The distribution of the community property of an intestate who was married at the time of death is governed by Probate Code § 45. Real and personal property are treated the same.

1. If No Surviving Descendants

If the married intestate has no surviving descendants, then all community property is now owned by the surviving spouse. The surviving spouse (1) retains the one-half of the community property that the surviving spouse owned once the marriage was dissolved by death and (2) inherits the deceased spouse's one-half of the community.

2. If Surviving Children or Their Descendants

Community property is distributed as follows if the married intestate has at least one surviving child or other descendant.

a. No Non-Spousal Descendants

If all of the deceased spouse's surviving descendants are also descendants of the surviving spouse, then the surviving spouse will own all of the community property, that is, the surviving spouse retains his or her one-half of the community and inherits the other half. Note that for spouses dying before September 1, 1993, the deceased spouse's one-half of the community property was not inherited by the surviving spouse. Instead, the deceased spouse's share passed to the deceased spouse's descendants.

b. Non-Spousal Descendants

If any of the deceased spouse's surviving descendants are not also descendants of the surviving spouse, then the community property is divided. The surviving spouse retains one-half of the community property, that is, the one-half the surviving spouse already owned by virtue of it being community property. The descendants of the deceased spouse inherit the deceased

spouse's one-half of the community property. All of the deceased spouse's descendants are treated as a group regardless of whether the other parent is or is not the surviving spouse.

C. Distribution of Separate Property of Married Intestate

Unlike most states, Texas in Probate Code § 38(b) has retained a vestige of the common law distinction between the descent of real property and the distribution of personal property.

If the intestate was in the midst of a real estate transaction at the time of death, it becomes significant to determine whether the intestate's interest is real or personal property. Texas courts hold that *equitable conversion* occurs. Thus, after a contract for the purchase and sale of real property is signed but before closing, the seller is treated as owning personal property (the right to the sales proceeds) and the buyer as owning real property (the right to specifically enforce the contract). *Parson v. Wolfe*, 676 S.W.2d 689 (Tex. App.—Amarillo 1984, no writ).

1. Surviving Descendants

a. Personal Property

The surviving spouse receives one-third of the deceased spouse's separate personal property with the remaining two-thirds passing to the children or their descendants. These interests are outright.

b. Real Property

The surviving spouse receives a life estate in one-third of the deceased spouse's separate real property. The rest of the property, that is, the outright interest in two-thirds of the separate real property and the remainder interest following the surviving spouse's life estate passes to the deceased spouse's children or their descendants.

2. No Surviving Descendants

a. Personal Property

If there are no surviving descendants, all separate personal property passes to the surviving spouse.

b. Real Property

(1) Surviving Parents, Siblings, or Descendants of Siblings

If there are no surviving descendants but there are surviving parents, siblings, or descendants of siblings, the surviving spouse inherits one-half of the separate real property outright with the remaining one-half passing to the parents, siblings, and descendants of siblings as if the intestate died without a surviving spouse (that is, this one-half passes using the same scheme as for individual property).

(2) No Surviving Parents, Siblings, or Descendants of Siblings

If the intestate has no surviving descendants, parents, siblings, or descendants of siblings, the surviving spouse inherits all of the separate real property.

D. Type of Distribution

Whenever individuals such as children, grandchildren, siblings and their descendants, cousins, etc. are heirs, you must determine how to divide their shares among them. See Probate Code § 43.

1. Per Capita

If the heirs are all of the *same degree* of relationship to the intestate, then they take per capita, i.e., each heir takes the same amount. For example, if all takers are children, each receives an equal share. If all children are deceased, then each grandchild takes an equal share.

2. Per Capita by Representation

If the heirs are of *different degrees* of relationship to decedent, e.g., children and grandchildren, the younger generation takers share what the older generation taker would have received had that person survived. For example, assume that Grandfather had three children; two of whom predeceased Grandfather. One-third passes to the surviving child, with one-third passing to the children of each deceased child (grandchildren). If each deceased child had a different number of grandchildren, the shares of the grandchildren will be different. For example, if one deceased child had two children, each gets one-sixth; if the other deceased child had three children, each would receive one-ninth.

EXAMPLES

Example 1: Wilma, a widow, dies intestate survived by her only son, Sammy, and her father, Frank. How is Wilma's property distributed?

Answer: Wilma's entire estate passes to Sammy.

Example 2: Harry, a widower, dies intestate survived by his mother, Mary, and his two brothers, Bruce and Bob. How is Harry's property distributed?

Answer: One-half of Harry's estate passes to Mary. Bruce and Bob each receive one-quarter.

Example 3: Husband (H) and Wife (W) have three children, Amy (A), Brad (B), and Charles (C). All three children are married and have children of their own. A has one child, Mike (M). B has three children, Nancy (N), Opie (O), and Pat (P). C's children are Robert (R) and Susan (S). H died intestate with both community and separate

property. In addition, H owned real and personal property of each type.

a. How would H's property be distributed?

Answer: All of H's community property is now owned by W; W keeps the one-half she owned by virtue of it being community property and W inherits H's one-half.

W receives one-third of H's separate personal property. Each of A, B, and C receive 2/9 of H's separate personal property.

W receives a life estate in one-third of H's separate real property. Each of A, B, and C receive 2/9 outright in H's separate real property as well as one-third of the remainder in W's life estate.

b. Assume that both B and C predeceased H. How would H's property be distributed?

Answer: All of H's community property is now owned by W; W keeps the one-half she owned by virtue of it being community property and W inherits H's one-half.

W receives one-third of H's separate personal property. A receives 2/9 of H's separate personal property, each of N, O, and P receive 2/27 and each of R and S receive 1/9.

W receives a life estate in one-third of H's separate real property. A receives 2/9 outright in H's separate real property plus one-third of the remainder in W's life estate. Each of N, O, and P receive 2/27 outright in H's separate real property plus 1/9 of the remainder in W's life estate. Each of R and S receive 1/9 outright in H's separate real property plus 1/6 of the remainder in W's life estate.

c. Assume that A, B, and C predeceased H. How would H's property be distributed?

Answer: All of H's community property is now owned by W; W keeps the one-half she owned by virtue of it being community property and W inherits H's one-half.

W receives one-third of H's separate personal property. Each of the six grandchildren (M, N, O, P, R, and S) receive 1/9 of H's separate personal property.

W receives a life estate in one-third of H's separate real property. Each of the six grandchildren receive 1/9 outright in H's separate real property plus 1/6 of the remainder in W's life estate.

d. Answer questions (a), (b), and (c) assuming that A's mother is X instead of W.

Answer: Only the distribution of community property in each case is different. In each situation, W would only retain her one-half of the community. H's share of the community property passes to his descendants because not all of his descendants are descendants of W. In (a), each of A, B, and C would get 1/6 of the total community (1/3 of H's one-half). In (b), A would receive 1/6, each of N, O, and P, 1/18, and each of R and S, 1/12. In (c), each grandchild would receive 1/12 of the total community.

Example 4: Mother and Father, now deceased, had three children, Arthur, Bill, and Chris. Arthur died survived by his wife, Peggy, and their two children, Linda and Ken. Bill is unmarried and childless. Chris is married to Wendy and they have no children. Chris died intestate with both community and separate property. In addition, Chris owned real and personal property of each type. How would Chris' property be distributed?

Answer: Wendy receives all the community property, all separate personal property, and one-half of the separate real property. Bill receives ¼ of the separate real property and Linda and Ken each receive 1/8 of the separate real property.

§ 38. Persons Who Take Upon Intestacy

(a) Intestate Leaving No Husband or Wife.

Where any person, having title to any estate, real, personal or mixed, shall die intestate, leaving no husband or wife, it shall descend and pass in parcenary to his kindred, male and female, in the following course:

1. To his children and their descendants.
2. If there be no children nor their descendants, then to his father and mother, in equal portions. But if only the father or mother survive the intestate, then his estate shall be divided into two equal portions, one of which shall pass to such survivor, and the other half shall pass to the brothers and sisters of the deceased, and to their descendants; but if there be none such, then the whole estate shall be inherited by the surviving father or mother.
3. If there be neither father nor mother, then the whole of such estate shall pass to the brothers and sisters of the intestate, and to their descendants.
4. If there be none of the kindred aforesaid, then the inheritance shall be divided into two moieties, one of which shall go to the paternal and the other to the maternal kindred, in the following course: To the grandfather and grandmother in equal portions, but if only one of these be living, then the estate shall be divided into two equal parts, one of which shall go to such survivor, and the other shall go to the descendant or descendants of such deceased grandfather or grandmother. If there be no such descendants, then the whole estate shall be inherited

by the surviving grandfather or grandmother. If there be no surviving grandfather or grandmother, then the whole of such estate shall go to their descendants, and so on without end, passing in like manner to the nearest lineal ancestors and their descendants.

(b) Intestate Leaving Husband or Wife. Where any person having title to any estate, real, personal or mixed, other than a community estate, shall die intestate as to such estate, and shall leave a surviving husband or wife, such estate of such intestate shall descend and pass as follows:

1. If the deceased have a child or children, or their descendants, the surviving husband or wife shall take one-third of the personal estate, and the balance of such personal estate shall go to the child or children of the deceased and their descendants. The surviving husband or wife shall also be entitled to an estate for life, in one-third of the land of the intestate, with remainder to the child or children of the intestate and their descendants.
2. If the deceased have no child or children, or their descendants, then the surviving husband or wife shall be entitled to all the personal estate, and to one-half of the lands of the intestate, without remainder to any person, and the other half shall pass and be inherited according to the rules of descent and distribution; provided, however, that if the deceased has neither surviving father nor mother nor surviving brothers or sisters, or their descendants, then the surviving husband or wife shall be entitled to the whole of the estate of such intestate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context § 39

The common law policy of keeping real property in the blood line of the original owner led to the development of the principle of ancestral property. This doctrine applied if an individual inherited real property and then died intestate without surviving descendants or first-line collateral relatives. Under this doctrine, real property inherited from the intestate's paternal side of the family would pass to the paternal collateral relatives and property inherited from the maternal side would pass to the maternal collateral relatives.

Section 39 provides that the doctrine of ancestral property does not apply in Texas by stating that the intestate is treated as the original purchaser of all property.

§ 39. No Distinction Because of Property's Source

There shall be no distinction in regulating the descent and distribution of the estate of a person dying intestate between property which may have been derived by gift, devise or descent from the father, and that which may have been derived by gift, devise or descent from the mother; and all the estate to which such intestate may have had title at the time of death shall descend and vest in the heirs of such person in the same manner as if he had been the original purchaser thereof.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

**Statutes in Context
§ 40**

The ability of a person to adopt a non-biological person and cause that person to be treated as a biological child was recognized thousands of years ago by societies such as the ancient Greeks, Romans, and Egyptians. However, the concept of adoption was beyond the grasp of common law attorneys and courts. The idea that a person could have "parents" other than the biological mother and father was unthinkable. In fact, English law did not recognize adoption until 1926. Accordingly, modern law relating to adoption developed in the United States with Vermont and Texas taking the lead when their legislatures enacted adoption statutes in 1850.

Section 40 details the effect of adoption on intestate distribution. The rights of three parties are at issue: (1) the adopted child; (2) the adoptive parents; and (3) the biological parents. Adopted children will inherit from and through the adoptive parents and, unlike in many states, also from and through the biological parents if the child was adopted as a minor. Adoptive parents are entitled to inherit from and through the adopted child. The inheritance rights of the biological parents, on the other hand, are cut off — biological parents do not inherit from or through their child who was given up for adoption. See also Family Code §§ 162.017 (adoption of minors) and 162.507 (adoption of adults).

The 2005 Legislature made a significant change with respect to the law governing inheritance by a person who is adopted as an adult. Under prior law, there was no difference between the inheritance rights of a person who was adopted as a minor and a person who was adopted after reaching adulthood, that is, both types of adopted individuals inherited not only from their adoptive parents but also retained the right to inherit from their biological parents.

Effective with regard to intestate individuals who die on or after September 1, 2005, the adopted adult may no longer inherit from or through the adult's biological parent. See Family Code § 162.507(c).

This amendment may lead to an absurd result. For example, assume that Mother and Father have a child in 1985. Mother dies in 1990 and Father marries Step-Mother in 1995. As time passes, Child and Step-Mother become close and shortly after Child reaches age 18, Step-Mother adopts Child. If Father dies intestate, Child will not be considered an heir because the statute provides that an adopted adult may not inherit from a biological parent.

A decree terminating the parent-child relationship may specifically remove the child's right to inherit from and through a biological parent. See Family Code § 161.206.

The discovery rule does not apply to heirship claims by adoptees *Little v. Smith*, 643 S.W.2d 414 (Tex. 1997).

Adoption by estoppel, also called equitable adoption, occurs when a "parent" acts as though the "parent" has adopted the "child" even though a formal court-approved adoption never occurred. Typically, the "child" must prove that there was an agreement to adopt and the courts will look at circumstantial evidence to establish the agreement. Thus, when the "parent" dies, the adopted by estoppel child is entitled to share in the estate just as if an adoption had actually occurred.

The result is different, however, if the adopted by estoppel child dies. The adoptive by estoppel parents and their kin are prohibited from inheriting from or through the adopted by estoppel child. The courts explain that it is the parents' fault that a formal adoption did not take place and thus the equities are not in their favor. As a result, the child's biological kin are the child's heirs. See *Heien v. Crabtree*, 369 S.W.2d 28 (Tex. 1963).

§ 40. Inheritance by and from an Adopted Child

For purposes of inheritance under the laws of descent and distribution, an adopted child shall be regarded as the child of the parent or parents by adoption, such adopted child and its descendants inheriting from and through the parent or parents by adoption and their kin the same as if such child were the natural child of such parent or parents by adoption, and such parent or parents by adoption and their kin inheriting from and through such adopted child the same as if such child were the natural child of such parent or parents by adoption. The natural parent or parents of such child and their kin shall not inherit from or through said child, but, except as provided by Section 162.507(c), Family Code, the said child shall inherit

from and through its natural parent or parents. Nothing herein shall prevent any parent by adoption from disposing of his property by will according to law. The presence of this Section specifically relating to the rights of adopted children shall in no way diminish the rights of such children, under the laws of descent and distribution or otherwise, which they acquire by virtue of their inclusion in the definition of “child” which is contained in this Code.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1989, 71st Leg., ch. 375, § 34, eff. Sept. 1, 1989. Amended by Acts 2005, 79th Leg., ch. 169, § 2, eff. Sept. 1, 2005. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 41. Matters Affecting and Not Affecting the Right to Inherit

Statutes in Context

§ 41(a)

Posthumous heirs are heirs who are born after the intestate dies. Section 41(a) provides that posthumous lineal heirs (e.g., children and grandchildren) will inherit from the intestate, but posthumous non-lineal heirs (e.g., nieces and nephews) will not inherit. It is uncertain whether a lineal descendant born many years after a parent's death due to the use of an alternate reproduction technique (e.g., frozen sperm, eggs, or embryos) would be entitled to inherit. When the statute was originally written, it anticipated that the lineal descendant would be conceived (in utero) before the intestate died.

(a) Persons Not in Being. No right of inheritance shall accrue to any persons other than to children or lineal descendants of the intestate, unless they are in being and capable in law to take as heirs at the time of the death of the intestate.

Statutes in Context

§ 41(b)

The term “half-blood” refers to collateral relatives who share only one common ancestor. For example, a brother and sister who have the same mother but different fathers would be half-siblings. On the other hand, if the brother and sister have the same parents, they would be related by the “whole-blood” because they share the same common ancestors.

At common law, half-blooded heirs could not inherit real property from a half-blooded intestate although they were entitled to inherit personal property. This strict rule with its emphasis on blood relationships has been modified by the states. States adopt one of three modern approaches: (1) The majority of states have totally eliminated the

distinction between half- and whole-blooded relatives in determining inheritance rights. Thus, half-blooded collaterals inherit just as if they were of the whole-blood. (2) Some states like Texas adopt the Scottish rule which provides that half-blooded collaterals receive half shares. (3) A few states permit half-blooded collateral heirs to inherit only if there is no whole-blooded heir of the same degree. Remember that the distinction between whole and half-blooded heirs is relevant only if distribution is being made to collateral heirs of the intestate.

A simple way to determine the proper distribution to half- and whole-blooded heirs under § 41(b) is to calculate the total number of shares by creating two shares for each whole-blooded heir and one share for each half-blooded heir. Each whole-blooded heir receives two of these shares and each half-blooded heir receives one. For example, if there are three sibling heirs, Whole Blood Arthur, Half Blood Brenda, and Half Blood Charlie, four shares would be created (two for Arthur and one each for Brenda and Charlie). The estate would be distributed with Arthur receiving two shares (1/2 of the estate) and Brenda and Charlie receiving one share each (1/4 of the estate).

(b) Heirs of Whole and Half Blood. In situations where the inheritance passes to the collateral kindred of the intestate, if part of such collateral be of the whole blood, and the other part be of the half blood only, of the intestate, each of those of half blood shall inherit only half so much as each of those of the whole blood; but if all be of the half blood, they shall have whole portions.

Statutes in Context

§ 41(c)

At common law, a noncitizen could not acquire or transmit real property through intestacy. This rule made sense because the landowner owed duties to the Crown which would be difficult to enforce if the landowner was not a citizen. On the other hand, noncitizens from friendly countries could both acquire and transmit personal property through intestacy.

Under § 41(c), noncitizens are treated no differently than citizens when it comes to inheritance rights. Note, however, that during the World Wars, the U.S. government restricted the inheritance rights of citizens of enemy nations.

(c) Alienage. No person is disqualified to take as an heir because he or a person through whom he claims is or has been an alien.

Statutes in Context
§ 41(d)

Corruption of blood refers to a common law principle that prevented a person from inheriting land if the person was convicted or imprisoned for certain offenses, especially treason and other capital crimes. Article I, § 21 of the Texas Constitution prohibits corruption of blood and § 41(d) restates this prohibition. Accordingly, an imprisoned person, even one on death row, may inherit property.

Forfeiture refers to a common law principle that caused all the property of a person who was convicted of a felony to be forfeited to the government so there was no property for the person's heirs to inherit. Article I, § 21 of the Texas Constitution prohibits forfeiture and § 41(d) restates this prohibition. Note, however, that under federal law, a person convicted of certain drug offenses forfeits a portion of the person's property to the government. 21 U.S.C. § 853.

To prevent murderers from benefiting from their evil acts, most state legislatures have enacted statutes prohibiting murderers from inheriting. These provisions are often referred to as slayers' statutes. Section 41(d), however, only applies if a beneficiary of a life insurance policy is convicted and sentenced as a principal or accomplice in wilfully bringing about the death of the insured. Texas courts resort to the constructive trust principle to prevent the murdering heir from inheriting. Legal title does pass to the murderer but equity treats the murderer as a constructive trustee of the title because of the unconscionable mode of its acquisition and then compels the murderer to convey it to the heirs of the deceased, exclusive of the murderer. See *Pritchett v. Henry*, 287 S.W.2d 546 (Tex. Civ. App. — Beaumont 1955, writ dismissed).

The property of a person who committed suicide was subject to special rules at common law. If the intestate committed suicide to avoid punishment after committing a felony, the intestate's heirs took nothing. Instead, the real property escheated and personal property was forfeited. However, if the intestate committed suicide because of pain or exhaustion from living, only personal property was forfeited and real property still descended to the heirs. Article I, § 21 of the Texas Constitution abolishes these common-law rules and thus the property of a person who commits suicide passes just as if the death were caused by some other means. Section 41(d) restates the Constitutional provision.

(d) Convicted Persons and Suicides. No conviction shall work corruption of blood or forfeiture of estate, except in the case of a beneficiary in a life

insurance policy or contract who is convicted and sentenced as a principal or accomplice in wilfully bringing about the death of the insured, in which case the proceeds of such insurance policy or contract shall be paid as provided in the Insurance Code of this State, as same now exists or is hereafter amended; nor shall there be any forfeiture by reason of death by casualty; and the estates of those who destroy their own lives shall descend or vest as in the case of natural death.

Statutes in Context
§ 41(e) & (f)

The 2007 Legislature added these provisions to § 41 which allow the court to disqualify a parent as an heir for a laundry list of bad acts relating to a child who dies intestate and under age 18 such as abandoning the child or its pregnant mother, not supporting the child, or committing enumerated criminal acts such as endangering the child or possessing child pornography. Note that disqualification only occurs if the bad acts are done by a parent, not by a grandparent, sibling, or other heir.

The portion of these provisions which prevents a person from inheriting from his or her own child if the parent has been convicted of one of the enumerated crimes may be unconstitutional. Article I, § 21 of the Texas Constitution provides that "[n]o conviction shall work * * * forfeiture of estate." In Opinion No. GA-0632 issued May 30, 2008, the Attorney General of Texas concluded that "the courts would probably find Probate Code section 41(e)(3) violative of article I, section 21 when applied to bar a wrongdoer's inheritance" unless the conduct would trigger other recognized legal doctrines such as a constructive trust.

(e) Parent-Child Relationship. A probate court may declare that the parent of a child under 18 years of age may not inherit from or through the child under the laws of descent and distribution if the court finds by clear and convincing evidence that the parent has:

- (1) voluntarily abandoned and failed to support the child in accordance with the parent's obligation or ability for at least three years before the date of the child's death, and did not resume support for the child before that date;
- (2) voluntarily and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from and failed to support the child since birth; or
- (3) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being

criminally responsible for the death or serious injury of a child under the following sections of the Penal Code or adjudicated under Title 3, Family Code, for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following sections of the Penal Code:

- (A) Section 19.02 (murder);
- (B) Section 19.03 (capital murder);
- (C) Section 19.04 (manslaughter);
- (D) Section 21.11 (indecent with a child);
- (E) Section 22.01 (assault);
- (F) Section 22.011 (sexual assault);
- (G) Section 22.02 (aggravated assault);
- (H) Section 22.021 (aggravated sexual assault);
- (I) Section 22.04 (injury to a child, elderly individual, or disabled individual);
- (J) Section 22.041 (abandoning or endangering child);
- (K) Section 25.02 (prohibited sexual conduct);
- (L) Section 43.25 (sexual performance by a child); or
- (M) Section 43.26 (possession or promotion of child pornography).

(f) Treatment of Certain Relationships. On a determination that the parent of a child may not inherit from or through the child under Subsection (e) of this section, the parent shall be treated as if the parent predeceased the child for purposes of:

- (1) inheritance under the laws of descent and distribution; and
- (2) any other cause of action based on parentage.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, § 2, eff. June 12, 1969. Subsecs. (e) & (f) added by Acts 2007, 80th Leg., ch. 1412, § 2, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context § 42

At common law, a child born outside of a valid marriage was considered as having no parents (*filius nullius*). Thus, a nonmarital child did not inherit from or through the child's biological mother or father. Likewise, the biological parents could not inherit from or through the child. However, the nonmarital child did retain the right to inherit from the child's spouse and descendants. If the child died intestate with neither a surviving spouse nor descendants, the child's property escheated to the government.

This harsh treatment of nonmarital children, formerly referred to by pejorative terms such as "illegitimate children" or "bastards," has been

greatly alleviated under modern law. In the 1977 United States Supreme Court case of *Trimble v. Gordon*, 430 U.S. 726 (1977), the Court held that marital and nonmarital children must be treated the same when determining heirs under intestacy statutes. The Court held that discriminating against non-marital children was a violation of the equal protection clause of the 14th Amendment.

One year later, the Supreme Court retreated from its broad holding in *Trimble*. In the five-four decision of *Lalli v. Lalli*, 439 U.S. 259 (1978), the Court held that a state may have legitimate reasons to apply a more demanding standard for nonmarital children to inherit from their fathers than from their mothers. The Court cited several justifications for this unequal treatment including the more efficient and orderly administration of estates, the avoidance of spurious claims, the maintenance of the finality of judgments, and the inability of the purported father to contest the child's paternity allegations.

Section 42(a) permits the nonmarital child to inherit from and through the biological mother (and vice versa) without any difference in the amount of maternity proof from that which a marital child is required to produce. On the other hand, Texas imposes higher standards on a nonmarital child to inherit from the father. Section 42(b), in conjunction with the referenced provisions of the Family Code, enumerates how a person may be considered the child of a man and thus entitled to inherit.

Texas also permits the nonmarital child to prove paternity after the purported father has died. In an attempt to limit the number of false claims, Texas imposes a higher standard of proof of paternity in post-death actions, that is, there must be clear and convincing evidence of paternity. DNA evidence is especially helpful in making this determination.

The discovery rule does not apply to heirship claims by non-marital children. *Frost Nat'l Bank v. Fernandez*, 315 S.W.3d 494 (Tex. 2010).

§ 42. Inheritance Rights of Children

(a) Maternal Inheritance. For the purpose of inheritance, a child is the child of his biological or adopted mother, so that he and his issue shall inherit from his mother and from his maternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue.

(b) Paternal Inheritance. (1) For the purpose of inheritance, a child is the child of his biological father if the child is born under circumstances described by Section 160.201, Family Code, is adjudicated to be the child of the father by court decree as provided by Chapter 160, Family Code, was adopted by his father, or if the father executed an acknowledgment of

paternity as provided by Subchapter D, Chapter 160, Family Code, or a like statement properly executed in another jurisdiction, so that he and his issue shall inherit from his father and from his paternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue. A person claiming to be a biological child of the decedent, who is not otherwise presumed to be a child of the decedent, or claiming inheritance through a biological child of the decedent, who is not otherwise presumed to be a child of the decedent, may petition the probate court for a determination of right of inheritance. If the court finds by clear and convincing evidence that the purported father was the biological father of the child, the child is treated as any other child of the decedent for the purpose of inheritance and he and his issue may inherit from his paternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue. This section does not permit inheritance by a purported father of a child, whether recognized or not, if the purported father's parental rights have been terminated.

(2) A person who purchases for valuable consideration any interest in real or personal property of the heirs of a decedent, who in good faith relies on the declarations in an affidavit of heirship that does not include a child who at the time of the sale or contract of sale of the property is not a presumed child of the decedent and has not under a final court decree or judgment been found to be entitled to treatment under this subsection as a child of the decedent, and who is without knowledge of the claim of that child, acquires good title to the interest that the person would have received, as purchaser, in the absence of any claim of the child not included in the affidavit. This subdivision does not affect the liability, if any, of the heirs for the proceeds of any sale described by this subdivision to the child who was not included in the affidavit of heirship.

(c) Homestead Rights, Exempt Property, and Family Allowances. A child as provided by Subsections (a) and (b) of this section is a child of his mother, and a child of his father, for the purpose of determining homestead rights, distribution of exempt property, and the making of family allowances.

(d) Marriages Void and Voidable. The issue of marriages declared void or voided by annulment shall be treated in the same manner as issue of a valid marriage.

Subsec. (b) amended by Acts 1987, 70th Leg., ch. 464, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 375, § 35, eff. Sept. 1, 1989. Subsec. (b)(1) amended by Acts 1997, 75th Leg., ch. 165, § 7.54, eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 1302, § 4, eff. Sept. 1, 1997; amended by Acts 2001, 77th Leg., ch. 821, § 2.18, eff. June 14, 2001. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 43

Whenever individuals such as children, grandchildren, siblings and their descendants, cousins, etc., are heirs, one must determine how to divide their shares among them. If the takers are all of the same degree of relationship to the intestate, then they take per capita, i.e., each heir takes the same amount. For example, if all takers are children, each takes an equal share. If all children are deceased, then each grandchild takes an equal share.

If the takers are of different degrees of relationship to the decedent, e.g., children and grandchildren, the younger-generation takers share what the older-generation taker would have received had that person survived, that is, per capita with representation. (Note that the term "per stirpes" as used in the caption to § 43 is a misnomer. Per stirpes refers to a distribution where shares are determined by the number of individuals in the first generation, even if they have all predeceased the intestate.) For example, assume that Grandfather had three children; two predeceased. one-third passes to the surviving child, with one-third passing to the children of each deceased child (grandchildren). If each deceased child had a different number of grandchildren, the shares of the grandchildren will be different (e.g., if one deceased child had two children, each gets one-sixth; if the other deceased child had three children, each gets one-ninth).

See the examples in the *Statutes in Context* for § 38.

§ 43. Determination of Per Capita and Per Stirpes Distribution

When the intestate's children, descendants, brothers, sisters, uncles, aunts, or any other relatives of the deceased standing in the first or same degree alone come into the distribution upon intestacy, they shall take per capita, namely: by persons; and, when a part of them being dead and a part living, the descendants of those dead shall have right to distribution upon intestacy, such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1991, 72nd Leg., ch. 895, § 3, eff. Sept. 1, 1991. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 44

An advancement is a special type of inter vivos gift. The advancer (donor) anticipates dying

intestate and the advancee (donee) is an individual who is likely to be one of the advancer's heirs. Although the gift is irrevocable and unconditional, the advancer intends the advancement to be an early distribution from the advancer's estate. Thus, the advancee's share of the advancer's estate is reduced to compensate for the advancement.

When the advancer dies intestate, the advanced property is treated as if it were still in the advancer's probate estate when computing the size of the intestate shares. Thus, the advancee receives a smaller share in the estate because the advancee already has part of the advancer's estate, that is, the advancement. This equalization process is referred to as going into hotchpot.

Section 44 provides that property given during an intestate's life to an heir is an advancement only if (1) the decedent acknowledges the advancement in a contemporaneous writing at the time of or prior to the transfer, or (2) the heir acknowledges in writing, at any time, that the transfer of property is to be treated as an advancement.

Example 1 Intestate had three children, Arthur, Brenda, and Charles. Intestate made a \$100,000 advancement to Arthur. Intestate died with a distributable probate estate of \$500,000. What is the proper distribution of Intestate's estate?

Arthur receives \$100,000, Brenda receives \$200,000, and Charles receives \$200,000. Because the \$100,000 gift to Arthur was an advancement, that amount is treated as if it were still in Intestate's estate. Thus, Intestate's estate is distributed as if it contained \$600,000. Intestate had three children and thus each child is entitled to a per capita share of \$200,000. Because Arthur has already received \$100,000 by way of the advancement, he is entitled only to an additional \$100,000 from Intestate's estate. Brenda and Charles each receive their share from Intestate's estate. The hotchpot process ensures that each child receives an equal share from Intestate accounting for both inter vivos and at-death transfers.

Example 2 Intestate had three children, Arthur, Brenda, and Charles. Intestate made a \$100,000 advancement to Arthur. Intestate died with a distributable probate estate of \$50,000. What is the proper distribution of Intestate's estate?

Arthur receives none of Intestate's estate, Brenda receives \$25,000 and Charles receives \$25,000. Like other inter vivos gifts, advancements are irrevocable. Thus, Arthur is under no obligation to actually return the advanced amount to Intestate's estate. Arthur is not indebted for the advanced amount. Instead, Arthur simply does not share in Intestate's estate because he has already

received property in excess of the share to which he would be entitled under a hotchpot computation. Thus, Intestate's entire estate is distributed to Brenda and Charles.

Example 3 Intestate had three children, Arthur, Brenda, and Charles. Intestate advanced two assets to Arthur, a house worth \$100,000 at the time of the advancement and a car worth \$30,000 at the time of the advancement. Intestate died with a distributable probate estate of \$500,000. At the time of Intestate's death, the house had appreciated to \$300,000 and the car had depreciated to \$1,000. What is the proper distribution of Intestate's estate?

Arthur receives \$80,000, Brenda receives \$210,000, and Charles receives \$210,000. Advancements are valued as of the date of the advancement under § 44(b). Thus, subsequent appreciation and depreciation of advanced property is ignored when going into hotchpot. The house valued at \$100,000 and the car valued at \$30,000 come into hotchpot. The value of the hotchpot, that is, advancements plus Intestate's estate, is \$630,000. Each of the three children is entitled to \$210,000. Because Arthur already received advancements valued at \$130,000, he receives only \$80,000 from the estate. Brenda and Charles each receive a full \$210,000 share because neither of them had received an advancement.

Example 4 Intestate had three children, Arthur, Brenda, and Charles. Intestate made a \$100,000 advancement to Arthur. Arthur died survived by his two children, Sam and Susan. Subsequently, Intestate died with a distributable probate estate of \$500,000. What is the proper distribution of Intestate's estate?

Under § 44(c), the advancement is not considered because Arthur did not survive Intestate and thus hotchpot does not occur unless Intestate specified in writing that the advancement is to be brought into hotchpot even if Intestate predeceases Arthur. Accordingly, Brenda and Charles would each receive one-third of Intestate's probate estate (approximately \$166,666) while Sam and Susan would each receive one-sixth (approximately \$83,333). The policy behind this approach is that the advancee's heirs may not have received the advanced property or its value from the advancee's estate.

The analogous concept to advancements in a will context is called satisfaction and is governed by § 37C.

§ 44. Advancements

(a) If a decedent dies intestate as to all or a portion of the decedent's estate, property the decedent gave

during the decedent's lifetime to a person who, on the date of the decedent's death, is the decedent's heir, or property received by a decedent's heir under a nontestamentary transfer under Chapter XI¹ of this code is an advancement against the heir's intestate share only if:

(1) the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift or nontestamentary transfer is an advancement; or

(2) the decedent's contemporaneous writing or the heir's written acknowledged otherwise indicates that the gift or nontestamentary transfer is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(b) For purposes of Subsection (a) of this section, property that is advanced is valued at the time the heir came into possession or enjoyment of the property or at the time of the decedent's death, whichever occurs first.

(c) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 846, § 4, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context § 45

Section 45 provides the intestate distribution scheme for community property. See the *Statutes in Context* to § 38 for a discussion of this provision.

Note that the distribution of community property was considerably different prior to September 1, 1993; the deceased spouse's half of the community passed to the deceased spouse's children even if all of the deceased spouse's children were also children of the surviving spouse.

Issues may arise regarding the identity and/or existence of a surviving spouse, especially if an informal or common law marriage is involved. See Family Code § 2.401.

§ 45. Community Estate

(a) On the intestate death of one of the spouses to a marriage, the community property estate of the deceased spouse passes to the surviving spouse if:

(1) no child or other descendant of the deceased spouse survives the deceased spouse; or

(2) all surviving children and descendants of the deceased spouse are also children or descendants of the surviving spouse.

(b) On the intestate death of one of the spouses to a marriage, if a child or other descendant of the deceased spouse survives the deceased spouse and the child or descendant is not a child or descendant of the surviving spouse, one-half of the community estate is retained by the surviving spouse and the other one-half passes to the children or descendants of the deceased spouse. The descendants shall inherit only such portion of said property to which they would be entitled under Section 43 of this code. In every case, the community estate passes charged with the debts against it.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1991, 72nd Leg., ch. 895, § 4, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 846, § 33, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context § 46

A joint tenancy is a type of concurrent property ownership. A joint tenant's rights end at death in favor of the surviving joint tenants. Thus, when a joint tenant dies, the deceased tenant's share is divided equally among the surviving joint tenants. The rights of these surviving joint tenants are superior to the deceased tenant's heirs or beneficiaries.

At common law, the survivorship feature attached automatically to a joint tenancy. The presumption of survivorship often led to unanticipated property distributions as co-owners held as joint tenants when they intended to hold as tenants in common. Nonlegally trained individuals did not appreciate the significant difference between these two types of concurrent ownership. Consequently, § 46(a) provides that the survivorship feature does not attach to a joint tenancy unless it is expressly stated in the instrument.

Survivorship agreements for community property are covered separately in §§ 451-462.

§ 46. Joint Tenancies

(a) If two or more persons hold an interest in property jointly, and one joint owner dies before severance, the interest of the decedent in the joint estate shall not survive to the remaining joint owner or owners but shall pass by will or intestacy from the decedent as if the decedent's interest had been severed. The joint owners may agree in writing, however, that the interest of any joint owner who dies shall survive to the surviving joint owner or owners, but no such agreement shall be inferred from the mere fact that the property is held in joint ownership.

¹ Probate Code § 436 et seq.

(b) Subsection (a) does not apply to agreements between spouses regarding their community property. Agreements between spouses regarding rights of survivorship in community property are governed by Part 3 of Chapter XI of this code.¹

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1961, 57th Leg., p. 233, ch. 120, § 1, eff. May 15, 1961; Acts 1969, 61st Leg., p. 1922, ch. 641, § 3, eff. June 12, 1969. Amended by Acts 1981, 67th Leg., p. 895, ch. 319, § 1, eff. Sept. 1, 1981; Acts 1987, 70th Leg., ch. 678, § 2; Acts 1989, 71st Leg., ch. 655, § 1, eff. Aug. 28, 1989. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 47

To be an heir, will beneficiary, recipient of property held in a joint tenancy with survivorship rights, or beneficiary of a life insurance policy, an individual must outlive the decedent. At common law, survival for only a mere instant was needed. This rule led to many proof problems as family members tried to establish that one person outlived the other or vice versa. Some of these cases read like horror novels as the courts evaluate evidence of which person twitched, gurgled, or gasped longer. See *Glover v. Davis*, 366 S.W.2d 227 (Tex. 1963).

To remedy this problem, § 47 imposes a survival period of 120 hours (5 days). If a person survives the decedent but dies prior to the expiration of the survival period, the property passes as if the person had actually predeceased the decedent.

§ 47. Requirement of Survival by 120 Hours

(a) Survival of Heirs. A person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly, except as otherwise provided in this section. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. This subsection does not apply where its application would result in the escheat of an intestate estate.

(b) Disposal of Community Property. When a husband and wife have died, leaving community property, and neither the husband nor wife survived the other by 120 hours, one-half of all community property shall be distributed as if the husband had survived, and

the other one-half thereof shall be distributed as if the wife had survived. The provisions of this subsection apply to proceeds of life or accident insurance which are community property and become payable to the estate of either the husband or the wife, as well as to other kinds of community property.

(c) Survival of devisees or Beneficiaries. A devisee who does not survive the testator by 120 hours is treated as if he predeceased the testator, unless the will of the decedent contains some language dealing explicitly with simultaneous death or deaths in a common disaster, or requiring that the devisee survive the testator or survive the testator for a stated period in order to take under the will. If property is so disposed of that the right of a beneficiary to succeed to any interest therein is conditional upon his surviving another person, the beneficiary shall be deemed not to have survived unless he or she survives the person by 120 hours. However, if any interest in property is given alternatively to one of two or more beneficiaries, with the right of each to take being dependent upon his surviving the other or others, and all shall die within a period of less than 120 hours, the property shall be divided into as many equal portions as there are beneficiaries, and those portions shall be distributed respectively to those who would have taken in the event that each beneficiary had survived.

(d) Joint Owners. If any real or personal property, including community property with a right of survivorship, shall be so owned that one of two joint owners is entitled to the whole on the death of the other, and neither survives the other by 120 hours, these assets shall be distributed one-half as if one joint owner had survived and the other one-half as if the other joint owner had survived. If there are more than two joint owners and all have died within a period of less than 120 hours, these assets shall be divided into as many equal portions as there are joint owners and these portions shall be distributed respectively to those who would have taken in the event that each joint owner survived.

(e) Insured and Beneficiary. When the insured and a beneficiary in a policy of life or accident insurance have died within a period of less than 120 hours, the insured shall be deemed to have survived the beneficiary for the purpose of determining the rights under the policy of the beneficiary or beneficiaries as such. The provisions of this subsection shall not prevent the application of subsection (b) above to the proceeds of life or accident insurance which are community property.

(f) Instruments Providing Different Disposition. When provision has been made in the case of wills, living trusts, deeds, or contracts of insurance, or any other situation, for disposition of property different from the provisions of this Section, this Section shall not apply.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1965, 59th Leg., p. 279, ch. 119, § 1,

¹ Probate Code § 451 et seq.

eff. Aug. 30, 1965; Acts 1979, 66th Leg., p. 1743, ch. 713, § 6, eff. Aug. 27, 1979. Subsec. (d) amended by Acts 1993, 73rd Leg., ch. 846, § 5, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 47A

The 2007 Legislature added a procedure to challenge the validity of a marriage based on the lack of mental capacity of one of the spouses even after the death of the allegedly incompetent spouse. If the court deems the marriage void, the surviving partner may not receive any benefits to which a surviving spouse is normally entitled such as the ability to be an heir and claim homestead rights. This section was designed to remedy marriages entered into due to the actions of abusive caregivers.

§ 47A. Marriage Voidable Based on Mental Incapacity

(a) If a proceeding under Chapter 6, Family Code, to declare a marriage void based on the lack of mental capacity of one of the parties to the marriage is pending on the date of death of one of those parties, or if a guardianship proceeding in which a court is requested under Chapter 6, Family Code, to declare a ward's or proposed ward's marriage void based on the lack of mental capacity of the ward or proposed ward is pending on the date of death of the ward or proposed ward, the court may make the determination and declare the marriage void after the decedent's death. In making that determination after the decedent's death, the court shall apply the standards for an annulment prescribed by Section 6.108(a), Family Code.

(b) Subject to Subsection (c) of this section, if a proceeding described by Subsection (a) of this section is not pending on the date of a decedent's death, an interested person may file an application with the court requesting that the court void the marriage of the decedent if, on the date of the decedent's death, the decedent was married, and that marriage commenced not earlier than three years before the decedent's date of death. The notice applicable to a proceeding for a declaratory judgment under Chapter 37, Civil Practice and Remedies Code, applies to a proceeding under this subsection.

(c) An application requesting that the court void a decedent's marriage authorized by Subsection (b) of this section may not be filed after the first anniversary of the date of the decedent's death.

(d) Except as provided by Subsection (e) of this section, in a proceeding brought under Subsection (b) of this section, the court shall declare the decedent's marriage void if the court finds that, on the date the marriage occurred, the decedent did not have the mental capacity to:

- (1) consent to the marriage; and
- (2) understand the nature of the marriage ceremony, if a ceremony occurred.

(e) In a proceeding brought under Subsection (b) of this section, a court that makes a finding described by Subsection (d) of this section may not declare the decedent's marriage void if the court finds that, after the date the marriage occurred, the decedent:

- (1) gained the mental capacity to recognize the marriage relationship; and
- (2) did recognize the marriage relationship.

(f) If the court declares a decedent's marriage void in a proceeding described by Subsection (a) of this section or brought under Subsection (b) of this section, the other party to the marriage is not considered the decedent's surviving spouse for purposes of any law of this state.

Added by Acts 2007, 80th Leg., ch. 1170, § 4.01, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Chapter III. Determination Of Heirship

Statutes in Context
§§ 48–56

If the decedent died intestate, the court will make a determination of the identity of the heirs. If there is no need for an estate administration, this determination of heirship may be all that is required to prove that title to property passed from the intestate to the heirs. The court will open an administration only if one is necessary to pay debts or to partition property among the heirs. Sections 48-56 relate to steps which must be taken for a formal determination of heirship.

The analogous proceeding for a testate decedent is to probate the will as a muniment of title as discussed in §§ 89A-89C.

§ 48. Proceedings to Declare Heirship.

(a) When a person dies intestate owning or entitled to real or personal property in Texas, and there shall have been no administration in this State upon the person's estate; or when it is necessary for the trustee of a trust holding assets for the benefit of a decedent to determine the heirs of the decedent; or when there has been a will probated in this State or elsewhere, or an administration in this State upon the estate of such decedent, and any real or personal property in this State has been omitted from such will or from such administration, or no final disposition thereof has been made in such administration, the court of the county in which venue would be proper under Section 6C of this code may determine and declare in the manner hereinafter provided who are the heirs and only heirs of such decedent, and their respective shares and interests, under the laws of this State, in the estate of such

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decedent or, if applicable, in the trust, and proceedings therefor shall be known as proceedings to declare heirship.

(b) If an application for determination of heirship is filed within four (4) years from the date of the death of the decedent, the applicant may request that the court determine whether a necessity for administration exists. The court shall hear evidence upon the issue and make a determination thereof in its judgment.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972; Acts 1977, 65th Leg., p. 1521, ch. 616, § 1, eff. Aug. 29, 1977. Subsec. (a) amended by 80th Leg., ch. 1170, § 2.02, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, §§ 1.09, 1.10, eff. Sept. 1, 2011. Subsec. (c) repealed by Acts 2011, 82nd Leg., ch. 1338, § 1.42, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 49. Who May Institute Proceedings to Declare Heirship

(a) Such proceedings may be instituted and maintained under a circumstance specified in Section 48(a) of this code by the qualified personal representative of the estate of such decedent, by a party seeking the appointment of an independent administrator under Section 145 of this code, by the trustee of a trust holding assets for the benefit of the decedent, by any person or persons claiming to be a secured creditor or the owner of the whole or a part of the estate of such decedent, or by the guardian of the estate of a ward, if the proceedings are instituted and maintained in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the death of the ward. In such a case an application shall be filed in a proper court stating the following information:

(1) the name of the decedent and the time and place of death;

(2) the names and residences of the decedent's heirs, the relationship of each heir to the decedent, and the true interest of the applicant and each of the heirs in the estate of the decedent or in the trust, as applicable;

(3) all the material facts and circumstances within the knowledge and information of the applicant that might reasonably tend to show the time or place of death or the names or residences of all heirs, if the time or place of death or the names or residences of all the heirs are not definitely known to the applicant;

(4) a statement that all children born to or adopted by the decedent have been listed;

(5) a statement that each marriage of the decedent has been listed with the date of the marriage, the name of the spouse, and if the marriage was terminated, the date and place of

termination, and other facts to show whether a spouse has had an interest in the property of the decedent;

(6) whether the decedent died testate and if so, what disposition has been made of the will;

(7) a general description of all the real and personal property belonging to the estate of the decedent or held in trust for the benefit of the decedent, as applicable; and

(8) an explanation for the omission of any of the foregoing information that is omitted from the application.

(b) Such application shall be supported by the affidavit of each applicant to the effect that, insofar as is known to such applicant, all the allegations of such application are true in substance and in fact and that no such material fact or circumstance has, within the affiant's knowledge, been omitted from such application. The unknown heirs of such decedent, all persons who are named in the application as heirs of such decedent, and all persons who are, at the date of the filing of the application, shown by the deed records of the county in which any of the real property described in such application is situated to own any share or interest in any such real property, shall be made parties in such proceeding.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972; Acts 1977, 65th Leg., p. 1522, ch. 616, § 2, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1744, ch. 713, § 7, eff. Aug. 27, 1979. Subsec. (a) amended by Acts 1983, 68th Leg., p. 629, ch. 139, § 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 693, § 1, eff. Sept. 1, 1985. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.11, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 50. Notice

(a) Citation shall be served by registered or certified mail upon all distributees 12 years of age or older whose names and addresses are known, or whose names and addresses can be learned through the exercise of reasonable diligence, provided that the court may in its discretion require that service of citation shall be made by personal service upon some or all of those named as distributees in the application. Citation shall be served as provided by this subsection on the parent, managing conservator, or guardian of a distributee who is younger than 12 years of age, if the name and address of the parent, managing conservator, or guardian is known or can be reasonably ascertained.

(b) If the address of a person or entity on whom citation is required to be served cannot be ascertained, citation shall be served on the person or entity by publication in the county in which the proceedings are commenced, and if the decedent resided in another county, then a citation shall also be published in the county of the decedent's last residence. To determine

whether there are any other heirs, citation shall also be served on unknown heirs by publication in the manner provided by this subsection.

(c) Except in proceedings in which there is service of citation by publication as provided by Subsection (b) of this section, citation shall also be posted in the county in which the proceedings are commenced and in the county of the decedent's last residence.

(d) A party to the proceedings who has executed the application need not be served by any method.

(e) A parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a distributee who is at least 12 years of age but younger than 19 years of age may not waive citation required to be served on the distributee under this section.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972; Acts 1979, 66th Leg., p. 1745, ch. 713, § 8, eff. Aug. 27, 1979. Subsecs. (a), (b) amended by Acts 1997, 75th Leg., ch. 1130, § 1, eff. Sept. 1, 1997. Subsecs. (b) amended by and (e) added by Acts 2001, 77th Leg., ch. 664, § 2, eff. Sept. 1, 2001. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 51. Transfer of Proceeding When Will Probated or Administration Granted

If an administration upon the estate of any such decedent shall be granted in the State, or if the will of such decedent shall be admitted to probate in this State, after the institution of a proceeding to declare heirship, the court in which such proceeding is pending shall, by an order entered of record therein, transfer the cause to the court of the county in which such administration shall have been granted, or such will shall have been probated, and thereupon the clerk of the court in which such proceeding was originally filed shall send to the clerk of the court named in such order, a certified transcript of all pleadings, entries in the judge's probate docket, and orders of the court in such cause. The clerk of the court to which such cause shall be transferred shall file the transcript and record the same in the judge's probate docket of that court and shall docket such cause, and the same shall thereafter proceed as though originally filed in that court. The court, in its discretion, may consolidate the cause so transferred with the pending proceeding.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972. Amended by Acts 2009, 81st Leg., ch. 602, § 4, eff. June 19, 2009. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context § 52

Some title companies, oil landpersons, and financial institutions may rely on an affidavit of heirship, standing alone without a formal

determination of heirship, to clear defects in title to real property.

§ 52. Recorded Instruments as Prima Facie Evidence

(a) A statement of facts concerning the family history, genealogy, marital status, or the identity of the heirs of a decedent shall be received in a proceeding to declare heirship, or in a suit involving title to real or personal property, as prima facie evidence of the facts therein stated, if the statement is contained in either an affidavit or any other instrument legally executed and acknowledged or sworn to before, and certified by, an officer authorized to take acknowledgments or oaths as applicable, or any judgment of a court of record, and if the affidavit or instrument has been of record for five years or more in the deed records of any county in this state in which such real or personal property is located at the time the suit is instituted, or in the deed records of any county of this state in which the decedent had his domicile or fixed place of residence at the time of his death. If there is any error in the statement of facts in such recorded affidavit or instrument, the true facts may be proved by anyone interested in the proceeding in which said affidavit or instrument is offered in evidence.

(b) An affidavit of facts concerning the identity of heirs of a decedent as to an interest in real property that is filed in a proceeding or suit described by Subsection (a) of this section may be in the form described by Section 52A of this code.

(c) An affidavit of facts concerning the identity of heirs of a decedent does not affect the rights of an omitted heir or a creditor of the decedent as otherwise provided by law. This statute shall be cumulative of all other statutes on the same subject, and shall not be construed as abrogating any right to present evidence or to rely on an affidavit of facts conferred by any other statute or rule of law.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, § 4, eff. June 12, 1969. Amended by Acts 1991, 72nd Leg., ch. 895, § 5, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1538, § 1, eff. Sept. 1, 1999. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 52A. Form of Affidavit of Facts Concerning Identity of Heirs

An affidavit of facts concerning the identity of heirs of a decedent may be in substantially the following form:

AFFIDAVIT OF FACTS CONCERNING THE IDENTITY OF HEIRS

Before me, the undersigned authority, on this day personally appeared _____ ("Affiant") (insert name of affiant) who, being first duly sworn, upon his/her oath states:

1. My name is _____ (insert name of affiant), and I live at _____ (insert address of affiant's

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residence). I am personally familiar with the family and marital history of _____ (“Decedent”) (insert name of decedent), and I have personal knowledge of the facts stated in this affidavit.

2. I knew decedent from _____ (insert date) until _____ (insert date). Decedent died on _____ (insert date of death). Decedent’s place of death was _____ (insert place of death). At the time of decedent’s death, decedent’s residence was _____ (insert address of decedent’s residence).

3. Decedent’s marital history was as follows: _____ (insert marital history and, if decedent’s spouse is deceased, insert date and place of spouse’s death).

4. Decedent had the following children: _____ (insert name, birth date, name of other parent, and current address of child or date of death of child and descendants of deceased child, as applicable, for each child).

5. Decedent did not have or adopt any other children and did not take any other children into decedent’s home or raise any other children, except: _____ (insert name of child or names of children, or state “none”).

6. (Include if decedent was not survived by descendants.) Decedent’s mother was: _____ (insert name, birth date, and current address or date of death of mother, as applicable).

7. (Include if decedent was not survived by descendants.) Decedent’s father was: _____ (insert name, birth date, and current address or date of death of father, as applicable).

8. (Include if decedent was not survived by descendants or by both mother and father.) Decedent had the following siblings: _____ (insert name, birth date, and current address or date of death of each sibling and parents of each sibling and descendants of each deceased sibling, as applicable, or state “none”).

9. (Optional.) The following persons have knowledge regarding the decedent, the identity of decedent’s children, if any, parents, or siblings, if any: _____ (insert names of persons with knowledge, or state “none”).

10. Decedent died without leaving a written will. (Modify statement if decedent left a written will.)

11. There has been no administration of decedent’s estate. (Modify statement if there has been administration of decedent’s estate.)

12. Decedent left no debts that are unpaid, except: _____ (insert list of debts, or state “none”).

13. There are no unpaid estate or inheritance taxes, except: _____ (insert list of unpaid taxes, or state “none”).

14. To the best of my knowledge, decedent owned an interest in the following real property: _____ (insert list of real property in which decedent owned an interest, or state “none”).

15. (Optional.) The following were the heirs of decedent: _____ (insert names of heirs).

16. (Insert additional information as appropriate, such as size of the decedent’s estate.)

Signed this _____ day of _____, _____.
(signature of affiant)
State of _____
County of _____

Sworn to and subscribed to before me on _____
(date) by _____ (insert name of affiant).
(signature of notarial officer)
(Seal, if any, of notary) _____
(printed name)
My commission expires: _____

Added by Acts 1999, 76th Leg., ch. 1538, § 2, eff. Sept. 1, 1999. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 53. Evidence; Unknown Parties and Incapacitated Persons

(a) The court in its discretion may require all or any part of the evidence admitted in a proceeding to declare heirship to be reduced to writing, and subscribed and sworn to by the witnesses, respectively, and filed in the cause, and recorded in the judge’s probate docket.

(b) If it appears to the court that there are or may be living heirs whose names or whereabouts are unknown, or that any defendant is an incapacitated person, the court may, in its discretion, appoint an attorney ad litem or guardian ad litem to represent the interests of any such persons. The court may not appoint an attorney ad litem or guardian ad litem unless the court finds that the appointment is necessary to protect the interests of the living heir or incapacitated person.

(c) The court shall appoint an attorney ad litem to represent the interests of unknown heirs.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972. Subsec. (b) amended by Acts 1995, 74th Leg., ch. 1039, § 6, eff. Sept. 1, 1995; Sec. heading amended by Acts 2001, 77th Leg., ch. 664, § 3, eff. Sept. 1, 2001; Subsec. (c) added by Acts 2001, 77th Leg., ch. 664, § 4, eff. Sept. 1, 2001. Amended by Acts 2009, 81st Leg., ch. 602, § 5, eff. June 19, 2009. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 53A. Order for Genetic Testing Authorized

(a) In a proceeding to declare heirship under this chapter, the court may, on the court’s own motion, and shall, on the request of a party to the proceeding, order one or more specified individuals to submit to genetic testing as provided for in Subchapter F, Chapter 160, Family Code. If two or more individuals are ordered to be tested, the court may order that the testing of those individuals be done concurrently or sequentially. The court may enforce an order under this subsection by contempt.

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(b) Subject to any assessment of costs following the proceeding in accordance with Rule 131, Texas Rules of Civil Procedure, the cost of genetic testing ordered under Subsection (a) of this section must be advanced:

(1) by a party to the proceeding who requests the testing;

(2) as agreed by the parties and approved by the court; or

(3) as ordered by the court.

(c) Subject to Subsection (d) of this section, the court shall order genetic testing subsequent to the testing conducted under Subsection (a) of this section if:

(1) a party to the proceeding contests the results of the genetic testing ordered under Subsection (a) of this section; and

(2) the party contesting the results requests that additional testing be conducted.

(d) If the results of the genetic testing ordered under Subsection (a) of this section identify a tested individual as an heir of the decedent, the court may order additional genetic testing in accordance with Subsection (c) of this section only if the party contesting those results pays for the additional testing in advance.

(e) If a sample of an individual's genetic material that could identify another individual as the decedent's heir is not available for purposes of conducting genetic testing under this section, the court, on a finding of good cause and that the need for genetic testing outweighs the legitimate interests of the individual to be tested, may order any of the following other individuals to submit a sample of genetic material for the testing under circumstances the court considers just:

(1) a parent, sibling, or child of the individual whose genetic material is not available; or

(2) any other relative of that individual, as necessary to conduct the testing.

(f) On good cause shown, the court may order:

(1) genetic testing of a deceased individual under this section; and

(2) if necessary, removal of the remains of the deceased individual as provided by Section 711.004, Health and Safety Code, for that testing.

(g) An individual commits an offense if the individual intentionally releases an identifiable sample of the genetic material of another individual that was provided for purposes of genetic testing ordered under this section, the release is for a purpose not related to the proceeding to declare heirship, and the release was not ordered by the court or done in accordance with written permission obtained from the individual who provided the sample. An offense under this subsection is a Class A misdemeanor.

Added by Acts 2007, 80th Leg., ch. 566, § 1, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 53B. Results of Genetic Testing; Admissibility

(a) A report of the results of genetic testing ordered under Section 53A of this chapter:

(1) must comply with the requirements for a report prescribed by Section 160.504, Family Code; and

(2) is admissible in a proceeding to declare heirship under this chapter as evidence of the truth of the facts asserted in the report.

(b) The presumption under Section 160.505, Family Code, applies to the results of genetic testing ordered under this section, and the presumption may be rebutted as provided by that section.

(c) A party to the proceeding who contests the results of genetic testing may call one or more genetic testing experts to testify in person or by telephone, videoconference, deposition, or another method approved by the court. Unless otherwise ordered by the court, the party offering the testimony bears the expense for the expert testifying.

Added by Acts 2007, 80th Leg., ch. 566, § 1, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 53C. Use of Genetic Testing Results in Certain Proceedings to Declare Heirship

(a) This section applies in a proceeding to declare heirship of a decedent only with respect to an individual who:

(1) petitions the court for a determination of right of inheritance as authorized by Section 42(b) of this code; and

(2) claims to be a biological child of the decedent, but with respect to whom a parent-child relationship with the decedent was not established as provided by Section 160.201, Family Code, or who claims inheritance through a biological child of the decedent, if a parent-child relationship between the individual through whom the inheritance is claimed and the decedent was not established as provided by Section 160.201, Family Code.

(b) Unless the results of genetic testing of another individual who is an heir of the decedent are admitted as rebuttal evidence, the court shall find that the individual described by Subsection (a) of this section is an heir of the decedent if the results of genetic testing ordered under Section 53A of this chapter identify a tested individual who is an heir of the decedent as the ancestor of the individual described by Subsection (a) of this section.

(c) Unless the results of genetic testing of another individual who is an heir of the decedent are admitted as rebuttal evidence, the court shall find that the individual described by Subsection (a) of this section is not an heir of the decedent if the results of genetic testing ordered under Section 53A of this chapter exclude a tested individual who is an heir of the decedent as the ancestor of the individual described by Subsection (a) of this section.

(d) If the results of genetic testing ordered under Section 53A of this chapter do not identify or exclude a

tested individual as the ancestor of the individual described by Subsection (a) of this section:

(1) the court may not dismiss the proceeding to declare heirship; and

(2) the results of the genetic testing and other relevant evidence are admissible in the proceeding.

Added by Acts 2007, 80th Leg., ch. 566, § 1, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 53D. Additional Orders Authorized

On the request of an individual determined by the results of genetic testing to be the heir of a decedent and for good cause shown, the court may:

(1) order the name of the individual to be changed; and

(2) if the court orders a name change under Subdivision (1) of this section, order the bureau of vital statistics to issue an amended birth record for the individual.

Added by Acts 2007, 80th Leg., ch. 566, § 1, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 53E. Proceedings and Records Public

A proceeding under this chapter involving genetic testing is open to the public as in other civil cases, and papers and records in the proceeding are available for public inspection.

Added by Acts 2007, 80th Leg., ch. 566, § 1, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 54. Judgment

The judgment of the court in a proceeding to declare heirship shall declare the names and places of residence of the heirs of the decedent, and their respective shares and interests in the real and personal property of such decedent. If the proof is in any respect deficient, the judgment shall so state.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 55. Effect of Judgment

(a) Such judgment shall be a final judgment, and may be appealed or reviewed within the same time limits and in the same manner as may other judgments in probate matters at the instance of any interested person. If any person who is an heir of the decedent is not served with citation by registered or certified mail, or by personal service, he may at any time within four years from the date of such judgment have the same corrected by bill of review, or upon proof of actual fraud, after the passage of any length of time, and may recover from the heirs named in the judgment, and those claiming under them who are not bona fide

purchasers for value, his just share of the property or its value.

(b) Although such judgment may later be modified, set aside, or nullified, it shall nevertheless be conclusive in any suit between any heir omitted from the judgment and a bona fide purchaser for value who has purchased real or personal property after entry of the judgment without actual notice of the claim of the omitted heir. Similarly, any person who has delivered funds or property of the decedent to the persons declared to be heirs in the judgment, or has engaged in any other transaction with them, in good faith, after entry of such judgment, shall not be liable therefor to any person.

(c) If the court states in its judgment that there is no necessity for administration on the estate, such recital shall constitute authorization to all persons owing any money to the estate of the decedent, or having custody of any property of such estate, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and to persons purchasing from or otherwise dealing with the heirs as determined in the judgment, to pay, deliver, or transfer such property or evidence of property rights to such heirs, or to purchase property from such heirs, without liability to any creditor of the estate or other person. Such heirs shall be entitled to enforce their right to payment, delivery, or transfer by suit. Nothing in this chapter shall affect the rights or remedies of the creditors of the decedent except as provided in this subsection.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 971, ch. 173, § 4, eff. Jan. 1, 1972; Acts 1979, 66th Leg., p. 1746, ch. 713, § 9, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 56. Filing of Certified Copy of Judgment

A certified copy of such judgment may be filed for record in the office of the county clerk of the county in which any of the real property described in such judgment is situated, and recorded in the deed records of such county, and indexed in the name of such decedent as grantor and of the heirs named in such judgment as grantees; and, from and after such filing, such judgment shall constitute constructive notice of the facts set forth therein.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Chapter IV. Execution and Revocation of Wills

Statutes in Context Chapter IV

The only way for a person to avoid having the probate estate pass to heirs under the law of intestate succession is to execute a valid will. A

person has, however, no right to make a will. The United States Supreme Court confirmed that “[r]ights of succession to the property of a deceased . . . are of statutory creation, and the dead hand rules succession only by sufferance. Nothing in the Federal Constitution forbids the legislature of a state to limit, condition, or even abolish the power of testamentary disposition over property within its jurisdiction.” *Irving Trust Co. v. Day*, 314 U.S. 556, 562 (1942).

Although not required to do so, the Texas Legislature has granted individuals the privilege of designating the recipients of their property upon death. Because the ability to execute a will is a privilege, a will typically has no effect unless the testator has precisely followed all the requirements. Texas, like most states, demands strict compliance with the statutorily mandated requirements. See *In re Estate of Iversen*, 150 S.W.3d 824 (Tex. App.—Fort Worth 2004, no pet.) (appellate court reversed trial court’s holding that a non-holographic will was properly executed even though it was unwitnessed; the affidavits of two individuals who saw the testator sign the will were not sufficient to satisfy the attestation requirement). A few states, however, have adopted a substantial compliance rule which grants the court a dispensing power to excuse a harmless error if there is clear and convincing evidence that the testator intended the document to be a will.

Many states have a savings statute which permits a will that does not meet the requirements of a valid will under local law to nonetheless be effective under certain circumstances. Texas does not have a savings statute.

There are four main requirements of a valid will: (1) legal capacity (§ 57), (2) testamentary capacity (§ 57 and case law thereunder), (3) testamentary intent (case law), and (4) formalities (attested wills under § 59 and holographic wills under § 60). Whenever you are asked to determine if a document purporting to be a will is valid, you must begin your analysis by ascertaining whether the testator satisfied each of these four requirements.

Statutes in Context
§ 57

Section 57 requires that the testator have both legal and testamentary capacity to execute a will.

The testator has legal capacity if the testator is either (1) age 18 or older, (2) currently or previously married, or (3) a current member of the armed forces of the United States.

A testator has testamentary capacity (“sound mind”) if the testator has (1) sufficient mental ability to understand the act in which the testator was engaged, (2) sufficient mental ability to understand the effect of making a will (that is, to dispose of property upon death), (3) sufficient mental ability to understand the general nature and extent of the testator’s property, (4) sufficient mental ability to know the testator’s next of kin and the natural objects of the testator’s bounty and their claims upon the testator, and (5) memory sufficient to collect in the testator’s mind the elements of the business to be transacted and to hold them long enough to perceive at least their obvious relation to each other and to form a reasonable judgment as to them. *Stephen v. Coleman*, 533 S.W.2d 444 (Tex. Civ. App. — Fort Worth 1976, writ ref’d n.r.e.).

§ 57. Who May Execute a Will

Every person who has attained the age of eighteen years, or who is or has been lawfully married, or who is a member of the armed forces of the United States or of the auxiliaries thereof or of the maritime service at the time the will is made, being of sound mind, shall have the right and power to make a last will and testament, under the rules and limitations prescribed by law.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 801, ch. 334, § 1, eff. Aug. 28, 1967. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 58

Section 58(b) authorizes a negative will, that is, a will which does not provide for the disposition of property but rather merely states that a named heir may not take by intestacy. Negative provisions were not enforced under the common law.

Section 58(c) provides that the contents of any specifically gifted item are not included in the gift unless the gift expressly includes the contents. Intangible property such as stock and titled personal property such as motor vehicles, are not considered contents. For example, if the will devises “my home to Son,” the contents of the real property will not pass to Son. However, if the will devises “my house and its contents to Son” and upon testator’s death the home contains furniture, stock certificates, and a car, Son would receive the furniture, but not the stock or car.

§ 58. Interests which May Pass Under a Will

(a) Every person competent to make a last will and testament may thereby devise and bequeath all the estate, right, title, and interest in property the person has

at the time of the person's death, subject to the limitations prescribed by law.

(b) A person who makes a last will and testament may:

(1) disinherit an heir; and

(2) direct the disposition of property or an interest passing under the will or by intestacy.

(c) A legacy of personal property does not include any contents of the property unless the will directs that the contents are included in the legacy. A devise of real property does not include any personal property located on or associated with the real property or any contents of personal property located on the real property unless the will directs that the personal property or contents are included in the devise.

(d) In this section:

(1) "Contents" means tangible personal property, other than titled personal property, found inside of or on a specifically bequeathed or devised item. The term includes clothing, pictures, furniture, coin collections, and other items of tangible personal property that do not require a formal transfer of title and that are located in another item of tangible personal property such as a cedar chest or other furniture.

(2) "Titled personal property" includes all tangible personal property represented by a certificate of title, certificate of ownership, written label, marking, or designation that signifies ownership by a person. The term includes a motor vehicle, motor home, motorboat, or other similar property that requires a formal transfer of title.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1991, 72nd Leg., ch. 895, § 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 846, § 6, eff. Sept. 1, 1993; Subsecs. (c), (d) amended by Acts 1995, 74th Leg., ch. 642, § 1, eff. Sept. 1, 1995. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 58a

Section 58a authorizes the use of a pour-over provision in a will, that is, a testamentary gift to an inter vivos trust. Pour-over provisions are very common because a testator may wish to obtain the benefits of a trust but not want to create the trust in the testator's will. Reasons a testator may prefer the pour-over technique include (1) an inter vivos trust is easier to amend than a will; (2) an inter vivos trust can serve as a receptacle for a variety of other assets, such as life insurance proceeds and annuity payments, to provide a unified disposition of the testator's property; and (3) the testator may pour over into a trust created by someone else, such as a spouse.

Section 58a is based on the 1991 version of the Uniform Testamentary Additions to Trusts Act. Innovations in this act include (1) the testator's

ability to pour over to an inter vivos trust which, although placed in writing, has not actually been created because no property has yet been transferred to the trust (in other words, the testamentary gift may provide the initial funding of the trust) and (2) the pour-over property is governed by the current terms of the trust, not those in effect when the testator died. Thus, if a testator leaves property to a trust created by someone else who is still alive, the potential exists for that person to make amendments to the trust after the testator's death which may change the identity of the beneficiaries and how the trust property is spent or managed.

See Insurance Code §§ 1104.021 through 1104.025 for additional provisions applicable to life insurance which is payable to the trustee named in the policy.

§ 58a. Devises or Bequests to Trustees

(a) A testator may validly devise or bequeath property in a will to the trustee of a trust established or to be established:

(1) during the testator's lifetime by the testator, by the testator and another person, or by another person, including a funded or unfunded life insurance trust, in which the settlor has reserved any or all rights of ownership of the insurance contracts; or

(2) at the testator's death by the testator's devise or bequest to the trustee, if the trust is identified in the testator's will and its terms are in a written instrument, other than a will, that is executed before, with, or after the execution of the testator's will or in another person's will if that other person has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust.

(b) A devise or bequest is not invalid because the trust is amendable or revocable or because the trust was amended after the execution of the will or the testator's death.

(c) Unless the testator's will provides otherwise, property devised or bequeathed to a trust described by Subsection (a) of this section is not held under a testamentary trust of the testator. The property becomes a part of the trust to which it is devised or bequeathed and must be administered and disposed of in accordance with the provisions of the instrument establishing the trust, including any amendments to the instrument made before or after the testator's death.

(d) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise or bequest to lapse.

Added by Acts 1961, 57th Leg., p. 43, ch. 29, § 1. Amended by Acts 1993, 73rd Leg., ch. 846, § 7, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 58b

Section 58b voids a testamentary gift made to an attorney or someone closely connected to the attorney (i.e., the attorney's spouse, the attorney's parent, a descendant of the attorney's parent, or the attorney's employee) when the attorney is also the attorney who drafted the will. This section, however, does not apply to wills prepared by an attorney if the attorney is the testator's spouse, ascendant or descendant, or related within the third degree of consanguinity or affinity. See Government Code §§ 573.021 - 573.025 (definitions of "consanguinity" and "affinity" by analogy).

In *Jones v. Krown*, 218 S.W.3d 746 (Tex. App.—Fort Worth 2007, pet. denied), an attorney drafted a will for a testator which named his paralegal (an independent contractor) as both a beneficiary and as the executrix. After the testator died, his sister filed a motion for a declaratory judgment to set aside the gift to the paralegal under § 58b. The court held that the paralegal's gift was void and that the property passed via intestacy to his sister.

See also Disciplinary Rule of Professional Conduct 1.08(b) (in the Government Code).

§ 58b. Devises and Bequests that Are Void

(a) A devise or bequest of property in a will is void if the devise or bequest is made to:

- (1) an attorney who prepares or supervises the preparation of the will;
- (2) a parent, descendant of a parent, or employee of the attorney described by Subdivision (1) of this subsection; or
- (3) a spouse of an individual described by Subdivision (1) or (2) of this subsection

(b) This section does not apply to:

- (1) a devise or bequest made to a person who:
 - (A) is the testator's spouse;
 - (B) is an ascendant or descendant of the testator; or
 - (C) is related within the third degree by consanguinity or affinity to the testator; or
- (2) a bona fide purchaser for value from a devisee in a will.

Added by Acts 1997, 75th Leg., ch. 1054, § 1, eff. Sept. 1, 1997. Subsec. (b) amended by Acts 2001, 77th Leg., ch. 527, § 1, eff. June 11, 2001. Subsec. (a) amended by Acts 2005, 79th Leg., ch. 551, § 2, eff. Sept. 1, 2005. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 58c

The 2003 Texas Legislature clarified whether a residuary clause will be deemed to exercise a power of appointment held by the testator by enacting Probate Code § 58c. A residuary clause or a clause purporting to dispose of all of the testator's property will exercise a power of appointment in favor of the will beneficiary only if one of the following two conditions is satisfied:

- 1. The testator makes a specific reference to the power of appointment in the will.
 - 2. There is some other indication in a writing (but not necessarily the will itself) that the testator intended to include the property subject to the power of appointment in the will.
-

§ 58c. Exercise of Power of Appointment

A testator may not exercise a power of appointment through a residuary clause in the testator's will or through a will providing for general disposition of all the testator's property unless:

- (1) the testator makes a specific reference to the power in the will; or
- (2) there is some other indication in writing that the testator intended to include the property subject to the power in the will.

Added by Acts 2003, 78th Leg., ch. 1060, § 8, eff. Sept. 1, 2003. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 59

Section 59 sets forth the formalities necessary for an attested will.

1. In Writing The statute does not indicate what the will is to be written on or written with. See Government Code § 311.005(11) for a definition of "written."

2. Signed by Testator The Probate Code does not explain what constitutes a signature but the Code Construction Act (Government Code § 311.005(6)) provides that a signature is any symbol executed or adopted by a person with present intent to authenticate a writing. Accordingly, initials, marks, and nicknames are sufficient.

A proxy may sign the testator's name provided the signature is placed on the will (1) by the testator's direction and (2) in the testator's presence. See also Government Code § 406.0165 for when a notary may sign as a proxy in the presence of a witness if the testator is physically unable to sign.

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Section 59(a) does not specify a location for the testator's signature. See *Lawson v. Dawson's Estate*, 53 S.W. 64 (Tex. Civ. App. — 1899, writ ref'd) (holding with regard to a holographic will that the location of the testator's signature is "of secondary consequence").

3. Attested by at Least Two Witnesses The witnesses must be credible, that is, competent to testify in court under the applicable evidence rules. See *Moos v. First State Bank*, 60 S.W.2d 888 (Tex. Civ. App. 1933, writ dismissed w.o.j.). The witnesses only need to be above the age of 14. See Probate Code §§ 61-62 for what happens if the witness is also a beneficiary of the will.

The witnesses do not need to know they are witnessing a will. In other words, publication is not required in Texas. See *Davis v. Davis*, 45 S.W.2d 240 (Tex. Civ. App. — Beaumont 1931, no writ). The witnesses only need to have the intent to give validity to the document as an act of the testator.

The witnesses must attest using "their names" in "their own handwriting." Thus, attestation by mark or by proxy is not allowed.

Although § 59(a) states that the witnesses must "subscribe" (that is, attest at the end of the will), the courts have not read this requirement strictly. See *Fowler v. Stagner*, 55 Tex. 393 (1881).

The witnesses must attest "in the presence of the testator." The courts have interpreted this to mean a conscious presence, that is, "the attestation must occur where testator, unless blind, is able to see it from his actual position at the time, or at most, from such position as slightly altered, where he has the power readily to make the alteration without assistance." *Nichols v. Rowan*, 442 S.W.2d 21 (Tex. Civ. App. — San Antonio 1967, writ ref'd n.r.e.). Note that Texas law, unlike many states, does not require (1) the witnesses to attest in each other's presence or (2) the testator to sign the will in the presence of the witnesses.

Although the testator should sign the will before the witnesses attest, Texas courts have not been strict in this regard. Instead, they have followed the continuous transaction view so that as long as "the execution and attestation of a will occurs at the same time and place and forms part of one transaction, it is immaterial that the witnesses subscribe before the testator signs." *James v. Haupt*, 573 S.W.2d 285, 289 (Tex. Civ. App. — Tyler 1978, writ ref'd n.r.e.) and *In re Estate of Pruitt*, 249 S.W.3d 654 (Tex. App.—Fort Worth 2008, no pet.).

Self-Proving Affidavit. Section 59(b) provides the testator with the option making the will self-proved by either (1) adding an affidavit as a separate document under § 59(a) or (2) including the affidavit within the text of the will under § 59(a-

1). Virtually all wills contain this affidavit because it substitutes for the in-court testimony of the witnesses when the will is probated thereby saving considerable time and expense.

In the past, problems arose if the testator and/or the witnesses signed the affidavit but not the will. The courts consistently held that the will and the affidavit were separate documents and thus a signature on the self-proving affidavit could not substitute for a missing signature on the will. See *Boren v. Boren*, 402 S.W.2d 728 (Tex. 1966). The 1991 Texas Legislature amended § 59(b) to alleviate this harsh result. Now, a signature on the affidavit may be used to prove the will but the will is then no longer considered self-proved and the testimony of the witnesses will be needed to probate the will.

The 2011 Legislature went a step farther by allowing the testator to include the self-proving language within the body of the will so that only one set of signatures is required. See § 59(a-1).

§ 59. Requisites of a Will

(a) Every last will and testament, except where otherwise provided by law, shall be in writing and signed by the testator in person or by another person for him by his direction and in his presence, and shall, if not wholly in the handwriting of the testator, be attested by two or more credible witnesses above the age of fourteen years who shall subscribe their names thereto in their own handwriting in the presence of the testator. Such a will or testament may, at the time of its execution or at any subsequent date during the lifetime of the testator and the witnesses, be made self-proved, and the testimony of the witnesses in the probate thereof may be made unnecessary, by the affidavits of the testator and the attesting witnesses, made before an officer authorized to administer oaths. Provided that nothing shall require an affidavit or certificate of any testator or testatrix as a prerequisite to self-proof of a will or testament other than the certificate set out below. The affidavits shall be evidenced by a certificate, with official seal affixed, of such officer attached or annexed to such will or testament in form and contents substantially as follows:

THE STATE OF TEXAS

COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____, _____, and _____, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said _____, testator, declared to me and to the said witnesses in my presence that said instrument is his last will and testament, and that he had willingly made and executed it as his free act and deed; and the said witnesses, each on his oath

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stated to me, in the presence and hearing of the said testator, that the said testator had declared to them that said instrument is his last will and testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said testator and at his request; that he was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

Testator

Witness

Witness

Subscribed and sworn to before me by the said _____, testator, and by the said _____ and _____, witnesses, this _____ day of _____ A.D. _____.

(SEAL)

(Signed) _____

(Official Capacity of Officer)

(a-1) As an alternative to the self-proving of a will by the affidavits of the testator and the attesting witnesses under Subsection (a) of this section, a will may be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths, and the testimony of the witnesses in the probate of the will may be made unnecessary, with the inclusion in the will of the following in form and contents substantially as follows:

I, _____, as testator, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my will, that I have willingly made and executed it in the presence of the undersigned witnesses, all of whom were present at the same time, as my free act and deed, and that I have requested each of the undersigned witnesses to sign this will in my presence and in the presence of each other. I now sign this will in the presence of the attesting witnesses and the undersigned authority on this _____ day of _____, 20____.

Testator

The undersigned, _____ and _____, each being above fourteen years of age, after being duly sworn, declare to the testator and to the undersigned authority that the testator declared to us that this instrument is the testator's will and that the testator requested us to act as witnesses to the testator's will and signature. The testator then signed this will in our presence, all of us being present at the same time. The testator is eighteen years of age or over (or being under such age, is or has been lawfully married, or is a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service), and we believe

the testator to be of sound mind. We now sign our names as attesting witnesses in the presence of the testator, each other, and the undersigned authority on this _____ day of _____, 20____.

Witness

Witness

Subscribed and sworn to before me by the said _____, testator, and by the said _____ and _____, witnesses, this _____ day of _____, 20____.

(SEAL)

(Signed) _____

(Official Capacity of Officer)

(b) An affidavit in form and content substantially as provided by Subsection (a) of this section is a "self-proving affidavit." A will with a self-proving affidavit subscribed and sworn to by the testator and witnesses attached or annexed to the will, or a will simultaneously executed, attested, and made self-proved as provided by Subsection (a-1) of this section, is a "self-proved will." Substantial compliance with the form provided by Subsection (a) or (a-1) of this section shall suffice to cause the will to be self-proved. For this purpose, an affidavit that is subscribed and acknowledged by the testator and subscribed and sworn to by the witnesses would suffice as being in substantial compliance. A signature on a self-proving affidavit as provided by Subsection (a) of this section is considered a signature to the will if necessary to prove that the will was signed by the testator or witnesses, or both, but in that case, the will may not be considered a self-proved will.

(c) A self-proved will may be admitted to probate without the testimony of any subscribing witness, but otherwise it shall be treated no differently than a will not self-proved. In particular and without limiting the generality of the foregoing, a self-proved will may be contested, or revoked or amended by a codicil in exactly the same fashion as a will not self-proved.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1961, 57th Leg., p. 936, ch. 412, § 1, eff. June 17, 1961; Acts 1969, 61st Leg., p. 1922, ch. 641, § 5, eff. June 12, 1969; Acts 1971, 62nd Leg., p. 974, ch. 173, § 5, eff. Jan. 1, 1972. Amended by Acts 1991, 72nd Leg., ch. 895, § 7, eff. Sept. 1, 1991. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.12, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

Statutes in Context

§ 59A

A contractual will refers to a will that is either (a) executed in whole or in part as the consideration for a contract, or (b) not revoked as the consideration for a contract. The contract must

meet all the requirements for a valid contract under applicable Texas law.

To ensure that only the wills of testators who actually intend to be bound are deemed contractual, § 59A requires that (1) the will state that a contract exists along with the material terms of the contract or (2) the contract be proved by a binding and enforceable written agreement such as a premarital agreement, divorce property settlement, or buy-sell agreement. The statute further provides that joint wills (a single testamentary instrument that contains the wills of two or more persons, such as a husband and wife) and reciprocal wills (separate wills which contain parallel dispositive provisions) are not presumably contractual. Nonetheless, to avoid the unintended creation of a contractual will, it may be prudent to include an anticontract provision.

If the testator executed the will prior to September 1, 1979, the contractual nature of the will may be established by extrinsic evidence.

§ 59A. Contracts Concerning Succession

(a) A contract to make a will or devise, or not to revoke a will or devise, if executed or entered into on or after September 1, 1979, can be established only by:

(1) provisions of a written agreement that is binding and enforceable; or

(2) provisions of a will stating that a contract does exist and stating the material provisions of the contract.

(b) The execution of a joint will or reciprocal wills does not by itself suffice as evidence of the existence of a contract.

Added by Acts 1979, 66th Leg., p. 1746, ch. 713, § 10, eff. Aug. 27, 1979. Amended by Acts 2003, 78th Leg., ch. 1060, § 9, eff. Sept. 1, 2003. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 60

A holographic will is prepared in the testator's own handwriting. Section 60 exempts holographic wills from the attestation requirement. This special treatment is justified by the aura of validity that surrounds a handwritten document because of the reduced chance of forgery and enhanced assurance of authenticity resulting from the large sample of the testator's writing.

The will must be "wholly" in the testator's own handwriting. Texas courts have adopted the surplusage approach which means that nonholographic material will not injure the holographic character of the will as long as the nonholographic material is not necessary to complete the instrument and does not affect its

meaning. See *Maul v. Williams*, 39 S.W.2d 1107 (Tex. Comm'n App. 1934, holding approved).

A holographic will may be made self-proved. Because the self-proving affidavit is a separate instrument, it does not need to be holographic.

§ 60. Exception Pertaining to Holographic Wills

Where the will is written wholly in the handwriting of the testator, the attestation of the subscribing witnesses may be dispensed with. Such a will may be made self-proved at any time during the testator's lifetime by the attachment or annexation thereto of an affidavit by the testator to the effect that the instrument is his last will; that he was at least eighteen years of age when he executed it (or, if under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service); that he was of sound mind; and that he has not revoked such instrument.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, § 6, eff. June 12, 1969. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 61

A testamentary gift to a beneficiary who is also a witness to the will is presumed void under the Texas purging statute, § 61. The testimony of an interested witness about the attestation is suspect because the witness has a motive to lie. There are three exceptions to this rule. The first exception applies if the witness would be an heir if the testator had actually died intestate in which case the witness may receive the gift provided it does not exceed the share of the testator's estate the witness could take under intestate succession. With regard to the smaller of the gift under the will or the intestate share, the witness has no motive to lie because the witness will receive that amount regardless of the validity of the will. The second exception is if the will can "be otherwise established" such as by the testimony of another witness. The third exception is detailed in § 62.

§ 61. Bequest to Witness

Should any person be a subscribing witness to a will, and also be a legatee or devisee therein, if the will cannot be otherwise established, such bequest shall be void, and such witness shall be allowed and compelled to appear and give his testimony in like manner as if no such bequest had been made. But, if in such case the witness would have been entitled to a share of the estate of the testator had there been no will, he shall be entitled to as much of such share as shall not exceed the value of the bequest to him in the will.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 62

Section 62 provides the third exception to the interested witness rule set forth in § 61. If the testimony of the witness-beneficiary is corroborated by a disinterested and credible person, the witness-beneficiary may retain the testamentary gift. Note that this person does not have to be an attesting witness to the will. For example, this person could be the attorney who supervised the will execution ceremony.

§ 62. Corroboration of Testimony of Interested Witness

In the situation covered by the preceding Section, the bequest to the subscribing witness shall not be void if his testimony proving the will is corroborated by one or more disinterested and credible persons who testify that the testimony of the subscribing witness is true and correct, and such subscribing witness shall not be regarded as an incompetent or non-credible witness under Section 59 of this Code.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 63

Section 63 provides two methods for revoking a will.

1. Subsequent Writing The testator may revoke a will in a new will, codicil, or other written declaration. The revocation may be express ("I hereby revoke all prior wills and codicils.") or it may be by inconsistency (the testator's old will left Blackacre to Able and the new will leaves Blackacre to Brenda). The formalities for the revocation instrument are the same as for a will.

2. Physical Act The testator may revoke a will by "destroying or canceling" the will such as by tearing up the will, drawing a dark line through the testator's signature, or burning the will. Revocation by physical act is an "all or nothing" arrangement, that is, Texas law does not permit partial revocation by physical act. Thus, if the testator merely draws lines through certain provisions or makes interlineations on a nonholographic will, these self-help changes will not be given effect; the will is probated as originally written. See *Leatherwood v. Stephens*, 24 S.W.2d 819 (Tex. Comm'n App. 1930, judgment adopted).

The physical act may be performed by a proxy provided it is done in the testator's presence.

In the almost unbelievable opinion of *In re Estate of Catlin*, 311 S.W.3d 697 (Tex. App.—Amarillo 2010, pet. denied), the court accepted proponent's explanation that he looked at the testator's home, office, safety deposit boxes, and drafting attorney's office but could not find the original. The court explained that the will proponent did not have to demonstrate an affirmative reason why the original cannot be located such as "the eating habits of a neighbor's goat, the occurrence of a Kansas tornado, the devastation of a flash flood, or the like." See § 85. This court basically makes it impossible for a testator to revoke a will by physical act because even if the will cannot be found and there is no affirmative reason why it cannot be found, a copy may nonetheless be probated.

§ 63. Revocation of Wills

No will in writing, and no clause thereof or devise therein, shall be revoked, except by a subsequent will, codicil, or declaration in writing, executed with like formalities, or by the testator destroying or canceling the same, or causing it to be done in his presence.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
Repealed § 64

A nuncupative will is an oral or spoken will. The common law had a long history of recognizing nuncupative wills for personal property. Beginning with the Statute of Frauds of 1677, however, legislatures have increased the number of restrictions and conditions on their use. The Wills Act of 1837 eliminated oral wills except for soldiers and sailors.

Courts and legislatures in the United States do not favor nuncupative wills because of the difficulty of proof and potential for fraud. Nonetheless, Texas permitted nuncupative wills under the limited circumstances set forth in §§ 64-65 until September 1, 2007. Oral wills will still be given effect if they were made prior to September 1, 2007.

Section 64 provided that nuncupative wills could be used only for the disposition of personal property; real property could not have been devised orally.

§ 64 [repealed]. Capacity to Make a Nuncupative Will

Any person who is competent to make a last will and testament may dispose of his personal property by a nuncupative will made under the conditions and limitations prescribed in this Code.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed Acts 2007, 80th Leg., ch. 1170, § 5.05, eff. Sept. 1, 2007.

**Statutes in Context
§ 64**

Ever since dicta in *Calvery v. Calvery*, 55 S.W.2d 527, 530 (Tex. 1932, opinion adopted), there has been uncertainty in Texas as to whether a no contest clause would be enforced to cause a beneficiary who contests a will to forfeit his or her gift if the beneficiary had both (1) probable cause for bringing the action and (2) was in good faith in bringing and maintaining the action. The 2009 Legislature resolved this issue by codifying the good faith with probable cause exception to the enforceability of *in terrorem* provisions in Probate Code § 64. The 2011 Legislature changed the exception to good faith with *just cause*.

It is important to note that § 64 only applies to the estates of decedents who died on or after the date of enactment, that is, June 19, 2009. Thus, the existence of this exception remains unclear with respect to estates of testators who included no contest provisions in their wills and who died before June 19, 2009.

Some testators may wish to trigger a forfeiture even if their wills are contested with probable cause and in good faith. Before the statutes, these testators would state their intent and there was a good chance the court would carry out their intent. The new statute makes this approach problematic. Perhaps a “reverse” approach would work such as, “If X does not contest this will, X receives [gift].” In other words, the provision does not take something away if a contest occurs (no forfeiture) but rather provides a gift if the person does not contest the will (a reward). Instead of a condition subsequent (taking away something already given if the condition is breached, that is, a forfeiture), this is type of provision imposes a condition precedent giving something if a condition is satisfied.

§ 64. Forfeiture Clause

A provision in a will that would cause a forfeiture of or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture

clause establishes by a preponderance of the evidence that [unenforceable if]:

- (1) just cause existed for bringing the action; and
- (2) the action was brought and maintained in good faith.

Added by Acts 2009, 81st Leg., ch. 414, § 1, eff. June 19, 2009. Repealed by Acts 2011, 82nd Leg., ch. 91, § 8.009(b), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.13, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 351, § 1.01, eff. Sept. 1, 2013 and repealed by § 2.02 eff. Jan. 1, 2014.

**Statutes in Context
Repealed § 65**

Section 65 imposed limitations on nuncupative wills in addition to the restriction to personal property set forth in § 64.

1. Last Sickness The testator must have been about ready to die when the testator spoke the testamentary words. The courts strictly interpreted this element requiring the testator to be “in extremis,” that is, overtaken by sudden and violent sickness so the testator had no time or opportunity to make a written will. See *McClain v. Adams*, 146 S.W.2d 373 (Tex. Comm’n App. 1941).

2. Location The testator must have spoken the testamentary words either (1) at home, (2) at a place where the testator resided for 10 days or more before speaking the words, or (3) at any location if the testator was taken sick away from home and then died before returning home.

3. Value of Bequeathed Property A nuncupative will could have disposed of no more than \$30 worth of personal property unless there were at least three witnesses who heard the testator speak the testamentary words.

See § 86 (repealed) for the special provisions relating to the proving of a nuncupative will.

§ 65 [repealed]. Requisites of a Nuncupative Will

No nuncupative will shall be established unless it be made in the time of the last sickness of the deceased, at his home or where he has resided for ten days or more next preceding the date of such will, except when the deceased is taken sick away from home and dies before he returns to such home; nor when the value exceeds Thirty Dollars, unless it be proved by three credible witnesses that the testator called on a person to take notice or bear testimony that such is his will, or words of like import.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed Acts 2007, 80th Leg., ch. 1170, § 5.05, eff. Sept. 1, 2007.

Statutes in Context
§ 67

Parents have no obligation to provide testamentary gifts for their children, even if they are minors. Thus, a parent may intentionally disinherit one or more of the parent's children. However, to protect a child from an accidental or inadvertent disinheritance, state legislatures have enacted statutes which may provide a forced share of the parent's estate for a pretermitted (omitted) child under certain circumstances. Section 67 contains the rules for determining whether a pretermitted child is entitled to a forced share of the testator's estate.

To qualify as a pretermitted child, the child must be born or adopted after the testator executes the will. A child is not pretermitted merely because the child is not a beneficiary of the will.

A pretermitted child will not be entitled to a forced share if (1) the testator provided for the pretermitted child in the will such as by a class gift to "children," (2) the testator provided for the pretermitted child with a non-probate asset such as a life insurance policy or a P.O.D. account, or (3) the testator mentioned the pretermitted child in the will (for example, "I intentionally make no provision for any child who may be hereafter born or adopted.").

If the will makes no gift to the testator's children (i.e., (1) the testator had a child when the testator executed the will but left nothing to this child, or (2) the testator had no living child when the testator executed the will), then the share of each pretermitted child is determined as follows. First, ascertain the amount of the estate not passing to the pretermitted child's other parent (remember that the testator's spouse may not be the child's other parent). Second, give the pretermitted child a share of this amount as if the testator had died intestate with no surviving spouse. The other beneficiaries will receive proportionately less to make up the pretermitted child's share.

If the will provides for at least one of the testator's then living children, then the pretermitted child's share is determined as follows. First, ascertain the amount of the estate given to the testator's children. Second, ascertain the number of children named as beneficiaries in the testator's will and the number of pretermitted children. Add these two figures together. Third, divide the amount of the estate given to the testator's children (step 1) by the figure in step 2 (children beneficiaries + pretermitted children). Each pretermitted child will receive this amount and the gifts to the other children beneficiaries will be reduced proportionately.

Example 1 Husband and Wife have three children, Art, Brenda, and Charles. After Wife executed her will, she had a fourth child, Paul. Husband is Paul's father and Wife's will does not mention or provide for Paul. To how much is Paul entitled under the following circumstances:

(a) Wife's will gives her entire estate to Husband. Paul is entitled to nothing because Wife's entire estate was left to Paul's other parent (Husband).

(b) Wife's will gives \$25,000 to Husband and the residuary to the American Red Cross. Paul is entitled to one-quarter of the residuary estate. Husband will still receive \$25,000 and the American Red Cross will receive three-quarters of the residuary estate.

(c) Wife's will gives her entire estate to the American Red Cross. Paul is entitled to one-quarter of the estate with the balance passing to the American Red Cross.

(d) Wife's will gives \$50,000 to Art, \$30,000 to Brenda, and \$20,000 to Charles. Paul is entitled to \$25,000 (Wife left a total of \$100,000 to her children, the total number of will beneficiary and pretermitted children is four; $\$100,000/4 = \$25,000$). The beneficiary children receive proportionately less, that is, Art will receive \$37,500, Brenda will receive \$22,500, and Charles will receive \$15,000.

(e) Wife's will leaves \$100,000 to Art. Paul is entitled to \$50,000 and Art's gift is reduced to \$50,000. Brenda and Charles still receive nothing.

(f) Wife named Paul as a beneficiary of her life insurance policy. Paul is entitled to nothing from Wife's estate.

Example 2 After executing her will, Wife has her first and only child, Paul. Wife's will does not mention or provide for Paul. To how much is Paul entitled under the following circumstances assuming that Husband is Paul's father?

(a) Wife's will gives her entire estate to Husband. Paul is entitled to nothing because Wife left her entire estate to Paul's other parent (Husband).

(b) Wife's will gives \$25,000 to Husband and the residuary to the American Red Cross. Paul is entitled to the entire residuary. Husband still receives \$25,000 and the American Red Cross receives nothing.

(c) Wife's will gives her entire estate to the American Red Cross. Paul is entitled to Wife's entire estate.

Example 3 After Husband married Wife (both childless prior to the marriage), Husband executed a will leaving his entire estate to Wife. This will did

not mention or provide for any subsequent children. As a result of an affair Husband had with Sarah, Paul was born and paternity has been properly established. To how much is Paul entitled upon Husband's death?

If Husband dies before September 1, 2011, Paul will receive Husband's entire estate because Wife is not Paul's other parent. However, if Husband dies on or after September 1, 2011, Paul will receive only one-half of Husband's estate because of the limitation imposed by § 67(e) and Wife will receive the remaining half.

§ 67. Pretermitted Child

(a) Whenever a pretermitted child is not mentioned in the testator's will, provided for in the testator's will, or otherwise provided for by the testator, the pretermitted child shall succeed to a portion of the testator's estate as provided by Subsection (a)(1) or (a)(2) of this section, except as limited by Subsection (e) of this section.

(1) If the testator has one or more children living when he executes his last will, and:

(A) No provision is made therein for any such child, a pretermitted child succeeds to the portion of the testator's separate and community estate to which the pretermitted child would have been entitled pursuant to Section 38(a) of this code had the testator died intestate without a surviving spouse owning only that portion of his estate not devised or bequeathed to the other parent of the pretermitted child.

(B) Provision, whether vested or contingent, is made therein for one or more of such children, a pretermitted child is entitled to share in the testator's estate as follows:

(i) The portion of the testator's estate to which the pretermitted child is entitled is limited to the disposition made to children under the will.

(ii) The pretermitted child shall receive such share of the testator's estate, as limited in Subparagraph (i), as he would have received had the testator included all pretermitted children with the children upon whom benefits were conferred under the will, and given an equal share of such benefits to each such child.

(iii) To the extent that it is feasible, the interest of the pretermitted child in the testator's estate shall be of the same character, whether an equitable or legal life estate or in fee, as the interest that the testator conferred upon his children under the will.

(2) If the testator has no child living when he executes his last will, the pretermitted child succeeds to the portion of the testator's separate and community estate to which the pretermitted child

would have been entitled pursuant to Section 38(a) of this code had the testator died intestate without a surviving spouse owning only that portion of his estate not devised or bequeathed to the other parent of the pretermitted child.

(b) The pretermitted child may recover the share of the testator's estate to which he is entitled either from the other children under Subsection (a)(1)(B) or the testamentary beneficiaries under Subsections (a)(1)(A) and (a)(2) other than the other parent of the pretermitted child, ratably, out of the portions of such estate passing to such persons under the will. In abating the interests of such beneficiaries, the character of the testamentary plan adopted by the testator shall be preserved to the maximum extent possible.

(c) A "pretermitted child," as used in this section, means a child of a testator who, during the lifetime of the testator, or after his death, is born or adopted after the execution of the will of the testator.

(d) For the purposes of this section, a child is provided for or a provision is made for a child if a disposition of property to or for the benefit of the pretermitted child, whether vested or contingent, is made:

(1) in the testator's will, including a devise or bequest to a trustee as authorized by Section 58(a) of this code; or

(2) outside the testator's will and is intended to take effect at the testator's death.

(e) If a pretermitted child's other parent is not the surviving spouse of the testator, the portion of the testator's estate to which the pretermitted child is entitled under Subsection (a)(1)(A) or (a)(2) of this section may not reduce the portion of the testator's estate passing to the testator's surviving spouse by more than one-half.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1989, 71st Leg., ch. 1035, § 5, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 895, § 8, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 846, § 8, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 1060, § 10, eff. Sept. 1, 2003. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.14, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

Statutes in Context § 68

Deceased individuals cannot take and hold title to property. Accordingly, a testamentary gift intended for a beneficiary who died before the testator will not take effect, that is, the gift lapses. Lapse also may occur if a beneficiary biologically outlives the testator but is legally treated as predeceasing the testator. For example, the beneficiary may disclaim the gift (§ 37A) or fail to

satisfy the survival period imposed by the will or § 47.

To determine the proper distribution of a lapsed gift, the courts begin by ascertaining the testator's intent as reflected by the express terms of the will. If the will provides a substitute taker in the event of lapse, that alternate beneficiary will receive the gift. If the will requires survivorship (e.g., "to my surviving children" or "to such of my children as shall survive me"), only the surviving beneficiaries are entitled to share in the gift. If the will is silent, however, § 68, the anti-lapse statute, may provide a substitute beneficiary.

Section 68(a) provides a substitute beneficiary if four conditions are satisfied. (1) The deceased beneficiary must be either a descendant of the testator or a descendant of the testator's parents (i.e., siblings, nieces, and nephews). (2) The beneficiary must die during the testator's lifetime or be treated as dying during the testator's lifetime. (3) The predeceased beneficiary must have left at least one surviving descendant. (4) A surviving descendant of the deceased beneficiary must survive the testator.

If all four requirements are met, then the gift to the predeceased beneficiary does not lapse and instead passes to the descendants of the predeceased beneficiary on a per capita with representation basis.

Section 68(a) applies to class gifts, as well as to gifts to individuals, as long as the class member was alive at the date the testator executed the will.

Section 68(c) addresses the issue of a partial lapse in the residuary clause when the clause lacks survivorship language. For example, assume that a valid will leaves the residuary estate to two of testator's friends, Bill and George. If Bill dies before the testator, George will receive the entire residuary estate. Section 68(c) implies survivorship language even though the will is silent. Remember that survivorship language is implied only in residuary gifts (that is, not in specific or general gifts).

§ 68. Prior Death of Legatee

(a) If a devisee who is a descendant of the testator or a descendant of a testator's parent is deceased at the time of the execution of the will, fails to survive the testator, or is treated as if the devisee predeceased the testator by Section 47 of this code or otherwise, the descendants of the devisee who survived the testator by 120 hours take the devised property in place of the devisee. The property shall be divided into as many shares as there are surviving descendants in the nearest degree of kinship to the devisee and deceased persons in the same degree whose descendants survived the testator. Each surviving descendant in the nearest

degree receives one share, and the share of each deceased person in the same degree is divided among his descendants by representation. For purposes of this section, a person who would have been a devisee under a class gift if the person had survived the testator is treated as a devisee unless the person died before the date the will was executed.

(b) Except as provided by Subsection (a) of this section, if a devise or bequest, other than a residuary devise or bequest, fails for any reason, the devise or bequest becomes a part of the residuary estate.

(c) Except as provided by Subsection (a) of this section, if the residuary estate is devised to two or more persons and the share of one of the residuary devisees fails for any reason, the residuary devisee's share passes to the other residuary devisees, in proportion to the residuary devisee's interest in the residuary estate.

(d) Except as provided by Subsection (a) of this section, if all residuary devisees are dead at the time of the execution of the will, fail to survive the testator, or are treated as if they predeceased the testator, the residuary estate passes as if the testator had died intestate.

(e) This section applies unless the testator's last will and testament provides otherwise. For example, a devise or bequest in the testator's will such as "to my surviving children" or "to such of my children as shall survive me" prevents the application of Subsection (a) of this section.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1991, 72nd Leg., ch. 895, § 9, eff. Sept. 1, 1991. Subsecs. (a), (e) amended by Acts 1993, 73rd Leg., ch. 846, § 9, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 69

Divorce was not a common occurrence in the early history of England or the United States. Thus, there is little common law addressing the ramifications of a divorce on a will executed before or during marriage which made a gift to a person who is now an ex-spouse. Early decisions usually held that the divorce had no effect on the will. The courts realized that a testator probably did not intend for the property to pass to an ex-spouse but felt that they had no legal basis for voiding the gift.

Section 69 provides that upon divorce, all provisions of a will executed during marriage in favor of an ex-spouse and the ex-spouse's relatives who are not also relatives of the testator are void. The balance of the will remains effective as written. Thus, the ex-spouse would not be able to take as a beneficiary or serve in a fiduciary capacity such as the executor of the will, the guardian of any minor children, or the trustee of a testamentary trust. If the spouses remarry each other and remain married until the first spouse

dies, the will remains effective as originally written. The testator also may include a provision validating a gift in favor of a spouse regardless of whether the spouses are married or divorced at the time of the testator's death.

Generally, the property left to the ex-spouse beneficiary (or a relative of the ex-spouse who is not a relative of the testator) passes under the will as if the ex-spouse had predeceased the testator.

See Family Code §§ 9.301 & 9.302 for similar provisions applicable to life insurance policies and retirement plans and Probate Code § 471-473 for what happens if the settlor and beneficiary of a revocable trust are divorced and the settlor fails to amend the trust to address this change in circumstance.

§ 69. Will Provisions Made Before Dissolution of Marriage

(a) In this section, "relative" means an individual who is related to another individual by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, respectively.

(b) If, after making a will, the testator's marriage is dissolved, whether by divorce, annulment, or a declaration that the marriage is void, all provisions in the will, including all fiduciary appointments, shall be read as if the former spouse and each relative of the former spouse who is not a relative of the testator failed to survive the testator, unless the will expressly provides otherwise.

(c) A person whose marriage to the decedent has been dissolved, whether by divorce, annulment, or a declaration that the marriage is void, is not a surviving spouse unless, by virtue of a subsequent marriage, the person is married to the decedent at the time of death and the subsequent marriage is not declared void under Section 47A of this code.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1746, ch. 713, § 12, eff. Aug. 27, 1979. Subsec. (a) amended by Acts 1995, 74th Leg., ch. 642, § 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1302, § 5, eff. Sept. 1, 1997. Amended by Acts 2007, 80th Leg., ch. 1170, § 4.02, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context § 69A

A judge in a divorce action would sometimes issue an order preventing a party from changing his or her will during the pendency of the divorce. The Texas Legislature added § 69A in 1993 to prohibit this practice.

§ 69A. Changing Wills

(a) A court may not prohibit a person from executing a new will or a codicil to an existing will.

(b) Notwithstanding Section 3(g) of this code, in this section, "court" means a constitutional county court, district court, or statutory county court, including a statutory probate court.

Added by Acts 1993, 73rd Leg., ch. 120, § 1, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context § 70A

Section 70A provides rules for determining who is entitled to increases in securities which occur between the time the testator executed the will and the testator's death. Generally, cash dividends are not included in a gift of securities but stock splits and stock dividends are included.

§ 70A. Increase in Securities; Accessions

(a) Unless the will clearly provides otherwise, a devise of securities that are owned by the testator on the date of execution of the will includes the following additional securities subsequently acquired by the testator as a result of the testator's ownership of the devised securities:

(1) securities of the same organization acquired because of action initiated by the organization or any successor, related, or acquiring organization, including stock splits, stock dividends, and new issues of stock acquired in a reorganization, redemption, or exchange, other than securities acquired through the exercise of purchase options or through a plan of reinvestment; and

(2) securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization, including stock splits, stock dividends, and new issues of stock acquired in a reorganization, redemption, or exchange, other than securities acquired through the exercise of purchase options or through a plan of reinvestment.

(b) Unless the will clearly provides otherwise, a devise of securities does not include a cash distribution relating to the securities and accruing before death, whether or not the distribution is paid before death.

(c) In this section:

(1) "Securities" has the meaning assigned by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes), and its subsequent amendments.

(2) "Stock" means securities.

Added by Acts 1993, 73rd Leg., ch. 846, § 10, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 71

Section 71 provides a procedure for a testator to deposit the will with the clerk of the court for safekeeping. Thus, when a person dies, it is prudent for those interested in the estate to check with the county court clerk in every county in which the decedent has resided. The deposit has no legal effect and does not enhance the likelihood of the will being deemed valid. The fee to deposit a will was increased from \$3 to \$5 in 2007.

§ 71. Deposit of Will with Court During Testator's Lifetime

(a) Deposit of Will. A will may be deposited by the person making it, or by another person for him, with the county clerk of the county of the testator's residence. Before accepting any will for deposit, the clerk may require such proof as shall be satisfactory to him concerning the testator's identity and residence. The clerk, on being paid a fee of Five Dollars therefor, shall receive and keep the will, and shall give a certificate of deposit for it. All wills so filed shall be numbered by the clerk in consecutive order, and all certificates of deposit shall bear like numbers respectively.

(b) How Will Shall Be Enclosed. Every will intended to be deposited with a county clerk shall be enclosed in a sealed wrapper, which shall have indorsed thereon "Will of," followed by the name, address and signature of the testator. The wrapper must also be indorsed with the name and current address of each person who shall be notified of the deposit of the will after the death of the testator.

(c) Index To Be Kept of All Wills Deposited. Each county clerk shall keep an index of all wills so deposited with him.

(d) To Whom Will Shall Be Delivered. During the lifetime of the testator, a will so deposited shall be delivered only to the testator, or to another person authorized by him by a sworn written order. Upon delivery of the will to the testator or to a person so authorized by him, the certificate of deposit issued for the will shall be surrendered by the person to whom delivery of the will is made; provided, however, that in lieu of the surrender of such certificate, the clerk may, in his discretion, accept and file an affidavit by the testator to the effect that the certificate of deposit has been lost, stolen, or destroyed.

(e) Proceedings Upon Death of Testator. If there shall be submitted to the clerk an affidavit to the effect that the testator of any will deposited with the clerk has died, or if the clerk shall receive any other notice or proof of the death of such testator which shall suffice to convince him that the testator is deceased, the clerk shall notify by registered mail with return receipt requested the person or persons named on the indorsement of the wrapper of the will that the will is on deposit in his office, and, upon request, he shall deliver

the will to such person or persons, taking a receipt therefor. If the notice by registered mail is returned undelivered, or if a clerk has accepted a will which does not specify on the wrapper the person or persons to whom it shall be delivered, the clerk shall open the wrapper and inspect the will. If an executor is named in the will, he shall be notified by registered mail, with return receipt requested, that the will is on deposit, and, upon request, the clerk shall deliver the will to the person so named as executor. If no executor is named in the will, or if the person so named is deceased, or fails to take the will within thirty days after the clerk's notice to him is mailed, or if notice to the person so named is returned undelivered, the clerk shall give notice by registered mail, with return receipt requested, to the devisees and legatees named in the will that the will is on deposit, and, upon request, the clerk shall deliver the will to any or all of such devisees and legatees.

(f) Depositing Has No Legal Significance. These provisions for the depositing of a will during the lifetime of a testator are solely for the purpose of providing a safe and convenient repository for such a will, and no will which has been so deposited shall be treated for purposes of probate any differently than any will which has not been so deposited. In particular, and without limiting the generality of the foregoing, a will which is not deposited shall be admitted to probate upon proof that it is the last will and testament of the testator, notwithstanding the fact that the same testator has on deposit with the court a prior will which has been deposited in accordance with the provisions of this Code.

(g) Depositing Does Not Constitute Notice. The fact that a will has been deposited as provided herein shall not constitute notice of any character, constructive or otherwise, to any person as to the existence of such will or as to the contents thereof.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 2007, 80th Leg., ch. 275, § 1, eff. June 15, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 71A

Texas had long followed the doctrine of exoneration, that is, debts on specifically gifted property were paid from other estate assets so that the beneficiary receives the asset unencumbered, rather than just the testator's equity. See *Currie v. Scott*, 187 S.W.2d 551 (Tex. 1945).

The doctrine has been abolished for wills executed on or after September 1, 2005. A specific gift passes subject to each debt secured by the property that exists on the date of the testator's death under new Probate Code § 71A.

The statute contains two special rules. First, the testator may expressly provide in the will for

the debts against a specific gift to be exonerated. Note, however, that a general provision in the will stating that debts are to be paid is not sufficient. Second, there is a new provision addressing the situation where a secured creditor elects matured secured claim status under Probate Code § 306(c-1).

§ 71A. No Right to Exoneration of Debts; Exception

(a) Except as provided by Subsection (b) of this section, a specific devise passes to the devisee subject to each debt secured by the property that exists on the date of the testator's death, and the devisee has no right to exoneration from the testator's estate for payment of the debt.

(b) A specific devise does not pass to the devisee subject to a debt described by Subsection (a) of this section if the will in which the devise is made specifically states that the devise passes without being subject to the debt. A general provision in the will stating that debts are to be paid is not a specific statement for purposes of this subsection.

(c) Subsection (a) of this section does not affect the rights of creditors provided under this code or the rights of other persons or entities provided under Part 3, Chapter VIII, of this code. If a creditor elects to have a debt described by Subsection (a) of this section allowed and approved as a matured secured claim, the claim shall be paid in accordance with Section 306(c-1) of this code.

Added by Acts 2005, 79th Leg., ch. 551, § 3, eff. Sept. 1, 2005. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Chapter V. Probate and Grant of Administration

Part 1. Estates of Decedents

**Statutes in Context
§ 72**

The validity of a will may not be determined while the testator is still alive. Section 72 does not authorize ante-mortem probate.

Section 72 also provides a procedure for dealing with the estate of a person whose death is proved only by circumstantial evidence.

§ 72. Proceedings Before Death; Administration in Absence of Direct Evidence of Death; Distribution; Limitation of Liability; Restoration of Estate; Validation of Proceedings

(a) The probate of a will or administration of an estate of a living person shall be void; provided, however, that the court shall have jurisdiction to determine the fact, time and place of death, and where

application is made for the grant of letters testamentary or of administration upon the estate of a person believed to be dead and there is no direct evidence that such person is dead but the death of such person shall be proved by circumstantial evidence to the satisfaction of the court, such letters shall be granted. Distribution of the estate to the persons entitled thereto shall not be made by the personal representative until after the expiration of three (3) years from the date such letters are granted. If in a subsequent action such person shall be proved by direct evidence to have been living at any time subsequent to the date of grant of such letters, neither the personal representative nor anyone who shall deliver said estate or any part thereof to another under orders of the court shall be liable therefor; and provided further, that such person shall be entitled to restoration of said estate or the residue thereof with the rents and profits therefrom, except real or personal property sold by the personal representative or any distributee, his successors or assigns, to bona fide purchasers for value, in which case the right of such person to the restoration shall be limited to the proceeds of such sale or the residue thereof with the increase thereof. In no event shall the bonds of such personal representative be void provided, however, that the surety shall have no liability for any acts of the personal representative which were done in compliance with or approved by an order of the court. Probate proceedings upon estates of persons believed to be dead brought prior to the effective date of this Act and all such probate proceedings then pending, except such probate proceedings contested in any litigation pending on the effective date of this Act, are hereby validated insofar as the court's finding of death of such person is concerned.

(b) In any case in which the fact of death must be proved by circumstantial evidence, the court, at the request of any interested person, may direct that citation be issued to the person supposed to be dead, and served upon him by publication and by posting, and by such additional means as the court may by its order direct. After letters testamentary or of administration have been issued, the court may also direct the personal representative to make a search for the person supposed to be dead by notifying law enforcement agencies and public welfare agencies in appropriate locations that such person has disappeared, and may further direct that the applicant engage the services of an investigative agency to make a search for such person. The expenses of search and notices shall be taxed as costs and shall be paid out of the property of the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1959, 56th Leg., p. 950, ch. 442, § 1, eff. May 30, 1959; Acts 1971, 62nd Leg., p. 975, ch. 173, § 7, eff. Jan. 1, 1972. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 73

A will must usually be probated within 4 years of the testator's death. However, § 73(a) permits a court to permit a "late" probate if the proponent of the will was "not in default." The courts have been quite lenient and have accepted a variety of reasons for the proponent's tardiness. See *In re Estate of Perez*, 324 S.W.3d 257 (Tex. App.—El Paso 2010, no pet.), in which the court accepted the proponent's excuse that she did not realize that she needed to probate her husband's will sooner because she was uneducated and economically challenged. See also *Kamoos v. Woodward*, 570 S.W.2d 6 (Tex. Civ. App. — San Antonio 1978, writ ref'd n.r.e.). Although it may not be possible to probate a will after the expiration of the four years because the proponent was in default, the will may nonetheless be used to show that the testator had revoked a prior will. *Chambers v. Chambers*, 542 S.W.2d 901, 905 (Tex. Civ. App.—Dallas 1976, no writ).

§ 73. Period for Probate

(a) No will shall be admitted to probate after the lapse of four years from the death of the testator unless it be shown by proof that the party applying for such probate was not in default in failing to present the same for probate within the four years aforesaid; and in no case shall letters testamentary be issued where a will is admitted to probate after the lapse of four years from the death of the testator.

(b) If any person shall purchase real or personal property from the heirs of a decedent more than four years from the date of the death of the decedent, for value, in good faith, and without knowledge of the existence of a will, such purchaser shall be held to have good title to the interest which such heir or heirs would have had in the absence of a will, as against the claims of any devisees or legatees under any will which may thereafter be offered for probate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, § 8, eff. Jan. 1, 1972. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 74

Section 74 provides that the application for the administration of an estate must usually be filed within 4 years of the decedent's death. A "late" administration is allowed if it is necessary to recover property due to the estate of the decedent.

§ 74. Time to File Application for Letters Testamentary or Administration

All applications for the grant of letters testamentary or of administration upon an estate must be filed within four years after the death of the testator or intestate; provided, that this section shall not apply in any case where administration is necessary in order to receive or recover funds or other property due to the estate of the decedent.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, § 8, eff. Jan. 1, 1972. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 75

After a testator dies, the custodian of the will does not have a duty to probate the will. Instead, § 75 merely requires that the custodian deliver the will to the clerk of the court. The statute provides procedures, including imprisonment of the custodian, which may be used if the custodian is unwilling to deliver the will.

§ 75. Duty and Liability of Custodian of Will

Upon receiving notice of the death of a testator, the person having custody of the testator's will shall deliver it to the clerk of the court which has jurisdiction of the estate. On sworn written complaint that any person has the last will of any testator, or any papers belonging to the estate of a testator or intestate, the county judge shall cause said person to be cited by personal service to appear before him and show cause why he should not deliver such will to the court for probate, or why he should not deliver such papers to the executor or administrator. Upon the return of such citation served, unless delivery is made or good cause shown, if satisfied that such person had such will or papers at the time of filing the complaint, such judge may cause him to be arrested and imprisoned until he shall so deliver them. Any person refusing to deliver such will or papers shall also be liable to any person aggrieved for all damages sustained as a result of such refusal, which damages may be recovered in any court of competent jurisdiction.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 76. Persons Who May Make Application

An executor named in a will or any interested person may make application to the court of a proper county:

(a) For an order admitting a will to probate, whether the same is written or unwritten, in his possession or not, is lost, is destroyed, or is out of the State.

(b) For the appointment of the executor named in the will.

(c) For the appointment of an administrator, if no executor is designated in the will, or if the person so named is disqualified, or refuses to serve, or is dead, or resigns, or if there is no will. An application for probate may be combined with an application for the appointment of an executor or administrator; and a person interested in either the probate of the will or the appointment of a personal representative may apply for both.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 77

To serve as a personal representative of a decedent's estate, the person must be qualified under § 77 and not disqualified under § 78. Section 77 provides a list in priority order of the persons who are qualified to serve. Note that the court may appoint co-personal representatives.

§ 77. Order of Persons Qualified to Serve

Letters testamentary or of administration shall be granted to persons who are qualified to act, in the following order:

- (a) To the person named as executor in the will of the deceased.
- (b) To the surviving husband or wife.
- (c) To the principal devisee or legatee of the testator.
- (d) To any devisee or legatee of the testator.
- (e) To the next of kin of the deceased, the nearest in order of descent first, and so on, and next of kin includes a person and his descendants who legally adopted the deceased or who have been legally adopted by the deceased.
- (f) To a creditor of the deceased.
- (g) To any person of good character residing in the county who applies therefor.
- (h) To any other person not disqualified under the following Section.

When applicants are equally entitled, letters shall be granted to the applicant who, in the judgment of the court, is most likely to administer the estate advantageously, or they may be granted to any two or more of such applicants.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1763, ch. 713, § 34, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 78

Section 78 enumerates the persons who are disqualified from serving as a personal representative. The disqualification of being a non-resident in § 78(c) is removed if the non-resident appoints a resident agent to accept service of process. For additional guidance regarding this agent, see §§ 221A & 221B.

§ 78. Persons Disqualified to Serve as Executor or Administrator

No person is qualified to serve as an executor or administrator who is:

- (a) An incapacitated person;
- (b) A convicted felon, under the laws either of the United States or of any state or territory of the United States, or of the District of Columbia, unless such person has been duly pardoned, or his civil rights restored, in accordance with law;
- (c) A non-resident (natural person or corporation) of this State who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate, and caused such appointment to be filed with the court;
- (d) A corporation not authorized to act as a fiduciary in this State; or
- (e) A person whom the court finds unsuitable.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 2a, eff. Aug. 22, 1957; Acts 1969, 61st Leg., p. 1922, ch. 641, § 7, eff. June 12, 1969. Amended by Acts 1995, 74th Leg., ch. 1039, § 7, eff. Sept. 1, 1995. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 79. Waiver of Right to Serve

The surviving husband or wife, or, if there be none, the heirs or any one of the heirs of the deceased to the exclusion of any person not equally entitled, may, in open court, or by power of attorney duly authenticated and filed with the county clerk of the county where the application is filed, renounce his right to letters testamentary or of administration in favor of another qualified person, and thereupon the court may grant letters to such person.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 80

If a creditor seeks an administration, § 80 provides a means for an interested person to defeat the application.

§ 80. Prevention of Administration

(a) Method of Prevention. When application is made for letters of administration upon an estate by a creditor, and other interested persons do not desire an administration thereupon, they can defeat such application:

(1) By the payment of the claim of such creditor; or

(2) By proof to the satisfaction of the court that such claim is fictitious, fraudulent, illegal, or barred by limitation; or

(3) By executing a bond payable to, and to be approved by, the judge in double the amount of such creditor's debt, conditioned that the obligors will pay the debt of such applicant upon the establishment thereof by suit in any court in the county having jurisdiction of the amount.

(b) Filing of Bond. The bond provided for, when given and approved, shall be filed with the county clerk, and any creditor for whose protection it was executed may sue thereon in his own name for the recovery of his debt.

(c) Bond Secured by Lien. A lien shall exist on all of the estate in the hands of the distributees of such estate, and those claiming under them with notice of such lien, to secure the ultimate payment of the bond provided for herein.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 81

Section 81 enumerates the contents of an application for letters testamentary depending on the type of will involved and whether it can be produced in court. Subsection (c) dealing with nuncupative wills was repealed effective September 1, 2007. However, this subsection still applies if the oral will was made prior to this date.

§ 81. Contents of Application for Letters Testamentary

(a) **For Probate of a Written Will.** A written will shall, if within the control of the applicant, be filed with the application for its probate, and shall remain in the custody of the county clerk unless removed therefrom by order of a proper court. An application for probate of a written will shall state:

(1) The name and domicile of each applicant.

(2) The name, age if known, and domicile of the decedent, and the fact, time, and place of death.

(3) Facts showing that the court has venue.

(4) That the decedent owned real or personal property, or both, describing the same generally, and stating its probable value.

(5) The date of the will, the name and residence of the executor named therein, if any, and if none be

named, then the name and residence of the person to whom it is desired that letters be issued, and also the names and residences of the subscribing witnesses, if any.

(6) Whether a child or children born or adopted after the making of such will survived the decedent, and the name of each such survivor, if any.

(7) That such executor or applicant, or other person to whom it is desired that letters be issued, is not disqualified by law from accepting letters.

(8) Whether a marriage of the decedent was ever dissolved after the will was made and if so, when and from whom.

(9) Whether the state, a governmental agency of the state, or a charitable organization is named by the will as a devisee.

The foregoing matters shall be stated and averred in the application to the extent that they are known to the applicant, or can with reasonable diligence be ascertained by him, and if any of such matters is not stated or averred in the application, the application shall set forth the reason why such matter is not so stated and averred.

(b) For Probate of Written Will Not Produced.

When a written will cannot be produced in court, in addition to the requirements of Subsection (a) hereof, the application shall state:

(1) The reason why such will cannot be produced.

(2) The contents of such will, as far as known.

(3) The date of such will and the executor appointed therein, if any, as far as known.

(4) The name, age, marital status, and address, if known, and the relationship to the decedent, if any, of each devisee, and of each person who would inherit as an heir in the absence of a valid will, and, in cases of partial intestacy, of each heir.

(c) **[repealed] Nuncupative Wills.** An application for probate of a nuncupative will shall contain all applicable statements required with respect to written wills in the foregoing subsections and also:

(1) The substance of testamentary words spoken.

(2) The names and residences of the witnesses thereto.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972. Subsec. (a) amended by Acts 1987, 70th Leg., ch. 463, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1035, § 6, eff. Sept. 1, 1989; Subsec. (a) amended by Acts 1997, 75th Leg., ch. 1302, § 6, eff. Sept. 1, 1997. Subsec. (c) repealed Acts 2007, 80th Leg., ch. 1170, § 5.05, eff. Sept. 1, 2007. Subsec. (a) amended by Acts 2009, 81st Leg., ch. 633, § 1, eff. Sept. 1, 2009. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.15, eff. Sept. 1, 2011.

Statutes in Context

§ 82

Section 82 enumerates the requirements of an application for letters of administration for an intestate decedent.

§ 82. Contents of Application for Letters of Administration

An application for letters of administration when no will is alleged to exist shall state:

(a) The name and domicile of the applicant, relationship to the decedent, if any, and that the applicant is not disqualified by law to act as administrator;

(b) The name and intestacy of the decedent, and the fact, time and place of death;

(c) Facts necessary to show venue in the court to which the application is made;

(d) Whether the decedent owned real or personal property, with a statement of its probable value;

(e) The name, age, marital status and address, if known, and the relationship, if any, of each heir to the decedent;

(f) If known by the applicant at the time of the filing of the application, whether children were born to or adopted by the decedent, with the name and the date and place of birth of each;

(g) If known by the applicant at the time of the filing of the application, whether the decedent was ever divorced, and if so, when and from whom; and

(h) That a necessity exists for administration of the estate, alleging the facts which show such necessity.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1746, ch. 713, § 13, eff. Aug. 27, 1979. Amended by Acts 1987, 70th Leg., ch. 463, § 2, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1302, § 7, eff. Sept. 1, 1997; Acts 2007, 80th Leg., ch. 1170, § 5.01, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 83. Procedure Pertaining to a Second Application

(a) Where Original Application Has Not Been Heard. If, after an application for the probate of a will or for the appointment of a general personal representative has been filed, and before such application has been heard, an application for the probate of a will of the decedent, not theretofore presented for probate, is filed, the court shall hear both applications together and determine what instrument, if any, should be admitted to probate, or whether the decedent died intestate. The court may not sever or bifurcate the proceeding on the applications.

(b) Where First Will Has Been Admitted to Probate. If, after a will has been admitted to probate, an application for the probate of a will of the decedent, not theretofore presented for probate, is filed, the court shall determine whether the former probate should be set

aside, and whether such other will should be admitted to probate, or whether the decedent died intestate.

(c) Where Letters of Administration Have Been Granted. Whenever letters of administration shall have been granted upon an estate, and it shall afterwards be discovered that the deceased left a lawful will, such will may be proved in the manner provided for the proof of wills; and, if an executor is named in such will, and he is not disqualified, he shall be allowed to qualify and accept as such executor, and the letters previously granted shall be revoked; but, if no such executor be named in the will, or if the executor named be disqualified, be dead, or shall renounce the executorship, or shall fail or be unable to accept and qualify within twenty days after the date of the probate of the will, or shall fail for a period of thirty days after the discovery of such will to present it for probate, then administration with the will annexed of the estate of such testator shall be granted as in other cases. All acts done by the first administrator, prior to the qualification of the executor or of the administrator with the will annexed, shall be as valid as if no such will had been discovered.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended Acts 2007, 80th Leg., ch. 1170, § 7.01, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.16, eff. Sept. 1, 2011. Subsec. (a) repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

Statutes in Context

§ 84

Section 84 explains how to prove a written will which is physically produced in court. If the will is self-proved, no additional proof is needed. See §§ 59 (attested wills) and 60 (holographic wills).

§ 84. Proof of Written Will Produced in Court

(a) Self-Proved Will.

(1) If a will is self-proved as provided in Section 59 of this Code or, if executed in another state or a foreign country, is self-proved in accordance with the laws of the state or foreign country of the testator's domicile at the time of the execution, no further proof of its execution with the formalities and solemnities and under the circumstances required to make it a valid will shall be necessary.

(2) For purposes of Subdivision (1) of this subsection, a will is considered self-proved if the will, or an affidavit of the testator and attesting witnesses attached or annexed to the will, provides that:

(A) the testator declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, the testator

executed the will as the testator's free and voluntary act for the purposes expressed in the instrument, the testator is of sound mind and under no constraint or undue influence, and the testator is eighteen years of age or over or, if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service; and

(B) the witnesses declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, each of the witnesses, in the presence and hearing of the testator, signed the will as witness to the testator's signing, and to the best of their knowledge the testator was of sound mind and under no constraint or undue influence, and the testator was eighteen years of age or over or, if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

(b) Attested Written Will. If not self-proved as provided in this Code, an attested written will produced in court may be proved:

(1) By the sworn testimony or affidavit of one or more of the subscribing witnesses thereto, taken in open court.

(2) If all the witnesses are non-residents of the county, or those who are residents are unable to attend court, by the sworn testimony of any one or more of them by deposition, either written or oral, taken in the same manner and under the same rules as depositions taken in other civil actions; or, if no opposition in writing to such will is filed on or before the date set for hearing thereon, then by the sworn testimony or affidavit of two witnesses taken in open court, or by deposition in the manner provided herein, to the signature or the handwriting evidenced thereby of one or more of the attesting witnesses, or of the testator, if he signed the will; or, if it be shown under oath to the satisfaction of the court that, diligent search having been made, only one witness can be found who can make the required proof, then by the sworn testimony or affidavit of such one taken in open court, or by deposition in the manner provided herein, to such signatures or handwriting.

(3) If none of the witnesses is living, or if all of such witnesses are members of the armed forces of the United States of America or of any auxiliary thereof, or of the armed forces reserve of the United States of America or of any auxiliary thereof, or of the Maritime Service, and are beyond the jurisdiction of the court, by two witnesses to the handwriting of one or both of the subscribing witnesses thereto, or of the testator, if signed by

him, and such proof may be either by sworn testimony or affidavit taken in open court, or by deposition, either written or oral, taken in the same manner and under the same rules as depositions taken in other civil actions; or, if it be shown under oath to the satisfaction of the court that, diligent search having been made, only one witness can be found who can make the required proof, then by the sworn testimony or affidavit of such one taken in open court, or by deposition in the manner provided herein, to such signatures or handwriting.

(c) Holographic Will. If not self-proved as provided in this Code, a will wholly in the handwriting of the testator may be proved by two witnesses to his handwriting, which evidence may be by sworn testimony or affidavit taken in open court, or, if such witnesses are non-residents of the county or are residents who are unable to attend court, by deposition, either written or oral, taken in the same manner and under the same rules as depositions taken in other civil actions.

(d) Depositions if No Contest Filed. If no contest has been filed, depositions for the purpose of establishing a will may be taken in the same manner as provided in this Code for the taking of depositions where there is no opposing party or attorney of record upon whom notice and copies of interrogatories may be served; and, in such event, this Subsection, rather than the preceding portions of this Section which provide for the taking of depositions under the same rules as depositions in other civil actions, shall be applicable.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 2003, 78th Leg., ch. 1060, §11, eff. Sept. 1, 2003. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.17, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

Statutes in Context

§ 85

Where a will "was in the possession of the testator or when he had ready access to it when last seen, failure to produce it after his death raises the presumption that the testator had destroyed it with an intention to revoke it, and the burden is cast upon the proponent to prove the contrary." *Mingo v. Mingo*, 507 S.W.2d 310 (Tex. Civ. App.—San Antonio 1974, writ ref'd n.r.e.). Section 85 explains the additional proof which is necessary if the original will is not physically produced in court (e.g., the original is lost, hidden, withheld by disgruntled heir, accidentally destroyed, etc.).

Controversy exists over whether a copy of a lost will is sufficient to prove its contents. Until being amended by the 2007 Legislature, the statute provided that the contents must be proved

"by the testimony of a credible witness who has read [the original] or heard it read." Several recent cases focused on this issue including *Garton v. Rockett*, 190 S.W.3d 139 (Tex. App.—Houston [1st Dist.] 2005, no pet.) (copy insufficient) and *In re Estate of Jones*, 197 S.W.3d 894 (Tex. App.—Beaumont 2006, pet. denied) (copy sufficient). The addition of a supposed third method of proof by the 2007 Legislature, that is, by identification of a copy, does not appear to actually add a new method because of the difficulty of a person testifying that the document is "a copy of the will" if the person never read the original or heard the original read.

In the almost unbelievable opinion of *In re Estate of Catlin*, 311 S.W.3d 697 (Tex. App.—Amarillo 2010, pet. denied), the court accepted proponent's explanation that he looked at the testator's home, office, safety deposit boxes, and drafting attorney's office but could not find the original. The court explained that the will proponent did not have to demonstrate an affirmative reason why the original cannot be located such as "the eating habits of a neighbor's goat, the occurrence of a Kansas tornado, the devastation of a flash flood, or the like." The court basically makes it impossible for a testator to revoke a will by physical act because even if the will cannot be found and there is no affirmative reason why it cannot be found, a copy may nonetheless be probated. See also *In re Estate of Perez*, 324 S.W.3d 257 (Tex. App.—El Paso 2010, no pet.).

§ 85. Proof of Written Will Not Produced in Court

A written will which cannot be produced in court shall be proved in the same manner as provided in the preceding Section for an attested written will or an holographic will, as the case may be, and the same amount and character of testimony shall be required to prove such will as is required to prove a written will produced in court; but, in addition thereto, the cause of its non-production must be proved, and such cause must be sufficient to satisfy the court that it cannot by any reasonable diligence be produced, and the contents of such will must be substantially proved by the testimony of a credible witness who has read the will, has heard the will read, or can identify a copy of the will.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 2003, 78th Leg., ch. 1060, § 11, eff. Sept. 1, 2003; Acts 2007, 80th Leg., ch. 1170, § 6.01, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context Repealed § 86

Section 86 explains the additional proof which is necessary if the will was oral and was made prior to September 1, 2007. See §§ 64 and 65.

§ 86 [repealed]. Proof of Nuncupative Will

(a) Notice and Proof of Nuncupative Will. No nuncupative will shall be proved within fourteen days after the death of the testator, or until those who would have been entitled by inheritance, had there been no will, have been summoned to contest the same, if they desire to do so.

(b) Testimony Pertaining to Nuncupative Wills. After six months have elapsed from the time of speaking the alleged testamentary words, no testimony shall be received to prove a nuncupative will, unless the testimony or the substance thereof shall have been committed to writing within six days after making the will.

(c) When Value of Estate Exceeds Thirty Dollars. When the value of the estate exceeds Thirty Dollars, a nuncupative will must be proved by three credible witnesses that the testator called on a person to take notice or bear testimony that such is his will, or words of like import.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed Acts 2007, 80th Leg., ch. 1170, § 5.05, eff. Sept. 1, 2007.

§ 87. Testimony to Be Committed to Writing

All testimony taken in open court upon the hearing of an application to probate a will shall be committed to writing at the time it is taken, and subscribed, and sworn to in open court by the witness or witnesses, and filed by the clerk; provided, however, that in any contested case, the court may, upon agreement of the parties, and in the event of no agreement on its own motion, dismiss this requirement.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context § 88

Section 88 enumerates the items which the applicant must prove to probate a will, receive letters testamentary or letters of administration.

§ 88. Proof Required for Probate and Issuance of Letters Testamentary or of Administration

(a) General Proof. Whenever an applicant seeks to probate a will or to obtain issuance of letters testamentary or of administration, he must first prove to the satisfaction of the court:

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(1) That the person is dead, and that four years have not elapsed since his decease and prior to the application; and

(2) That the court has jurisdiction and venue over the estate; and

(3) That citation has been served and returned in the manner and for the length of time required by this Code; and

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

(b) Additional Proof for Probate of Will. To obtain probate of a will, the applicant must also prove to the satisfaction of the court:

(1) If the will is not self-proved as provided by this Code, that the testator, at the time of executing the will, was at least eighteen years of age, or was or had been lawfully married, or was a member of the armed forces of the United States or of the auxiliaries thereof, or of the Maritime Service of the United States, and was of sound mind; and

(2) If the will is not self-proved as provided by this Code, that the testator executed the will with the formalities and solemnities and under the circumstances required by law to make it a valid will; and

(3) That such will was not revoked by the testator.

(c) Additional Proof for Issuance of Letters Testamentary. If letters testamentary are to be granted, it must appear to the court that proof required for the probate of the will has been made, and, in addition, that the person to whom the letters are to be granted is named as executor in the will.

(d) Additional Proof for Issuance of Letters of Administration. If letters of administration are to be granted, the applicant must also prove to the satisfaction of the court that there exists a necessity for and administration upon such estate.

(e) Proof Required Where Prior Letters Have Been Granted. If letters testamentary or of administration have previously been granted upon the estate, the applicant need show only that the person for whom letters are sought is entitled thereto by law and is not disqualified.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, § 8, eff. June 12, 1969. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 89. Action of Court on Probated Will

Upon the completion of hearing of an application for the probate of a will, if the Court be satisfied that such will should be admitted to probate, an order to that effect shall be entered. Certified copies of such will and the order, or of the record thereof, and the record of testimony, may be recorded in other counties, and may be used in evidence, as the original might be, on the

trial of the same matter in any other court, when taken there by appeal or otherwise.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1961, 57th Leg., p. 1072, ch. 480, § 1, eff. Aug. 28, 1961. Amended by Acts 1983, 68th Leg., p. 1155, ch. 260, § 1, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 846, § 11, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§§ 89A–89C

Sections 89A-89C detail how to probate a will as a muniment of title. This procedure is extremely efficient and cost-effective because there is no administration of the estate (no executor is appointed; no letters testamentary are issued). Instead, the testator's will is proved to be valid and the court order admitting the will to probate documents title transfer to the beneficiaries and gives authority to all those who hold the testator's property to deliver it to the beneficiaries. To use the procedure, however, the testator's estate must have no unpaid debts (except those secured by real property) or the court must determine for another reason that there is no necessity for administration. Sometimes the beneficiaries will pay the testator's debts out of their own pockets so that this procedure may be used.

The muniment of title procedure is also used for "late" probates which are permitted under § 73. See also § 128B (heirs must receive notice of late probate).

§ 89A. Contents of Application for Probate of Will as Muniment of Title

(a) A written will shall, if within the control of the applicant, be filed with the application for probate as a muniment of title, and shall remain in the custody of the county clerk unless removed from the custody of the clerk by order of a proper court. An application for probate of a will as a muniment of title shall state:

(1) The name and domicile of each applicant.

(2) The name, age if known, and domicile of the decedent, and the fact, time, and place of death.

(3) Facts showing that the court has venue.

(4) That the decedent owned real or personal property, or both, describing the property generally, and stating its probable value.

(5) The date of the will, the name and residence of the executor named in the will, if any, and the names and residences of the subscribing witnesses, if any.

(6) Whether a child or children born or adopted after the making of such will survived the decedent, and the name of each such survivor, if any.

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(7) That there are no unpaid debts owing by the estate of the testator, excluding debts secured by liens on real estate.

(8) Whether a marriage of the decedent was ever dissolved after the will was made and if so, when and from whom.

(9) Whether the state, a governmental agency of the state, or a charitable organization is named by the will as a devisee.

The foregoing matters shall be stated and averred in the application to the extent that they are known to the applicant, or can with reasonable diligence be ascertained by the applicant, and if any of such matters is not stated or averred in the application, the application shall set forth the reason why such matter is not so stated and averred.

(b) When a written will cannot be produced in court, in addition to the requirements of Subsection (a) of this section, the application shall state:

(1) The reason why such will cannot be produced.

(2) The contents of such will, to the extent known.

(3) The date of such will and the executor appointed in the will, if any, to the extent known.

(4) The name, age, marital status, and address, if known, and the relationship to the decedent, if any, of each devisee, and of each person who would inherit as an heir in the absence of a valid will, and, in cases of partial intestacy, of each heir.

(c) [repealed] An application for probate of a nuncupative will as muniment of title shall contain all applicable statements required with respect to written wills in the foregoing subsections and also:

(1) The substance of testamentary words spoken.

(2) The names and residences of the witnesses thereto.

Added by Acts 1997, 75th Leg., ch. 540, § 1, eff. Sept. 1, 1997. Subsec. (a) amended by Acts 2001, 77th Leg., ch. 10, § 1, eff. Sept. 1, 2001. Subsec. (c) repealed Acts 2007, 80th Leg., ch. 1170, § 5.05, eff. Sept. 1, 2007. Subsec. (a) amended by Acts 2009, 81st Leg., ch. 634, § 1, eff. Sept. 1, 2009. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.17, eff. Sept. 1, 2011.

§ 89B. Proof Required for Probate of a Will as a Muniment of Title

(a) General Proof. Whenever an applicant seeks to probate a will as a muniment of title, the applicant must first prove to the satisfaction of the court:

(1) That the person is dead, and that four years have not elapsed since the person's death and prior to the application; and

(2) That the court has jurisdiction and venue over the estate; and

(3) That citation has been served and returned in the manner and for the length of time required by this Code; and

(4) That there are no unpaid debts owing by the estate of the testator, excluding debts secured by liens on real estate.

(b) To obtain probate of a will as a muniment of title, the applicant must also prove to the satisfaction of the court:

(1) If the will is not self-proved as provided by this Code, that the testator, at the time of executing the will, was at least 18 years of age, or was or had been lawfully married, or was a member of the armed forces of the United States or of the auxiliaries of the armed forces of the United States, or of the Maritime Service of the United States, and was of sound mind; and

(2) If the will is not self-proved as provided by this Code, that the testator executed the will with the formalities and solemnities and under the circumstances required by law to make it a valid will; and

(3) That such will was not revoked by the testator.

Added by Acts 1997, 75th Leg., ch. 540, § 1 eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 89C. Probate of Wills as Muniments of Title

(a) In each instance where the court is satisfied that a will should be admitted to probate, and where the court is further satisfied that there are no unpaid debts owing by the estate of the testator, excluding debts secured by liens on real estate, or for other reason finds that there is no necessity for administration upon such estate, the court may admit such will to probate as a muniment of title.

(b) If a person who is entitled to property under the provisions of the will cannot be ascertained solely by reference to the will or if a question of construction of the will exists, on proper application and notice as provided by Chapter 37, Civil Practice and Remedies Code, the court may hear evidence and include in the order probating the will as a muniment of title a declaratory judgment construing the will or determining those persons who are entitled to receive property under the will and the persons' shares or interests in the estate. The judgment is conclusive in any suit between any person omitted from the judgment and a bona fide purchaser for value who has purchased real or personal property after entry of the judgment without actual notice of the claim of the omitted person to an interest in the estate. Any person who has delivered property of the decedent to a person declared to be entitled to the property under the judgment or has engaged in any other transaction with the person in good faith after entry of the judgment is not liable to any person for actions taken in reliance on the judgment.

(c) The order admitting a will to probate as a muniment of title shall constitute sufficient legal authority to all persons owing any money to the estate of the decedent, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and to persons purchasing from or otherwise dealing with the estate, for payment or transfer, without liability, to the persons described in such will as entitled to receive the particular asset without administration. The person or persons entitled to property under the provisions of such wills shall be entitled to deal with and treat the properties to which they are so entitled in the same manner as if the record of title thereof were vested in their names.

(d) Unless waived by the court, before the 181st day, or such later day as may be extended by the court, after the date a will is admitted to probate as a muniment of title, the applicant for probate of the will shall file with the clerk of the court a sworn affidavit stating specifically the terms of the will that have been fulfilled and the terms of the will that have been unfulfilled. Failure of the applicant for probate of the will to file such affidavit shall not otherwise affect title to property passing under the terms of the will.

Added by Acts 1993, 73rd Leg., ch. 846, § 12, eff. Sept. 1, 1993. Renumbered from V.A.T.S. Probate Code, § 89A by Acts 1997, 75th Leg., ch. 540, § 1, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 90. Custody of Probated Wills

All original wills, together with the probate thereof, shall be deposited in the office of the county clerk of the county wherein the same shall have been probated, and shall there remain, except during such time as they may be removed for inspection to another place upon order by the court where probated. If the court shall order an original will to be removed to another place for inspection, the person removing such original will shall give a receipt therefor, and the clerk of the court shall make and retain a copy of such original will.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 91. When Will Not in Custody of Court

If for any reason a written will is not in the custody of the court, the court shall find the contents thereof by written order, and certified copies of same as so established by the court may be recorded in other counties, and may be used in evidence, as in the case of certified copies of written wills in the custody of the court.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 2007, 80th Leg., ch. 1170, § 5.02, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 92. Period for Probate Does Not Affect Settlement

Where letters testamentary or of administration shall have once been granted, any person interested in the administration of the estate may proceed, after any lapse of time, to compel settlement of the estate when it does not appear from the record that the administration thereof has been closed.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 93

Section 93 provides the statute of limitations for contesting a will. If the contest ground is not based on fraud, the period is 2 years from the date the court admitted the will to probate. However, if the contest ground is based on forgery or other fraud, the 2-year period runs from the discovery of the forgery or fraud. Incapacitated persons as defined in § 3(p) have 2 years from the removal of their disabilities to begin the contest.

§ 93. Period for Contesting Probate

After a will has been admitted to probate, any interested person may institute suit in the proper court to contest the validity thereof, within two years after such will shall have been admitted to probate, and not afterward, except that any interested person may institute suit in the proper court to cancel a will for forgery or other fraud within two years after the discovery of such forgery or fraud, and not afterward. Provided, however, that incapacitated persons shall have two years after the removal of their disabilities within which to institute such contest.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 2001, 77th Leg., ch. 292, § 3, eff. May 23, 2001. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 94

A will has no legal effect until it is probated. Under § 94, a beneficiary has no claim to the devised or bequeathed property until the will is admitted to probate.

§ 94. No Will Effectual Until Probated

Except as hereinafter provided with respect to foreign wills, no will shall be effectual for the purpose of proving title to, or the right to the possession of, any real or personal property disposed of by the will, until such will has been admitted to probate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Part 2. Procedure Pertaining to Foreign Wills

Statutes in Context §§ 95–107A

Sections 95-107A address the procedures for handling “foreign” (that is, non-Texas) wills.

1. Non-Texas Domiciliary With Non-Texas Will

a. Will Probated in Decedent’s Domiciliary Jurisdiction If the will is probated in the decedent’s domiciliary state or country, the will need not meet the requirements of Texas law to be effective to dispose of Texas property. The only grounds a contestant may use to attack the will in Texas are (1) the foreign proceedings are not properly authenticated, (2) the will was previously rejected by a Texas court, and (3) the will has been set aside by a court in the domiciliary jurisdiction. See §§ 95(b)(1), 95(d)(1), 95(e), and 100(a).

b. Will Admitted in Non-Domiciliary Jurisdiction If the will has already been probated in a state or county which was not the decedent’s domicile at death, the will may be contested in Texas on any ground that would prevent a Texas will from gaining admission to probate. See §§ 95(b)(2), 95(d)(2), and 100(b).

c. Will Not Admitted Anywhere If the will has not been admitted in any other state or county, the proponent may bring an original probate in Texas. The will may be contested on any ground that would prevent a Texas will from gaining admission to probate. See §§ 103 and 104.

d. Rejected in Domiciliary Jurisdiction A rejection of a foreign will by the decedent’s domiciliary jurisdiction is conclusive in Texas unless the ground for rejection in the domiciliary jurisdiction would not have been a valid ground for rejecting the will under Texas law. For example, assume that the testator died with an unwitnessed holographic will in a state which requires witnesses on all wills. Because Texas recognizes holographic wills without witnesses (§ 60), this will could be probated in Texas even though it was rejected by the domiciliary state. See § 102.

2. Texas Domiciliary with Non-Texas Will The will must meet all Texas requirements. Texas does not have a savings statute, that is, a statute which provides that a will is effective in Texas if it would have been valid in the state or country in which it was originally executed.

§ 95. Probate of Foreign Will Accomplished by Filing and Recording

(a) **Foreign Will May Be Probated.** The written will of a testator who was not domiciled in Texas at the time of his death which would affect any real or personal property in this State, may be admitted to probate upon proof that it stands probated or established in any of the United States, its territories, the District of Columbia, or any foreign nation.

(b) **Application and Citation.**

(1) Will probated in domiciliary jurisdiction. If a foreign will has been admitted to probate or established in the jurisdiction in which the testator was domiciled at the time of his death, the application need state only that probate is requested on the basis of the authenticated copy of the foreign proceedings in which the will was probated or established. No citation or notice is required.

(2) Will probated in non-domiciliary jurisdiction. If a foreign will has been admitted to probate or established in any jurisdiction other than the domicile of the testator at the time of his death, the application for its probate shall contain all of the information required in an application for the probate of a domestic will, and shall also set out the name and address of each devisee and each person who will be entitled to a portion of the estate as an heir in the absence of a will. Citations shall be issued and served on each such devisee and heir by registered or certified mail.

(c) **Copy of Will and Proceedings To Be Filed.** A copy of the will and of the judgment, order, or decree by which it was admitted to probate or otherwise established, attested by and with the original signature of the clerk of the court or of such other official as has custody of such will or is in charge of probate records, with the seal of the court affixed, if there is a seal, together with a certificate containing the original signature of the judge or presiding magistrate of such court that the said attestation is in due form, shall be filed with the application. Original signatures shall not be required for recordation in the deed records pursuant to Sections 96 through 99 or Section 107 of this code.

(d) **Probate Accomplished by Recording.**

(1) Will admitted in domiciliary jurisdiction. If the will has been probated or established in the jurisdiction in which the testator was domiciled at the time of his death, it shall be the ministerial duty of the clerk to record such will and the evidence of its probate or establishment in the judge’s probate docket. No order of the court is necessary. When so filed and recorded, the will shall be deemed to be admitted to probate, and shall have the same force and effect for all purposes as if the original will had been probated by order of the court, subject to contest in the manner and to the extent hereinafter provided.

(2) Will admitted in non-domiciliary jurisdiction. If the will has been probated or

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established in another jurisdiction not the domicile of the testator, its probate in this State may be contested in the same manner as if the testator had been domiciled in this State at the time of his death. If no contest is filed, the clerk shall record such will and the evidence of its probate or establishment in the judge's probate docket, and no order of the court shall be necessary. When so filed and recorded, it shall be deemed to be admitted to probate, and shall have the same force and effect for all purposes as if the original will had been probated by order of the court, subject to contest in the manner and to the extent hereafter provided.

(e) Effect of Foreign Will on Local Property. If a foreign will has been admitted to probate or established in the jurisdiction in which the testator was domiciled at the time of his death, such will, when probated as herein provided, shall be effectual to dispose of both real and personal property in this State irrespective of whether such will was executed with the formalities required by this Code.

(f) Protection of Purchasers. When a foreign will has been probated in this State in accordance with the procedure prescribed in this section for a will that has been admitted to probate in the domicile of the testator, and it is later proved in a proceeding brought for that purpose that the foreign jurisdiction in which the will was admitted to probate was not in fact the domicile of the testator, the probate in this State shall be set aside. If any person has purchased property from the personal representative or any legatee or devisee, in good faith and for value, or otherwise dealt with any of them in good faith, prior to the commencement of the proceeding, his title or rights shall not be affected by the fact that the probate in this State is subsequently set aside.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972. Subsec. (c) amended by Acts 1999, 76th Leg., ch. 755, § 1, eff. Sept. 1, 1999. Subsec. (d) amended by Acts 2009, 81st Leg., ch. 602, § 6, eff. June 19, 2009. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 96. Filing and Recording Foreign Will in Deed Records

When any will or testamentary instrument conveying or in any manner disposing of land in this State has been duly probated according to the laws of any of the United States, or territories thereof, or the District of Columbia, or of any country out of the limits of the United States, a copy thereof and of its probate which bears the attestation, seal and certificate required by the preceding Section, may be filed and recorded in the deed records in any county of this State in which said real estate is situated, in the same manner as deeds and conveyances are required to be recorded under the laws of this State, and without further proof or authentication; provided that the validity of such a will

or testamentary instrument filed under this Section may be contested in the manner and to the extent hereinafter provided.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 97. Proof Required for Recording in Deed Records

A copy of such foreign will or testamentary instrument, and of its probate attested as provided above, together with the certificate that said attestation is in due form, shall be prima facie evidence that said will or testamentary instrument has been duly admitted to probate, according to the laws of the state, territory, district, or country wherein it has allegedly been admitted to probate, and shall be sufficient to authorize the same to be recorded in the deed records in the proper county or counties in this State.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1925, ch. 641, § 9, eff. June 12, 1969. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 98. Effect of Recording Copy of Will in Deed Records

Every such foreign will, or testamentary instrument, and the record of its probate, which shall be attested and proved, as hereinabove provided, and delivered to the county clerk of the proper county in this State to be recorded in the deed records, shall take effect and be valid and effectual as a deed of conveyance of all property in this State covered by said foreign will or testamentary instrument; and the record thereof shall have the same force and effect as the record of deeds or other conveyances of land from the time when such instrument is delivered to the clerk to be recorded, and from that time only.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1925, ch. 641, § 9, eff. June 12, 1969. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 99. Recording in Deed Records Serves as Notice of Title

The record of any such foreign will, or testamentary instrument, and of its probate, duly attested and proved and filed for recording in the deed records of the proper county, shall be notice to all persons of the existence of such will or testamentary instrument, and of the title or titles conferred thereby.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1925, ch. 641, § 9, eff. June 12, 1969. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 100. Contest of Foreign Wills

(a) Will Admitted in Domiciliary Jurisdiction. A foreign will that has been admitted to probate or

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established in the jurisdiction in which the testator was domiciled at the time of his death, and either admitted to probate in this State or filed in the deed records of any county of this State, may be contested by any interested person but only upon the following grounds:

(1) That the foreign proceedings were not authenticated in the manner required for ancillary probate or recording in the deed records.

(2) That the will has been finally rejected for probate in this State in another proceeding.

(3) That the probate of the will has been set aside in the jurisdiction in which the testator died domiciled.

(b) Will Probated in Non-Domiciliary Jurisdiction.

A foreign will that has been admitted to probate or established in any jurisdiction other than that of the testator's domicile at the time of his death may be contested on any grounds that are the basis for the contest of a domestic will. If a will has been probated in this State in accordance with the procedure applicable for the probate of a will that has been admitted in the state of domicile, without the service of citation required for a will admitted in another jurisdiction that is not the domicile of the testator, and it is proved that the foreign jurisdiction in which the will was probated was not in fact the domicile of the testator, the probate in this State shall be set aside. If otherwise entitled, the will may be reprobated in accordance with the procedure prescribed for the probate of a will admitted in a non-domiciliary jurisdiction, or it may be admitted to original probate in this State in the same or a subsequent proceeding.

(c) Time and Method. A foreign will that has been admitted to ancillary probate in this State or filed in the deed records in this State may be contested by the same procedures, and within the same time limits, as wills admitted to probate in this State in original proceedings.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 101. Notice of Contest of Foreign Will

Within the time permitted for the contest of a foreign will in this State, verified notice may be filed and recorded in the judge's probate docket of the court in this State in which the will was probated, or the deed records of any county in this State in which such will was recorded, that proceedings have been instituted to contest the will in the foreign jurisdiction where it was probated or established. Upon such filing and recording, the force and effect of the probate or recording of the will shall cease until verified proof is filed and recorded that the foreign proceedings have been terminated in favor of the will, or that such proceedings were never actually instituted.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1925, ch. 641, § 9, eff. June 12, 1969. Amended by Acts 2009, 81st Leg.,

ch. 602, § 7, eff. June 19, 2009. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 102. Effect of Rejection of Will in Domiciliary Proceedings

Final rejection of a will or other testamentary instrument from probate or establishment in the jurisdiction in which the testator was domiciled shall be conclusive in this State, except where the will or other testamentary instrument has been rejected solely for a cause which is not ground for rejection of a will of a testator who died domiciled in this State, in which case the will or testamentary instrument may nevertheless be admitted to probate or continue to be effective in this State.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 103. Original Probate of Foreign Will in this State

Original probate of the will of a testator who died domiciled outside this State which, upon probate, may operate upon any property in this State, and which is valid under the laws of this State, may be granted in the same manner as the probate of other wills is granted under this Code, if the will does not stand rejected from probate or establishment in the jurisdiction where the testator died domiciled, or if it stands rejected from probate or establishment in the jurisdiction where the testator died domiciled solely for a cause which is not ground for rejection of a will of a testator who died domiciled in this State. The court may delay passing on the application for probate of a foreign will pending the result of probate or establishment, or of a contest thereof, at the domicile of the testator.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 104. Proof of Foreign Will in Original Probate Proceeding

If a testator dies domiciled outside this State, a copy of his will, authenticated in the manner required by this Code, shall be sufficient proof of the contents of the will to admit it to probate in an original proceeding in this State if no objection is made thereto. This Section does not authorize the probate of any will which would not otherwise be admissible to probate, or, in case objection is made to the will, relieve the proponent from offering proof of the contents and legal sufficiency of the will as otherwise required, except that the original will need not be produced unless the court so orders.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1925, ch. 641, § 9, eff. June 12, 1969. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 105. Executor of Will Probated in Another Jurisdiction

When a foreign will is admitted to ancillary probate in accordance with Section 95 of this Code, the executor named in such will shall be entitled to receive, upon application, letters testamentary upon proof that he has qualified as such in the jurisdiction in which the will was admitted to probate, and that he is not disqualified to serve as executor in this State. After such proof is made, the court shall enter an order directing that ancillary letters testamentary be issued to him. If letters of administration have previously been granted by such court in this State to any other person, such letters shall be revoked upon the application of the executor after personal service of citation upon the person to whom such letters were granted.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1925, ch. 641, § 9, eff. June 12, 1969. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

**Statutes in Context
§ 105A**

Section 105A explains when a non-Texas bank or trust company may serve as an executor or trustee in Texas. Basically, the statute adopts a reciprocity approach, that is, the foreign entity may serve in Texas if a Texas bank or trust company may serve as a fiduciary in the foreign jurisdiction.

§ 105A. Appointment and Service of Foreign Banks and Trust Companies in Fiduciary Capacity

(a) A corporate fiduciary that does not have its main office or a branch office in this state, hereinafter called "foreign corporate fiduciaries", having the corporate power to so act, may be appointed and may serve in the State of Texas as trustee (whether of a personal or corporate trust), executor, administrator, guardian of the estate, or in any other fiduciary capacity, whether the appointment be by will, deed, agreement, declaration, indenture, court order or decree, or otherwise, when and to the extent that the home state of the corporate fiduciary grants authority to serve in like fiduciary capacity to a corporate fiduciary whose home state is this state.

(b) Before qualifying or serving in the State of Texas in any fiduciary capacity, as aforesaid, such a foreign corporate fiduciary shall file in the office of the Secretary of the State of the State of Texas (1) a copy of its charter, articles of incorporation or of association, and all amendments thereto, certified by its secretary under its corporate seal; (2) a duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing the Secretary of State and his successors its agent for service of process upon whom all notices and processes issued by any court of this state may be served in any action or proceeding relating to any trust, estate, fund or other matter within this state

with respect to which such foreign corporate fiduciary is acting in any fiduciary capacity, including the acts or defaults of such foreign corporate fiduciary with respect to any such trust, estate or fund; and (3) a written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent or other person to whom such notice or process shall be forwarded by the Secretary of State. Upon receipt of such notice or process, it shall be the duty of the Secretary of State forthwith to forward same by registered or certified mail to the officer, agent or other person so designated. Service of notice or process upon the Secretary of State as agent for such a foreign corporate fiduciary shall in all ways and for all purposes have the same effect as if personal service had been had within this state upon such foreign corporate fiduciary.

(c) Any foreign corporate fiduciary acting in a fiduciary capacity in this state in strict accordance with the provisions of this Section shall not be deemed to be doing business in the State of Texas within the meaning of Article 8.01 of the Texas Business Corporation Act; and shall be deemed qualified to serve in such capacity under the provisions of Section 105 of this Code.

(d) The provisions hereof are in addition to, and not a limitation on, the provisions of Subtitle F or G, Title 3, Finance Code.

(e) Any foreign corporate fiduciary which shall violate any provision of this Section 105a shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not exceeding Five Thousand Dollars (\$5,000.00), and may, in the discretion of the court, be prohibited from thereafter serving in this state in any fiduciary capacity.

Subsecs. (c), (d) amended by Acts 1995, 74th Leg., ch. 914, § 10, eff. Sept. 1, 1995; Subsec. (c) amended by Acts 1997, 75th Leg., ch. 769, § 5, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, § 6.002, eff. Sept. 1, 1999; Subsec. (d) amended by Acts 2001, 77th Leg., ch. 1420, § 6.029, eff. Sept. 1, 2001. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 106. When Foreign Executor to Give Bond

A foreign executor shall not be required to give bond if the will appointing him so provides. If the will does not exempt him from giving bond, the provisions of this Code with respect to the bonds of domestic representatives shall be applicable.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 976, ch. 173, § 9, eff. Jan. 1, 1972. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 107. Power of Sale of Foreign Executor or Trustee

When by any foreign will recorded in the deed records of any county in this state in the manner provided herein, power is given an executor or trustee to sell any real or personal property situated in this

state, no order of a court of this state shall be necessary to authorize such executor or trustee to make such sale and execute proper conveyance, and whenever any particular directions are given by a testator in any such will respecting the sale of any such property situated in this state, belonging to his estate, the same shall be followed unless such directions have been annulled or suspended by order of a court of competent jurisdiction. *Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1925, ch. 641, § 9, eff. June 12, 1969. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.*

§ 107A. Suit for the Recovery of Debts by a Foreign Executor or Administrator

(a) On giving notice by registered or certified mail to all creditors of the decedent in this state who have filed a claim against the estate of the decedent for a debt due to the creditor, a foreign executor or administrator of a person who was a nonresident at the time of death may prosecute a suit in this state for the recovery of debts due to the decedent.

(b) The plaintiff's letters testamentary or letters of administration granted by a competent tribunal, properly authenticated, shall be filed with the suit.

(c) By filing suit in this state for the recovery of a debt due to the decedent, a foreign executor or administrator submits personally to the jurisdiction of the courts of this state in a proceeding relating to the recovery of a debt due by his decedent to a resident of this state. Jurisdiction under this subsection is limited to the money or value of personal property recovered in this state by the foreign executor or administrator.

(d) Suit may not be maintained in this state by a foreign executor or administrator if there is an executor or administrator of the decedent qualified by a court of this state or if there is pending in this state an application for appointment as an executor or administrator.

Added by Acts 1977, 65th Leg., p. 1190, ch. 457, § 1, eff. Aug. 29, 1977. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Part 3. Emergency Intervention Proceedings; Funeral and Burial Expenses

Statutes in Context §§ 108–114

Sections 108-114 provide a method for a person qualified to serve as an administrator under § 77 to obtain court permission in an accelerated time frame to (1) obtain access to the decedent's funds to pay for the decedent's funeral and burial expenses and (2) to obtain access to the decedent's rented residence (e.g., an apartment) to remove and protect the decedent's personal

property. The application cannot be filed earlier than the third day after the decedent's death or later than the ninetieth day after the decedent's death.

§ 108. Time to File Emergency Application

An applicant may file an application requesting emergency intervention by a court exercising probate jurisdiction to provide for the payment of funeral and burial expenses or the protection and storage of personal property owned by the decedent that was located in rented accommodations on the date of the decedent's death with the clerk of the court in the county of domicile of the decedent or the county in which the rental accommodations that contain the decedent's personal property are located. The application must be filed not earlier than the third day after the date of the decedent's death and not later than the 90th day after the date of the decedent's death.

Added by Acts 1993, 73rd Leg., ch. 712, § 7, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 642, § 6, eff. Sept. 1, 1995. Renumbered from V.A.T.S. Probate Code, § 520 and amended by Acts 1997, 75th Leg., ch. 199, § 1, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 109. Eligible Applicants for Emergency Intervention

A person qualified to serve as an administrator under Section 77 of this code may file an emergency intervention application.

Added by Acts 1993, 73rd Leg., ch. 712, § 7, eff. Sept. 1, 1993. Renumbered from V.A.T.S. Probate Code, § 521 and amended by Acts 1997, 75th Leg., ch. 199, § 1, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 110. Requirements for Emergency Intervention

An applicant may file an emergency application with the court under Section 108 of this code only if an application has not been filed and is not pending under Section 81, 82, 137, or 145 of this code and the applicant:

- (1) needs to obtain funds for the funeral and burial of the decedent; or
- (2) needs to gain access to rental accommodations in which the decedent's personal property is located and the applicant has been denied access to those accommodations.

Added by Acts 1995, 74th Leg., ch. 642, § 7, eff. Sept. 1, 1995. Renumbered from V.A.T.S. Probate Code, § 521A and amended by Acts 1997, 75th Leg., ch. 199, § 1, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 111. Contents of Emergency Intervention Application for Funeral and Burial Expenses

(a) An application for emergency intervention to obtain funds needed for a decedent's funeral and burial expenses must be sworn and must contain:

(1) the name, address, and interest of the applicant;

(2) the facts showing an immediate necessity for the issuance of an emergency intervention order under this section by the court;

(3) the date of the decedent's death, place of death, decedent's residential address, and the name and address of the funeral home holding the decedent's remains;

(4) any known or ascertainable heirs and devisees of the decedent and the reason:

(A) the heirs and devisees cannot be contacted; or

(B) the heirs and devisees have refused to assist in the decedent's burial;

(5) a description of funeral and burial procedures necessary and a statement from the funeral home that contains a detailed and itemized description of the cost of the funeral and burial procedures; and

(6) the name and address of an individual, entity, or financial institution, including an employer, that is in possession of any funds of or due to the decedent, and related account numbers and balances, if known by the applicant.

(b) The application shall also state whether there are any written instructions from the decedent relating to the type and manner of funeral or burial the decedent would like to have. The applicant shall attach the instructions, if available, to the application and shall fully comply with the instructions. If written instructions do not exist, the applicant may not permit the decedent's remains to be cremated unless the applicant obtains the court's permission to cremate the decedent's remains.

Added by Acts 1993, 73rd Leg., ch. 712, § 7, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 642, § 8, eff. Sept. 1, 1995. Renumbered from V.A.T.S. Probate Code, § 522 and amended by Acts 1997, 75th Leg., ch. 199, § 1, eff. Sept. 1, 1997. Subsec. (a) amended by Acts 2007, 80th Leg., ch. 1170, § 8.01, eff. June 15, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 112. Contents for Emergency Intervention Application for Access to Personal Property

An application for emergency intervention to gain access to rental accommodations of a decedent at the time of the decedent's death that contain the decedent's personal property must be sworn and must contain:

(1) the name, address, and interest of the applicant;

(2) the facts showing an immediate necessity for the issuance of an emergency intervention order by the court;

(3) the date and place of the decedent's death, the decedent's residential address, and the name and address of the funeral home holding the decedent's remains;

(4) any known or ascertainable heirs and devisees of the decedent and the reason:

(A) the heirs and devisees cannot be contacted; or

(B) the heirs and devisees have refused to assist in the protection of the decedent's personal property;

(5) the type and location of the decedent's personal property and the name of the person in possession of the property; and

(6) the name and address of the owner or manager of the decedent's rental accommodations and whether access to the accommodations is necessary.

Added by Acts 1995, 74th Leg., ch. 642, § 9, eff. Sept. 1, 1995. Renumbered from V.A.T.S. Probate Code, § 522A and amended by Acts 1997, 75th Leg., ch. 199, § 1, eff. Sept. 1, 1997. Amended by Acts 2007, 80th Leg., ch. 1170, § 8.02, eff. June 15, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 113. Orders of Emergency Intervention

(a) If the court determines on review of an application filed under Section 108 of this code that emergency intervention is necessary to obtain funds needed for a decedent's funeral and burial expenses, the court may order funds of the decedent held by an employer, individual, or financial institution to be paid directly to a funeral home only for reasonable and necessary attorney's fees for the attorney who obtained the order granted under this section, for court costs for obtaining the order, and for funeral and burial expenses not to exceed \$5,000 as ordered by the court to provide the decedent with a reasonable, dignified, and appropriate funeral and burial.

(b) If the court determines on review of an application filed under Section 108 of this code that emergency intervention is necessary to gain access to accommodations rented by the decedent at the time of the decedent's death that contain the decedent's personal property, the court may order one or more of the following:

(1) the owner or agent of the rental accommodations shall grant the applicant access to the accommodations at a reasonable time and in the presence of the owner or agent;

(2) the applicant and owner or agent of the rental accommodations shall jointly prepare and file with the court a list that generally describes the decedent's property found at the premises;

(3) the applicant or the owner or agent of the rental accommodations may remove and store the

decedent's property at another location until claimed by the decedent's heirs;

(4) the applicant has only the powers that are specifically stated in the order and that are necessary to protect the decedent's property that is the subject of the application; or

(5) funds of the decedent held by an employer, individual, or financial institution to be paid to the applicant for reasonable and necessary attorney's fees and court costs for obtaining the order.

(c) The court clerk may issue certified copies of an emergency intervention order on request of the applicant only until the 90th day after the date the order was signed or the date a personal representative is qualified, whichever occurs first.

(d) A person who is furnished with a certified copy of an emergency intervention order within the period described by Subsection (c) of this section is not personally liable for the person's actions that are taken in accordance with and in reliance on the order.

Added by Acts 1993, 73rd Leg., ch. 712, § 7, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 642, § 10, eff. Sept. 1, 1995. Renumbered from V.A.T.S. Probate Code, § 523 and amended by Acts 1997, 75th Leg., ch. 199, § 1, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 114. Termination

(a) All power and authority of an applicant under an emergency intervention order cease to be effective or enforceable on the 90th day after the date the order was issued or on the date a personal representative is qualified, whichever occurs first.

(b) If a personal representative has not been appointed when an emergency intervention order issued under Section 113(b) of this code ceases to be effective, a person who is in possession of the decedent's personal property that is the subject of the order, without incurring civil liability, may:

(1) release the property to the decedent's heirs;

or

(2) dispose of the property under Subchapter C, Chapter 54, Property Code¹ or Section 7.209 or 7.210, Business & Commerce Code.

Added by Acts 1993, 73rd Leg., ch. 712, § 7, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 642, § 11, eff. Sept. 1, 1995. Renumbered from V.A.T.S. Probate Code, § 524 and amended by Acts 1997, 75th Leg., ch. 199, § 1, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context § 115

Section 115 permits the person serving as the executor of a deceased spouse's will or the

deceased spouse's next of kin to file an application to limit the right of the surviving spouse to control the deceased spouse's burial or cremation. The purpose of this procedure is to prevent a spouse who is suspected of being involved in the deceased spouse's death from burying or cremating the deceased spouse's body and thereby concealing or destroying potentially inculpatory evidence. See also Health & Safety Code § 711.002.

§ 115. Limitation on Right of Surviving Spouse to Control Deceased's Burial or Cremation

(a) An application under this section may be filed by:

(1) the executor of the deceased's will; or

(2) the next of kin of the deceased, the nearest in order of descent first, and so on, and next of kin includes the deceased's descendants who legally adopted the deceased or who have been legally adopted by the deceased.

(b) An application under this section must be under oath and must establish:

(1) whether the deceased died intestate or testate;

(2) the surviving spouse is alleged to be a principal or accomplice in a wilful act which resulted in the death of the deceased; and

(3) good cause exists to limit the right of the surviving spouse to control the burial and interment or cremation of the deceased spouse.

(c) After notice and hearing, without regard to whether the deceased died intestate or testate, and subject to the prohibition described by Section 711.002(1), Health and Safety Code, a court may limit the right of a surviving spouse, whether or not the spouse has been designated by the deceased's will as the executor of a deceased spouse's estate, to control the burial and interment or cremation of the deceased spouse if the court finds that there is good cause to believe that the surviving spouse is the principal or an accomplice in a wilful act which resulted in the death of the deceased spouse.

(d) If the court limits the surviving spouse's right of control, as provided by Subsection (c), the court shall designate and authorize a person to make burial or cremation arrangements.

Added by Acts 1995, 74th Leg., ch. 642, § 12, eff. Sept. 1, 1995. Renumbered from V.A.T.S. Probate Code, § 525 and amended by Acts 1997, 75th Leg., ch. 199, § 1, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 707, § 2, eff. June 17, 2011.

Part 4. Citations and Notices

¹ Property Code §54.041 et seq.

Statutes in Context
§ 128

Notice of an application for the probate of a written will produced in court and for letters of administration is served by posting under § 128. The notice of the action is merely placed on the courthouse door or a nearby location under § 33(f)(2). Unlike in many states, will beneficiaries and heirs do not receive personal service or service by mail. The posting procedure has been deemed to satisfy the due process requirements of the U.S. Constitution. See *Estate of Ross*, 672 S.W.2d 315 (Tex. App. — Eastland 1984, writ ref'd n.r.e.), cert. denied, *Holmes v. Ross*, 470 U.S. 1084 (1985). Methods of service more likely to give actual (as contrasted to constructive) notice are required if the proponent is attempting to probate a written will not produced in court, a nuncupative will, or a will more than 4 years after the testator's death (see § 128B).

§ 128. Citations With Respect to Applications for Probate or for Issuance of Letters

(a) Where Application Is for Probate of a Written Will Produced in Court or for Letters of Administration. When an application for the probate of a written will produced in court, or for letters of administration, is filed with the clerk, he shall issue a citation to all parties interested in such estate, which citation shall be served by posting and shall state:

- (1) That such application has been filed, and the nature of it.
- (2) The name of the deceased and of the applicant.
- (3) The time when such application will be acted upon.
- (4) That all persons interested in the estate should appear at the time named therein and contest said application, should they desire to do so.

(b) Where Application Is for Probate of a Written Will Not Produced. When the application is for the probate of a written will which cannot be produced in court, the clerk shall issue a citation to all parties interested in such estate, which citation shall contain substantially the statements made in the application for probate, and the time when, place where, and the court before which such application will be acted upon. If the heirs of the testator be residents of this state, and their residence be known, the citation shall be served upon them by personal service. Service of such citation may be made by publication in the following cases:

- (1) When the heirs are non-residents of this state; or
- (2) When their names or their residences are unknown; or
- (3) When they are transient persons.

(c) No Action Until Service Is Had. No application for the probate of a will or for the issuance of letters shall be acted upon until service of citation has been made in the manner provided herein.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 2007, 80th Leg., ch. 1170, § 5.02, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 128A

The 2007 Legislature overhauled this section by adding a requirement for beneficiaries in most situations to receive notice *after* a will is admitted to probate. The notice must be given within 60 days of when the will is probated unless an exception applies. The personal representative must file an affidavit within 90 days of probate explaining that the notice was given. The 2011 Legislature made modified the statute in an attempt to make compliance easier and more beneficial to the beneficiaries.

Under prior law, only government agencies and charitable beneficiaries were entitled to notice.

§ 128A. Notice to Certain Beneficiaries After Probate of Will

(a) In this section, “beneficiary” means a person, entity, state, governmental agency of the state, charitable organization, or trustee of a trust entitled to receive property under the terms of a decedent’s will, to be determined for purposes of this section with the assumption that each person who is alive on the date of the decedent’s death survives any period required to receive the bequest as specified by the terms of the will. The term does not include a person, entity, state, governmental agency of the state, charitable organization, or trustee of a trust that would be entitled to receive property under the terms of a decedent’s will on the occurrence of a contingency that has not occurred as of the date of the decedent’s death.

(a-1) This section does not apply to the probate of a will as a muniment of title.

(b) Except as provided by Subsection (d) of this section, not later than the 60th day after the date of an order admitting a decedent’s will to probate, the personal representative of the decedent’s estate, including an independent executor or independent administrator, shall give notice that complies with Subsection (e) of this section to each beneficiary named in the will whose identity and address are known to the personal representative or, through reasonable diligence, can be ascertained. If, after the 60th day after the date of the order, the personal representative becomes aware of the identity and address of a beneficiary who was not given notice on or before the 60th day, the personal representative shall give the

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notice as soon as possible after becoming aware of that information.

(c) Notwithstanding the requirement under Subsection (b) of this section that the personal representative give the notice to the beneficiary, the personal representative shall give the notice with respect to a beneficiary described by this subsection as follows:

(1) if the beneficiary is a trustee of a trust, to the trustee, unless the personal representative is the trustee, in which case the personal representative shall, except as provided by Subsection (c-1) of this section, give the notice to the person or class of persons first eligible to receive the trust income, to be determined for purposes of this subdivision as if the trust were in existence on the date of the decedent's death;

(2) if the beneficiary has a court-appointed guardian or conservator, to that guardian or conservator;

(3) if the beneficiary is a minor for whom no guardian or conservator has been appointed, to a parent of the minor; and

(4) if the beneficiary is a charity that for any reason cannot be notified, to the attorney general.

(c-1) The personal representative is not required to give the notice otherwise required by Subsection (c)(1) of this section to a person eligible to receive trust income at the sole discretion of the trustee of a trust if:

(1) the personal representative has given the notice to an ancestor of the person who has a similar interest in the trust; and

(2) no apparent conflict exists between the ancestor and the person eligible to receive trust income.

(d) A personal representative is not required to give the notice otherwise required by this section to a beneficiary who:

(1) has made an appearance in the proceeding with respect to the decedent's estate before the will was admitted to probate;

(2) is entitled to receive aggregate gifts under the will with an estimated value of \$2,000 or less;

(3) has received all gifts to which the beneficiary is entitled under the will not later than the 60th day after the date of the order admitting the decedent's will to probate; or

(4) has received a copy of the will that was admitted to probate or a written summary of the gifts to the beneficiary under the will and has waived the right to receive the notice in an instrument that:

(A) either acknowledges the receipt of the copy of the will or includes the written summary of the gifts to the beneficiary under the will;

(B) is signed by the beneficiary; and

(C) is filed with the court.

(e) The notice required by this section must include:

(1) the name and address of the beneficiary to whom the notice is given or, for a beneficiary described by Subsection (c) of this section, the name and address of the beneficiary for whom the notice is given and of the person to whom the notice is given;

(2) the decedent's name;

(3) a statement that the decedent's will has been admitted to probate;

(4) a statement that the beneficiary to whom or for whom the notice is given is named as a beneficiary in the will;

(5) the personal representative's name and contact information; and

(6) either:

(A) a copy of the will that was admitted to probate and the order admitting the will to probate; or

(B) a summary of the gifts to the beneficiary under the will, the court in which the will was admitted to probate, the docket number assigned to the estate, the date the will was admitted to probate, and, if different, the date the court appointed the personal representative.

(f) The notice required by this section must be sent by registered or certified mail, return receipt requested.

(g) Not later than the 90th day after the date of an order admitting a will to probate, the personal representative shall file with the clerk of the court in which the decedent's estate is pending a sworn affidavit of the personal representative, or a certificate signed by the personal representative's attorney, stating:

(1) for each beneficiary to whom notice was required to be given under this section, the name and address of the beneficiary to whom the personal representative gave the notice or, for a beneficiary described by Subsection (c) of this section, the name and address of the beneficiary and of the person to whom the notice was given;

(2) the name and address of each beneficiary to whom notice was not required to be given under Subsection (d)(2), (3), or (4) of this section;

(3) the name of each beneficiary whose identity or address could not be ascertained despite the personal representative's exercise of reasonable diligence; and

(4) any other information necessary to explain the personal representative's inability to give the notice to or for any beneficiary as required by this section.

(h) The affidavit or certificate required by Subsection (g) of this section may be included with any pleading or other document filed with the clerk of the court, including the inventory, appraisal, and list of claims, an affidavit in lieu of the inventory, appraisal, and list of claims, or an application for an extension of the deadline to file the inventory, appraisal, and list of claims or an affidavit in lieu of the inventory, appraisal, and list of claims, provided

that the pleading or other document with which the affidavit or certificate is included is filed not later than the date the affidavit or certificate is required to be filed as provided by Subsection (g) of this section.

Added by Acts 1989, 71st Leg., ch. 1035, § 7, eff. Sept. 1, 1989. Subsec. (a) amended by Acts 2007, 80th Leg., ch. 1170, § 5.04, eff. Sept. 1, 2007. Amended by Acts 2007, 80th Leg., ch. 801, § 1, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.19, eff. Sept. 1, 2011.

Statutes in Context

§ 128B

See Statutes in Context to § 128.

§ 128B. Notice to Heirs on Application to Probate Will After Four Years

(a) Except as provided by Subsection (b) of this section, an applicant for the probate of a will under Section 73(a) of this code must give notice by service of process to each of the testator's heirs whose address can be ascertained by the applicant with reasonable diligence. The notice must be given before the probate of the testator's will.

(b) Notice under Subsection (a) of this section is not required to be provided to an heir who has delivered to the court an affidavit signed by the heir stating that the heir does not object to the offer of the testator's will for probate.

(c) The notice required by this section and an affidavit described by Subsection (b) of this section must also contain a statement that:

(1) the testator's property will pass to the testator's heirs if the will is not admitted to probate; and

(2) the person offering the testator's will for probate may not be in default for failing to present the will for probate during the four-year period immediately following the testator's death.

(d) If the address of any of the testator's heirs cannot be ascertained by the applicant with reasonable diligence, the court shall appoint an attorney ad litem to protect the interests of the unknown heirs after an application for the probate of a will is made under Section 73(a) of this code.

(e) In the case of an application for the probate of a will of a testator who has had another will admitted to probate, this section applies to a beneficiary of the testator's probated will instead of the testator's heirs.

Added by Acts 1999, 76th Leg., ch. 855, § 2, eff. Sept. 1, 1999. Heading amended by Acts 2007, 80th Leg., ch. 801, § 2, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 129. Validation of Prior Modes of Service of Citation

(a) In all cases where written wills produced in court have been probated prior to June 14, 1927, after publication of citation as provided by the then Article 28 of the Revised Civil Statutes of Texas (1925), without service of citation, the action of the courts in admitting said wills to probate is hereby validated in so far as service of citation is concerned.

(b) In all cases where written wills produced in court have been probated or letters of administration have been granted prior to May 18, 1939, after citation, as provided by the then Article 3334, Title 54, of the Revised Civil Statutes of Texas (1925), without service of citation as provided for in the then Article 3336, Title 54, of the Revised Civil Statutes of Texas (1925) as amended by Acts 1935, 44th Legislature, page 659, Chapter 273, Section 1, such service of citation and the action of the court in admitting said wills to probate and granting administration upon estates, are hereby validated in so far as service of citation is concerned.

(c) In all cases where written wills have been probated or letters of administration granted, prior to June 12, 1941, upon citation or notice duly issued by the clerk in conformance with the requirements of the then Article 3333 of Title 54 of the Revised Civil Statutes of Texas (1925), as amended, but not directed to the sheriff or any constable of the county wherein the proceeding was pending, and such citation or notice having been duly posted by the sheriff or any constable of said county and returned for or in the time, manner, and form required by law, such citation or notice and return thereof and the action of the court in admitting said wills to probate or granting letters of administration upon estates, are hereby validated in so far as said citation or notice, and the issuance, service and return thereof are concerned.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 129A. Service by Publication or Other Substituted Service

Notwithstanding any other provisions of this part of this chapter, if an attempt to make service under this part of this chapter is unsuccessful, service may be made in the manner provided by Rule 109 or 109a, Texas Rules of Civil Procedure, for the service of a citation on a party by publication or other substituted service.

Added by Acts 1993, 73rd Leg., ch. 712, § 2, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Chapter VI. Special Types of Administration

Part 1. Temporary Administration in the Interest of Estates of Dependents

**Statutes in Context
§ 131A**

Section 131A permits the court to appoint a temporary administrator to protect a decedent's estate. Any person, even someone who does not qualify as an interested person under § 3®, may request a temporary administration.

§ 131A. Appointment of Temporary Administrators

(a) If a county judge determines that the interest of a decedent's estate requires the immediate appointment of a personal representative, he shall, by written order, appoint a temporary administrator with limited powers as the circumstances of the case require. The duration of the appointment must be specified in the court's order and may not exceed 180 days unless the appointment is made permanent as provided by Subsection (j) of this section.

(b) Any person may file with the clerk of the court a written application for the appointment of a temporary administrator of a decedent's estate under this section. The application must be verified and must include the information required by Section 81 of this code if the decedent died testate or Section 82 of this code if the decedent died intestate and an affidavit that sets out:

- (1) the name, address, and interest of the applicant;
- (2) the facts showing an immediate necessity for the appointment of a temporary administrator;
- (3) the requested powers and duties of the temporary administrator;
- (4) a statement that the applicant is entitled to letters of temporary administration and is not disqualified by law from serving as a temporary administrator; and
- (5) a description of the real and personal property that the applicant believes to be in the decedent's estate.

(c) An order of appointment must:

- (1) designate the appointee as "temporary administrator" of the decedent's estate for the specified period;
- (2) define the powers conferred on the appointee; and
- (3) set the amount of bond to be given by the appointee.

(d) Not later than the third business day after the date of the order, the appointee shall file with the county clerk a bond in the amount ordered by the court. In this subsection, "business day" means a day other than a Saturday, Sunday, or holiday recognized by this state.

(e) Not later than the third day after the date on which an appointee qualifies, the county clerk shall

issue to the appointee letters of appointment that set forth the powers to be exercised by the appointee as ordered by the court.

(f) On the date that the county clerk issues letters of appointment, the county clerk shall post a notice of the appointment to all interested persons on the courthouse door.

(g) On the date the county clerk issues letters of appointment, the appointee shall notify the known heirs of the decedent of his appointment by certified mail, return receipt requested.

(h) A notice required by Subsection (f) or (g) of this section must state that:

- (1) an interested person or an heir may request a hearing to contest the appointment not later than the 15th day after the date that the letters of appointment are issued;
- (2) if no contest is made within the period specified by the notice, the appointment will continue for the time specified in the order of appointment; and
- (3) the court may make the appointment permanent.

(i) If an interested person or an heir requests a hearing to contest the appointment of a temporary administrator, a hearing shall be held and a determination made not later than the 10th day after the date the request was made. If a request is not made on or before the 15th day after the date that the letters of appointment are issued, the appointment of a temporary administrator continues for the period specified in the order, unless made permanent under Subsection (j) of this section. During the pendency of a contest of the appointment of a temporary administrator, the temporary appointee shall continue to act as administrator of the estate to the extent of the powers conferred by his appointment. If the court sets aside the appointment, the court may require the temporary administrator to prepare and file, under oath, a complete exhibit of the condition of the estate and detail the disposition the temporary administrator has made of the property of the estate.

(j) At the conclusion of the term of appointment of a temporary administrator, the court may, by written order, make the appointment permanent if the permanent appointment is in the interest of the estate.

Added by Acts 1987, 70th Leg., ch. 460, § 2, eff. Sept. 1, 1987. Subsec. (e) amended by Acts 1989, 71st Leg., ch. 1035, § 8, eff. Sept. 1, 1989; Subsec. (b) amended by Acts 1997, 75th Leg., ch. 540, § 2, eff. Sept. 1, 1997. Subsec. (d) amended by Acts 2005, 79th Leg., ch. 765, § 1, eff. June 17, 2005. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 132

Section 132 provides for the creation of a temporary administration pending the contest of a will if no executor has yet to be appointed.

§ 132. Temporary Administration Pending Contest of a Will or Administration

(a) Appointment of Temporary Administrator. Pending a contest relative to the probate of a will or the granting of letters of administration, the court may appoint a temporary administrator, with such limited powers as the circumstances of the case require; and such appointment may continue in force until the termination of the contest and the appointment of an executor or administrator with full powers. The power of appointment in this Subsection is in addition to the court's power of appointment under Section 131A of this Code.

(b) Additional Powers Relative to Claims. When temporary administration has been granted pending a will contest, or pending a contest on an application for letters of administration, the court may, at any time during the pendency of the contest, confer upon the temporary administrator all the power and authority of a permanent administrator with respect to claims against the estate, and in such case the court and the temporary administrator shall act in the same manner as in permanent administration in connection with such matters as the approval or disapproval of claims, the payment of claims, and the making of sales of real or personal property for the payment of claims; provided, however, that in the event such power and authority is conferred upon a temporary administrator, he shall be required to give bond in the full amount required of a permanent administrator. The provisions of this Subsection are cumulative and shall not be construed to exclude the right of the court to order a temporary administrator to do any and all of the things covered by this Subsection in other cases where the doing of such things shall be necessary or expedient to preserve the estate pending final determination of the contest.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Subsec. (a) amended by Acts 1987, 70th Leg., ch. 460, § 3, eff. Sept. 1, 1987. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 133. Powers of Temporary Administrators

Temporary administrators shall have and exercise only such rights and powers as are specifically expressed in the order of the court appointing them, and as may be expressed in subsequent orders of the court. Where a court, by a subsequent order, extends the rights and powers of a temporary administrator, it may require additional bond commensurate with such extension. Any acts performed by temporary administrators that are not so expressly authorized shall be void.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 25, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 134. Accounting

At the expiration of a temporary appointment, the appointee shall file with the clerk of the court a sworn list of all property of the estate which has come into his hands, a return of all sales made by him, and a full exhibit and account of all his acts as such appointee.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 135. Closing Temporary Administration

The list, return, exhibit, and account so filed shall be acted upon by the court and, whenever temporary letters shall expire or cease to be of effect for any cause, the court shall immediately enter an order requiring such temporary appointee forthwith to deliver the estate remaining in his possession to the person or persons legally entitled to its possession. Upon proof of such delivery, the appointee shall be discharged and the sureties on his bond released as to any future liability.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 26, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Part 3. Small Estates

Statutes in Context
§ 137 & § 138

Sections 137-138 provide a short-form method for handling an intestate estate when the total value of the intestate's property, not including homestead and exempt property, does not exceed \$50,000. This procedure is inexpensive and quick and thus is often preferred to a normal administration. Note, however, that the only real property which may be transferred in this manner is the homestead. The estate of a wealthy person might qualify for this procedure because the decedent's wealth may be in non-probate assets and the decedent's homestead.

§ 137. Collection of Small Estates Upon Affidavit

(a) The distributees of the estate of a decedent who dies intestate shall be entitled thereto, to the extent that the assets, exclusive of homestead and exempt property, exceed the known liabilities of said estate, exclusive of liabilities secured by homestead and exempt property, without awaiting the appointment of a personal representative when:

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(1) No petition for the appointment of a personal representative is pending or has been granted; and

(2) Thirty days have elapsed since the death of the decedent; and

(3) The value of the entire assets of the estate, not including homestead and exempt property, does not exceed \$50,000; and

(4) There is filed with the clerk of the court having jurisdiction and venue an affidavit sworn to by two disinterested witnesses, by all such distributees that have legal capacity, and, if the facts warrant, by the natural guardian or next of kin of any minor or the guardian of any other incapacitated person who is also a distributee, which affidavit shall be examined by the judge of the court having jurisdiction and venue; and

(5) The affidavit shows the existence of the foregoing conditions and includes a list of all of the known assets and liabilities of the estate, the names and addresses of the distributees, and the relevant family history facts concerning heirship that show the distributees' rights to receive the money or property of the estate or to have such evidences of money, property, or other rights of the estate as are found to exist transferred to them as heirs or assignees; and

(6) The judge, in the judge's discretion, finds that the affidavit conforms to the terms of this section and approves the affidavit; and

(7) A copy of the affidavit, certified to by said clerk, is furnished by the distributees of the estate to the person or persons owing money to the estate, having custody or possession of property of the estate, or acting as registrar, fiduciary or transfer agent of or for evidences of interest, indebtedness, property, or other right belonging to the estate.

(b) This section does not affect the disposition of property under the terms of a will or other testamentary document nor, except as provided by Subsection (c) of this section, does it transfer title to real property.

(c) Title to a decedent's homestead that is the only real property in a decedent's estate may be transferred on an affidavit that meets the requirements of this section. An affidavit that is used to transfer title to a homestead under this section must be recorded in the deed records of a county in which the homestead is located. A bona fide purchaser for value may rely on a recorded affidavit under this section. A bona fide purchaser for value without actual or constructive notice of an heir who is not disclosed in a recorded affidavit under this section acquires title to a homestead free of the interests of the undisclosed heir, but the bona fide purchaser remains subject to any claim a creditor of the decedent has by law. A purchaser has constructive notice of an heir who is not disclosed in a recorded affidavit under this section if an affidavit, judgment of heirship, or title transaction in the chain of title in the deed records identifies the heir of the decedent who is not disclosed in the affidavit as an heir of the decedent.

An heir who is not disclosed in a recorded affidavit under this section may recover from an heir who receives consideration from a purchaser in a transfer for value of title to a homestead passing under the affidavit.

(d) If the judge approves the affidavit under this section, the affidavit is to be recorded as an official public record under Chapter 194, Local Government Code. If the county has not adopted a microfilm or microphotographic process under Chapter 194, Local Government Code, the county clerk shall provide and keep in his office an appropriate book labeled "Small Estates," with an accurate index showing the name of the decedent and reference to land, if any, involved, in which he shall record every such affidavit so filed, upon being paid his legal recording fee.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 4, eff. Aug. 22, 1957; Acts 1969, 61st Leg., p. 1978, ch. 670, § 1, eff. Sept. 1, 1969; Acts 1975, 64th Leg., p. 1402, ch. 543, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 361, ch. 177, § 1, eff. May 29, 1977; Acts 1979, 66th Leg., p. 1747, ch. 713, § 14, eff. Aug. 27, 1979. Amended by Acts 1983, 68th Leg., p. 4560, ch. 757, § 1, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 594, § 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 642, § 3, eff. Sept. 1, 1995; Subsec. (a) amended by Acts 1995, 74th Leg., ch. 1039, § 8, eff. Sept. 1, 1995; amended by Acts 1997, 75th Leg., ch. 540, § 3, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 138. Effect of Affidavit

The person making payment, delivery, transfer or issuance pursuant to the affidavit described in the preceding Section shall be released to the same extent as if made to a personal representative of the decedent, and shall not be required to see to the application thereof or to inquire into the truth of any statement in the affidavit, but the distributees to whom payment, delivery, transfer, or issuance is made shall be answerable therefor to any person having a prior right and be accountable to any personal representative thereafter appointed. In addition, the person or persons who execute the affidavit shall be liable for any damage or loss to any person which arises from any payment, delivery, transfer, or issuance made in reliance on such affidavit. If the person to whom such affidavit is delivered refuses to pay, deliver, transfer, or issue the property as above provided, such property may be recovered in an action brought for such purpose by or on behalf of the distributees entitled thereto, upon proof of the facts required to be stated in the affidavit.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1995, 74th Leg., ch. 642, § 4, eff. Sept. 1, 1995. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§§ 139–142

Sections 139-142 provide a procedure for a court to dispense with administration if (1) the decedent is survived by a spouse, minor children, or adult incapacitated children and (2) the value of the estate, not including homestead and exempt property, does not exceed the family allowance. Administration is not necessary because there would be no property for the decedent's creditors or will beneficiaries to reach.

§ 139. Application for Order of No Administration

If the value of the entire assets of an estate, not including homestead and exempt property, does not exceed the amount to which the surviving spouse, minor children, and adult incapacitated children of the decedent are entitled as a family allowance, there may be filed by or on behalf of the surviving spouse, minor children, or adult incapacitated children an application in any court of proper venue for administration, or, if an application for the appointment of a personal representative has been filed but not yet granted, then in the court where such application has been filed, requesting the court to make a family allowance and to enter an order that no administration shall be necessary. The application shall state the names of the heirs or devisees, a list of creditors of the estate together with the amounts of the claims so far as the same are known, and a description of all real and personal property belonging to the estate, together with the estimated value thereof according to the best knowledge and information of the applicant, and the liens and encumbrances thereon, with a prayer that the court make a family allowance and that, if the entire assets of the estate, not including homestead and exempt property, are thereby exhausted, the same be set aside to the surviving spouse, minor children, and adult incapacitated children, as in the case of other family allowances provided for by this Code.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 810, § 1.01, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 810, § 2.17, eff. Jan. 1, 2014.

§ 140. Hearing and Order Upon the Application

Upon the filing of an application for no administration such as that provided for in the preceding Section, the court may hear the same forthwith without notice, or at such time and upon such notice as the court requires. Upon the hearing of the application, if the court finds that the facts contained therein are true and that the expenses of last illness, funeral charges, and expenses of the proceeding have been paid or secured, the court shall make a family allowance and, if the entire assets of the estate, not including homestead and exempt property, are thereby

exhausted, shall order that no administration be had of the estate and shall assign to the surviving spouse, minor children, and adult incapacitated children the whole of the estate, in the same manner and with the same effect as provided in this Code for the making of family allowances to the surviving spouse, minor children, and adult incapacitated children.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 810, § 1.01, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 810, § 2.17, eff. Jan. 1, 2014.

§ 141. Effect of Order

The order that no administration be had on the estate shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right, belonging to the estate, and to persons purchasing from or otherwise dealing with the estate, for payment or transfer to the persons described in the order as entitled to receive the estate without administration, and the persons so described in the order shall be entitled to enforce their right to such payment or transfer by suit.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 142. Proceeding to Revoke Order

At any time within one year after the entry of an order of no administration, and not thereafter, any interested person may file an application to revoke the same, alleging that other property has been discovered, or that property belonging to the estate was not included in the application for no administration, or that the property described in the application was incorrectly valued, and that if said property were added, included, or correctly valued, as the case may be, the total value of the property would exceed that necessary to justify the court in ordering no administration. Upon proof of any of such grounds, the court shall revoke the order of no administration. In case of any contest as to the value of any property, the court may appoint two appraisers to appraise the same in accordance with the procedure hereinafter provided for inventories and appraisements, and the appraisal of such appraisers shall be received in evidence but shall not be conclusive.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 143

Section 143 provides for summary proceedings for certain insolvent estates even after a personal representative has been appointed. The statute

refers to “claims of Classes One to Four” from § 322. Note that § 322 has been amended many times since § 143 was enacted in 1955 and thus the referenced claims are not the same as when § 143 originally took effect.

§ 143. Summary Proceedings for Small Estates After Personal Representative Appointed

Whenever, after the inventory, appraisal, and list of claims or the affidavit in lieu of the inventory, appraisal, and list of claims has been filed by a personal representative, it is established that the estate of a decedent, exclusive of the homestead and exempt property and family allowance to the surviving spouse, minor children, and adult incapacitated children, does not exceed the amount sufficient to pay the claims of Classes One to Four, inclusive, as claims are hereinafter classified, the personal representative shall, upon order of the court, pay the claims in the order provided and to the extent permitted by the assets of the estate subject to the payment of such claims, and thereafter present the personal representative’s account with an application for the settlement and allowance thereof. Thereupon the court, with or without notice, may adjust, correct, settle, allow or disallow such account, and, if the account is settled and allowed, may decree final distribution, discharge the personal representative, and close the administration.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.20, eff. Sept. 1, 2011. Amended by Acts 2011, 82nd Leg., ch. 810, § 1.01, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 810, § 2.17, eff. Jan. 1, 2014

Part 4. Independent Administration

**Statutes in Context
§ 145**

Texas was a pioneer in the area of non-court-supervised administrations since the first independent administration statutes were enacted in 1843. Independent administrations are extremely common because they are faster, economical, and more convenient than court-supervised (dependent) administrations. Once the personal representative files the inventory, appraisal, and list of claims, the personal representative administers the estate without court involvement.

Section 145 explains when an independent administration is possible. (1) The testator’s will may expressly authorize independent administration. Although no special language is needed, most attorneys track the statutory language as follows: “I appoint [name] as

independent executor. I direct that there shall be no action in the probate court in the settlement of my estate other than the probating and recording of this will, and the return of an inventory, appraisal, and list of claims of my estate.” See § 145(b). (2) If the testator did not specify the executor to be independent, all of the beneficiaries may agree under § 145(c). However, if the will expressly prohibits independent administration, the court will not authorize independent administration. See § 145(o). (3) If the decedent died intestate, the heirs may agree to an independent administration under § 145(c), (g).

§ 145. Independent Administration

(a) Independent administration of an estate may be created as provided in Subsections (b) through (e) of this section.

(b) Any person capable of making a will may provide in his will that no other action shall be had in the county court in relation to the settlement of his estate than the probating and recording of his will, and the return of an inventory, appraisal, and list of claims of his estate.

(c) In situations where an executor is named in a decedent’s will, but the will does not provide for independent administration of the decedent’s estate as provided in Subsection (b) of this section, all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent’s will the executor named in the will to serve as independent executor and request in the application that no other action shall be had in the county court in relation to the settlement of the decedent’s estate other than the probating and recording of the decedent’s will, and the return of an inventory, appraisal, and list of claims of the decedent’s estate. In such case the county court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent executor, unless the county court finds that it would not be in the best interest of the estate to do so.

(d) In situations where no executor is named in the decedent’s will, or in situations where each executor named in the will is deceased or is disqualified to serve as executor or indicates by affidavit filed with the application for administration of the decedent’s estate his inability or unwillingness to serve as executor, all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent’s will a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the county court in relation to the settlement of the decedent’s estate other than the probating and recording of the decedent’s will, and the return of an

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inventory, appraisement, and list of claims of the decedent's estate. In such case the county court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the county court finds that it would not be in the best interest of the estate to do so.

(e) All of the distributees of a decedent dying intestate may agree on the advisability of having an independent administration and collectively designate in the application for administration of the decedent's estate a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the county court in relation to the settlement of the decedent's estate other than the return of an inventory, appraisement, and list of claims of the decedent's estate. In such case the county court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the county court finds that it would not be in the best interest of the estate to do so.

(f) In those cases where an independent administration is sought under the provisions of Subsections (c) through (e) above, all distributees shall be served with citation and notice of the application for independent administration unless the distributee waives the issuance or service of citation or enters an appearance in court.

(g) The court may not appoint an independent administrator to serve in an intestate administration unless and until the parties seeking appointment of the independent administrator have been determined, through a proceeding to declare heirship under Chapter III of this code, to constitute all of the decedent's heirs.

(h) When an independent administration has been created, and the order appointing an independent executor has been entered by the county court, and the inventory, appraisement, and list aforesaid has been filed by the executor and approved by the county court or an affidavit in lieu of the inventory, appraisement, and list of claims has been filed by the executor, as long as the estate is represented by an independent executor, further action of any nature shall not be had in the county court except where this Code specifically and explicitly provides for some action in the county court.

(i) If a distributee described in Subsections (c) through (e) of this section is an incapacitated person, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the county court finds that either the granting of independent administration or the appointment of the person, firm, or corporation designated in the application as independent executor would not be in the best interests of the incapacitated person, then, notwithstanding anything to the contrary in Subsections (c) through (e) of this section, the county court shall not enter an order granting independent administration of the estate. If such distributee who is an incapacitated person has no guardian of the person, the county court

may appoint a guardian ad litem to make application on behalf of the incapacitated person if the county court considers such an appointment necessary to protect the interest of the distributees. Alternatively, if the distributee who is an incapacitated person is a minor and has no guardian of the person, the natural guardian or guardians of the minor may consent on the minor's behalf if there is no conflict of interest between the minor and the natural guardian or guardians.

(j) If a trust is created in the decedent's will, the person or class of persons first eligible to receive the income from the trust, when determined as if the trust were to be in existence on the date of the decedent's death, shall, for the purposes of Subsections (c) and (d) of this section, be deemed to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence upon the termination of such trust, and are authorized to apply for independent administration on behalf of the trusts without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence upon the termination of such trust. If a trust beneficiary who is considered to be a distributee under this subsection is an incapacitated person, the trustee or cotrustee may file the application or give the consent, provided that the trustee or cotrustee is not the person proposed to serve as the independent executor.

(k) If a life estate is created either in the decedent's will or by law, the life tenant or life tenants, when determined as if the life estate were to commence on the date of the decedent's death, shall, for the purposes of Subsections (c) through (e) of this section, be deemed to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for independent administration on behalf of the estate without the consent or approval of any remainderman.

(l) If a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, then, for the purposes of determining who shall be the distributee under Subsections (c), (d), (h), and (i) of this section, it shall be presumed that the distributees living at the time of the filing of the application for probate of the decedent's will survived the decedent by the prescribed period.

(m) In the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees under Subsections (c), (d), (e), (h), and (i) of this section, it shall be presumed that no distributee living at the time the application for independent administration is filed shall subsequently disclaim any portion of such distributee's interest in the decedent's estate.

(n) If a distributee of a decedent's estate should die and if by virtue of such distributee's death such distributee's share of the decedent's estate shall become payable to such distributee's estate, then the deceased distributee's personal representative may sign the application for independent administration of the

decedent's estate under Subsections (c), (d), (e), (h), and (i) of this section.

(o) Notwithstanding anything to the contrary in this section, a person capable of making a will may provide in his will that no independent administration of his estate may be allowed. In such case, his estate, if administered, shall be administered and settled under the direction of the county court as other estates are required to be settled.

(p) If an independent administration of a decedent's estate is created pursuant to Subsections (c), (d), or (e) of this section, then, unless the county court shall waive bond on application for waiver, the independent executor shall be required to enter into bond payable to and to be approved by the judge and his or her successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety. This subsection does not repeal any other section of this Code.

(q) Absent proof of fraud or collusion on the part of a judge, no judge may be held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as an independent executor or independent administrator under Subsections (c), (d), and (e) of the section. Section 36 of this code does not apply to the appointment of an independent executor or administrator under Subsection (c), (d), or (e) of this section.

(r) A person who declines to serve or resigns as independent executor or administrator of a decedent's estate may be appointed an executor or administrator of the estate if the estate will be administered and settled under the direction of the court.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 2(b); Acts 1977, 65th Leg., p. 1061, ch. 390, § 3, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1750, ch. 713, § 16, eff. Aug. 27, 1979. Subsec. (o) added by Acts 1991, 72nd Leg., ch. 895, § 10, eff. Sept. 1, 1991; Subsec. (q) amended by Acts 1993, 73rd Leg., ch. 846, § 15, eff. Sept. 1, 1993; Subsec. (i) amended by Acts 1995, 74th Leg., ch. 1039, § 9, eff. Sept. 1, 1995. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 3, eff. Jan. 1, 2014 and amended by deleting the last sentence of subsection (q) by Acts 2009, 81st Leg., ch. 680, § 7, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.21, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

Statutes in Context §§ 145A-145C

The 2011 Legislature added §§ 145A-145C to confirm that an independent representative may sell estate property without a court order under the same circumstances that a dependent

representative could sell estate property with a court order. In intestate administrations or where a will fails expressly to grant a power of sale, the court may grant an independent administrator a power of sale over real property in the order of appointment if the beneficiaries who would receive the real property consent to the power. The added provisions provide statutory protection for third parties who rely on the apparent authority of an independent representative where a power of sale is granted in the will or the representative provides an affidavit that the sale is necessary under the circumstances described in current Probate Code Section 341(1).

§ 145A. Granting Power of Sale by Agreement

In a situation in which a decedent does not have a will or a decedent's will does not contain language authorizing the personal representative to sell real property or contains language that is not sufficient to grant the representative that authority, the court may include in an order appointing an independent executor under Section 145 of this code any general or specific authority regarding the power of the independent executor to sell real property that may be consented to by the beneficiaries who are to receive any interest in the real property in the application for independent administration or in their consents to the independent administration. The independent executor, in such event, may sell the real property under the authority granted in the court order without the further consent of those beneficiaries.

Added by Acts 2011, 82nd Leg., ch. 1338, § 1.22, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 145B. Independent Executors May Act Without Court Approval

Unless this code specifically provides otherwise, any action that a personal representative subject to court supervision may take with or without a court order may be taken by an independent executor without a court order. The other provisions of this part are designed to provide additional guidance regarding independent administrations in specified situations, and are not designed to limit by omission or otherwise the application of the general principles set forth in this part.

Added by Acts 2011, 82nd Leg., ch. 1338, § 1.22, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 145C. Power of Sale of Estate Property

(a) Definition. In this section, "independent executor" does not include an independent administrator.

(b) General. Unless limited by the terms of a will, an independent executor, in addition to any power of sale of estate property given in the will, and an

independent administrator have the same power of sale for the same purposes as a personal representative has in a supervised administration, but without the requirement of court approval. The procedural requirements applicable to a supervised administration do not apply.

(c) Protection of Person Purchasing Estate Property.

(1) A person who is not a devisee or heir is not required to inquire into the power of sale of estate property of the independent executor or independent administrator or the propriety of the exercise of the power of sale if the person deals with the independent executor or independent administrator in good faith and:

(A) a power of sale is granted to the independent executor in the will;

(B) a power of sale is granted under Section 145A of this code in the court order appointing the independent executor or independent administrator; or

(C) the independent executor or independent administrator provides an affidavit, executed and sworn to under oath and recorded in the deed records of the county where the property is located, that the sale is necessary or advisable for any of the purposes described in Section 341(1) of this code.

(2) As to acts undertaken in good faith reliance, the affidavit described by Subsection (c)(1)(C) of this section is conclusive proof, as between a purchaser of property from an estate, and the personal representative of the estate or the heirs and distributees of the estate, with respect to the authority of the independent executor or independent administrator to sell the property. The signature or joinder of a devisee or heir who has an interest in the property being sold as described in this section is not necessary for the purchaser to obtain all right, title, and interest of the estate in the property being sold.

(3) This section does not relieve the independent executor or independent administrator from any duty owed to a devisee or heir in relation, directly or indirectly, to the sale.

(d) No Limitations. This section does not limit the authority of an independent executor or independent administrator to take any other action without court supervision or approval with respect to estate assets that may take place in a supervised administration, for purposes and within the scope otherwise authorized by this code, including the authority to enter into a lease and to borrow money.

Added by Acts 2011, 82nd Leg., ch. 1338, § 1.22, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

Statutes in Context

§ 146

The independent executor deals with creditors and sets aside exempt property and allowances just like a dependent executor but without court involvement under § 146. Note, however, that the courts have held that §§ 309, 310, and 313 do not apply to independent administrations. See *Bunting v. Pearson*, 430 S.W.2d 470 (Tex. 1968).

§ 146. Payment of Claims and Delivery of Exemptions and Allowances

(a) Duty of the Independent Executor. An independent executor, in the administration of an estate, independently of and without application to, or any action in or by the court:

(1) shall give the notices required under Sections 294 and 295;

(2) may give the notice permitted under Section 294(d) and bar a claim under that subsection;

(3) shall approve, classify, and pay, or reject, claims against the estate in the same order of priority, classification, and proration prescribed in this Code; and

(4) shall set aside and deliver to those entitled thereto exempt property and allowances for support, and allowances in lieu of exempt property, as prescribed in this Code, to the same extent and result as if the independent executor's actions had been accomplished in, and under orders of, the court.

(a-1) Statement in Notice of Claim. To be effective, the notice provided under Subsection (a)(2) of this section must include, in addition to the other information required by Section 294(d) of this code, a statement that a claim may be effectively presented by only one of the methods prescribed by this section.

(b) Secured Claims for Money. Within six months after the date letters are granted or within four months after the date notice is received under Section 295 of this code, whichever is later, a creditor with a claim for money secured by real or personal property of the estate must give notice to the independent executor of the creditor's election to have the creditor's claim approved as a matured secured claim to be paid in due course of administration. In addition to giving the notice within this period, a creditor whose claim is secured by real property shall record a notice of the creditor's election under this subsection in the deed records of the county in which the real property is located. If no election to be a matured secured creditor is made, or the election is made, but not within the prescribed period, or is made within the prescribed period but the creditor has a lien against real property and fails to record notice of the claim in the deed records as required within the prescribed period, the claim shall be a preferred debt and lien against the specific property securing the indebtedness and shall be paid according to the terms of

the contract that secured the lien, and the claim may not be asserted against other assets of the estate. The independent executor may pay the claim before the claim matures if paying the claim before maturity is in the best interest of the estate.

(b-1) Matured Secured Claims.

(1) A claim approved as a matured secured claim under Subsection (b) of this section remains secured by any lien or security interest against the specific property securing payment of the claim but subordinated to the payment from the property of claims having a higher classification under Section 322 of this code. However, the secured creditor:

(A) is not entitled to exercise any remedies in a manner that prevents the payment of the higher priority claims and allowances; and

(B) during the administration of the estate, is not entitled to exercise any contractual collection rights, including the power to foreclose, without either the prior written approval of the independent executor or court approval.

(2) Subdivision (1) of this subsection may not be construed to suspend or otherwise prevent a creditor with a matured secured claim from seeking judicial relief of any kind or from executing any judgment against an independent executor. Except with respect to real property, any third party acting in good faith may obtain good title with respect to an estate asset acquired through a secured creditor's extrajudicial collection rights, without regard to whether the creditor had the right to collect the asset or whether the creditor acted improperly in exercising those rights during an estate administration due to having elected matured secured status.

(3) If a claim approved or established by suit as a matured secured claim is secured by property passing to one or more devisees in accordance with Section 71A of this code, the independent executor shall collect from the devisees the amount of the debt and pay that amount to the claimant or shall sell the property and pay out of the sale proceeds the claim and associated expenses of sale consistent with the provisions of Section 306(c-1) of this code applicable to court supervised administrations.

(b-2) Preferred Debt and Lien Claims. During an independent administration, a secured creditor whose claim is a preferred debt and lien against property securing the indebtedness under Subsection (b) of this section is free to exercise any judicial or extrajudicial collection rights, including the right to foreclosure and execution; provided, however, that the creditor does not have the right to conduct a nonjudicial foreclosure sale within six months after letters are granted.

(b-3) Certain Unsecured Claims; Barring of Claims. An unsecured creditor who has a claim for money against an estate and who receives a notice under Section 294(d) of this code shall give to the independent executor notice of the nature and amount

of the claim not later than the 120th day after the date the notice is received or the claim is barred.

(b-4) Notices Required by Creditors. Notice to the independent executor required by Subsections (b) and (b-3) of this section must be contained in:

(1) a written instrument that is hand-delivered with proof of receipt, or mailed by certified mail, return receipt requested with proof of receipt, to the independent executor or the executor's attorney;

(2) a pleading filed in a lawsuit with respect to the claim; or

(3) a written instrument or pleading filed in the court in which the administration of the estate is pending.

(b-5) Filing Requirements Applicable.

Subsection (b-4) of this section does not exempt a creditor who elects matured secured status from the filing requirements of Subsection (b) of this section, to the extent those requirements are applicable.

(b-6) Statute of Limitations. Except as otherwise provided by Section 16.062, Civil Practice and Remedies Code, the running of the statute of limitations shall be tolled only by a written approval of a claim signed by an independent executor, a pleading filed in a suit pending at the time of the decedent's death, or a suit brought by the creditor against the independent executor. In particular, the presentation of a statement or claim, or a notice with respect to a claim, to an independent executor does not toll the running of the statute of limitations with respect to that claim.

(b-7) Other Claim Procedures of Code Generally Do Not Apply. Except as otherwise provided by this section, the procedural provisions of this code governing creditor claims in supervised administrations do not apply to independent administrations. By way of example, but not as a limitation:

(1) Section 313 of this code does not apply to independent administrations, and consequently a creditor's claim may not be barred solely because the creditor failed to file a suit not later than the 90th day after the date an independent executor rejected the claim or with respect to a claim for which the independent executor takes no action; and

(2) Sections 306(f)-(k) of this code do not apply to independent administrations.

(c) Liability of Independent Executor. An independent executor, in the administration of an estate, may pay at any time and without personal liability a claim for money against the estate to the extent approved and classified by the personal representative if:

(1) the claim is not barred by limitations; and

(2) at the time of payment, the independent executor reasonably believes the estate will have sufficient assets to pay all claims against the estate.

(d) Notice Required of Unsecured Creditor. An unsecured creditor who has a claim for money against an estate and receives a notice under Section 294(d) shall give notice to the independent executor of the nature and amount of the claim not later than the 120th

day after the date on which the notice is received or the claim is barred.

(e) Placement of Notice. Notice required by Subsections (b) and (d) must be contained in:

(1) a written instrument that is hand-delivered with proof of receipt or mailed by certified mail, return receipt requested, to the independent executor or the executor's attorney;

(2) a pleading filed in a lawsuit with respect to the claim; or

(3) a written instrument or pleading filed in the court in which the administration of the estate is pending.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 2(c), eff. Aug. 21, 1957. Amended by Acts 1995, 74th Leg., ch. 1054, § 1, eff. Jan. 1, 1996. Subsec. (b) amended by and Subsecs. (d), (e) added by Acts 1997, 75th Leg., ch. 1302, § 8, eff. Sept. 1, 1997. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 3, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.23, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 147. Enforcement of Claims by Suit

Any person having a debt or claim against the estate may enforce the payment of the same by suit against the independent executor; and, when judgment is recovered against the independent executor, the execution shall run against the estate of the decedent in the hands of the independent executor which is subject to such debt. The independent executor shall not be required to plead to any suit brought against him for money until after six months from the date that an independent administration was created and the order appointing an independent executor was entered by the county court.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 980, ch. 376, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1064, ch. 390, § 4, eff. Sept. 1, 1977. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 3, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 148. Requiring Heirs to Give Bond

When an independent administration is created and the order appointing an independent executor is entered by the county court, any person having a debt against such estate may, by written complaint filed in the county court where such order was entered, cause all distributees of the estate, heirs at law, and other persons entitled to any portion of such estate under the will, if any, to be cited by personal service to appear before such county court and execute a bond for an amount equal to the amount of the creditor's claim or the full value of such estate, as shown by the inventory and list of claims, whichever is the smaller, such bond to be payable to the judge, and his successors, and to be approved by said judge, and conditioned that all

obligors shall pay all debts that shall be established against such estate in the manner provided by law. Upon the return of the citation served, unless such person so entitled to any portion of the estate, or some of them, or some other person for them, shall execute such bond to the satisfaction of the county court, such estate shall thereafter be administered and settled under the direction of the county court as other estates are required to be settled. If the bond is executed and approved, the independent administration shall proceed. Creditors of the estate may sue on such bond, and shall be entitled to judgment thereon for the amount of their debt, or they may have their action against those in possession of the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1977, 65th Leg., p. 1064, ch. 390, § 5, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1750, ch. 713, § 17, eff. Aug. 27, 1979. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 3, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 149. Requiring Independent Executor to Give Bond

When it has been provided by will, regularly probated, that an independent executor appointed by such will shall not be required to give bond for the management of the estate devised by such will, the direction shall be observed, unless it be made to appear at any time that such independent executor is mismanaging the property, or has betrayed or is about to betray his trust, or has in some other way become disqualified, in which case, upon proper proceedings had for that purpose, as in the case of executors or administrators acting under orders of the court, such executor may be required to give bond.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 3, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

Statutes in Context § 149A & § 149B

The independent executor does not need to render annual accountings. Instead, accountings are required only under the circumstances described in the Code, that is, (1) if an interested person demands an accounting 15 months or more after the date the independent executor was appointed (§ 149A) or (2) an interested person petitions the court for an accounting and distribution after 2 years from the date of the creation of the independent administration (§ 149B).

§ 149A. Accounting

(a) Interested Person May Demand Accounting.

At any time after the expiration of fifteen months from

the date that an independent administration was created and the order appointing an independent executor was entered by the county court, any person interested in the estate may demand an accounting from the independent executor. The independent executor shall thereupon furnish to the person or persons making the demand an exhibit in writing, sworn and subscribed by the independent executor, setting forth in detail:

1. The property belonging to the estate which has come into his hands as executor.
2. The disposition that has been made of such property.
3. The debts that have been paid.
4. The debts and expenses, if any, still owing by the estate.
5. The property of the estate, if any, still remaining in his hands.
6. Such other facts as may be necessary to a full and definite understanding of the exact condition of the estate.
7. Such facts, if any, that show why the administration should not be closed and the estate distributed.

Any other interested person shall, upon demand, be entitled to a copy of any exhibit or accounting that has been made by an independent executor in compliance with this section.

(b) Enforcement of Demand. Should the independent executor not comply with a demand for an accounting authorized by this section within sixty days after receipt of the demand, the person making the demand may compel compliance by an action in the county court, as that term is defined by Section 3 of this code. After a hearing, the court shall enter an order requiring the accounting to be made at such time as it deems proper under the circumstances.

(c) Subsequent Demands. After an initial accounting has been given by an independent executor, any person interested in an estate may demand subsequent periodic accountings at intervals of not less than twelve months, and such subsequent demands may be enforced in the same manner as an initial demand.

(d) Remedies Cumulative. The right to an accounting accorded by this section is cumulative of any other remedies which persons interested in an estate may have against the independent executor thereof.

Added by Acts 1971, 62nd Leg., p. 980, ch. 173, § 10, eff. Jan. 1, 1972. Amended by Acts 1973, 63rd Leg., p. 412, ch. 184, § 1, eff. May 25, 1973; Acts 1977, 65th Leg., p. 1065, ch. 390, § 6, eff. Sept. 1, 1977; Subsec. (b) amended by Acts 1999, 76th Leg., ch. 855, § 3, eff. Sept. 1, 1999. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 3, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 149B. Accounting and Distribution

(a) In addition to or in lieu of the right to an accounting provided by Section 149A of this code, at any time after the expiration of two years from the date

the court clerk first issues letters testamentary or of administration to any personal representative of an estate, a person interested in the estate then subject to independent administration may petition the county court, as that term is defined by Section 3 of this code, for an accounting and distribution. The court may order an accounting to be made with the court by the independent executor at such time as the court deems proper. The accounting shall include the information that the court deems necessary to determine whether any part of the estate should be distributed.

(b) On receipt of the accounting and, after notice to the independent executor and a hearing, unless the court finds a continued necessity for administration of the estate, the court shall order its distribution by the independent executor to the persons entitled to the property. If the court finds there is a continued necessity for administration of the estate, the court shall order the distribution of any portion of the estate that the court finds should not be subject to further administration by the independent executor. If any portion of the estate that is ordered to be distributed is incapable of distribution without prior partition or sale, the court shall order partition and distribution, or sale, in the manner provided for the partition and distribution of property incapable of division in estates administered under the direction of the county court.

(c) If all the property in the estate is ordered distributed by the executor and the estate is fully administered, the court also may order the independent executor to file a final account with the court and may enter an order closing the administration and terminating the power of the independent executor to act as executor.

Added by Acts 1979, 66th Leg., p. 1751, ch. 713, § 18, eff. Aug. 27, 1979. Subsecs. (a) and (b) amended by Acts 1985, 69th Leg., ch. 882, § 1, eff. Aug. 26, 1985; Subsec. (a) amended by Acts 1987, 70th Leg., ch. 760, § 1, eff. Aug. 31, 1987; Subsec. (b) amended by Acts 1987, 70th Leg., ch. 565, § 1, eff. June 18, 1987; Subsec. (a) amended by Acts 1999, 76th Leg., ch. 855, § 4, eff. Sept. 1, 1999. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 3, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.24, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

Statutes in Context § 149C

Section 149C provides the procedures for removing an independent executor. The court may order the costs, expenses, and reasonable attorney's fees of the party seeking removal to be paid out of the estate. The removed independent executor is entitled to reimbursement for expenses assuming the defense is in good faith even if the person is removed from office.

In *Kappus v. Kappus*, 284 S.W.3d 831 (Tex. 2009), the Texas Supreme examined § 149C and pointed out that “conflict of interest,” either actual or potential, is not one of the listed grounds for removal and thus removal could not be based on this ground. Accordingly, the 2011 Legislature added subsection (a)(7) to permit removal when the independent executor becomes incapable of properly performing fiduciary duties due to a material conflict of interest.

§ 149C. Removal of Independent Executor

(a) The county court, as that term is defined by Section 3 of this code, on its own motion or on motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place fixed in the notice, may remove an independent executor when:

(1) the independent executor fails to return within ninety days after qualification, unless such time is extended by order of the court, either an inventory of the property of the estate and list of claims that have come to the independent executor’s knowledge or an affidavit in lieu of the inventory, appraisal, and list of claims;

(2) sufficient grounds appear to support belief that the independent executor has misapplied or embezzled, or that the independent executor is about to misapply or embezzle, all or any part of the property committed to the independent executor’s care;

(3) the independent executor fails to make an accounting which is required by law to be made;

(4) the independent executor fails to timely file the affidavit or certificate required by Section 128A of this code;

(5) the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of the independent executor’s duties;

(6) the independent executor becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes legally incapacitated from properly performing the independent executor’s fiduciary duties; or

(7) the independent executor becomes incapable of properly performing the independent executor’s fiduciary duties due to a material conflict of interest.

(b) The order of removal shall state the cause of removal and shall direct by order the disposition of the assets remaining in the name or under the control of the removed executor. The order of removal shall require that letters issued to the removed executor shall be surrendered and that all letters shall be canceled of record. If an independent executor is removed by the court under this section, the court may, on application, appoint a successor independent executor as provided by Section 154A of this code.

(c) An independent executor who defends an action for his removal in good faith, whether successful or not, shall be allowed out of the estate his necessary expenses and disbursements, including reasonable attorney’s fees, in the removal proceedings.

(d) Costs and expenses incurred by the party seeking removal incident to removal of an independent executor appointed without bond, including reasonable attorney’s fees and expenses, may be paid out of the estate.

Added by Acts 1979, 66th Leg., p. 1751, ch. 713, § 19, eff. Aug. 27, 1979. Subsec. (d) added by Acts 1987, 70th Leg., ch. 719, § 1, eff. Aug. 31, 1987. Subsec. (a) amended by Acts 1989, 71st Leg., ch. 1035, § 10, eff. Sept. 1, 1989; amended by Acts 1995, 74th Leg., ch. 1039, § 10, eff. Sept. 1, 1995; amended by Acts 1999, 76th Leg., ch. 855, § 5, eff. Sept. 1, 1999. Subsec. (a) amended by Acts 2007, 80th Leg., ch. 801, § 3, eff. Sept. 1, 2007. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 3, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.25, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 149D. Distribution of Remaining Estate Pending Judicial Discharge

(a) On or before filing an action under Section 149E of this code, the independent executor must distribute to the beneficiaries of the estate any of the remaining assets or property of the estate that remains in the hands of the independent executor after all of the estate’s debts have been paid, except for a reasonable reserve of assets that the independent executor may retain in a fiduciary capacity pending court approval of the final account.

(b) The court may review the amount of assets on reserve and may order the independent executor to make further distributions under this section.

Added by Acts 1999, 76th Leg., ch. 855, § 6, eff. Sept. 1, 1999. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 3, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

Statutes in Context § 149E

Section 149E permits the court to discharge an independent executor so that the executor will have a court order indicating that he or she is not liable for any matters relating to the past administration of the estate which have been fully and fairly disclosed.

§ 149E. Judicial Discharge of Independent Executor

(a) After an estate has been administered and if there is no further need for an independent administration of the estate, the independent executor of the estate may file an action for declaratory judgment

under Chapter 37, Civil Practice and Remedies Code, seeking to discharge the independent executor from any liability involving matters relating to the past administration of the estate that have been fully and fairly disclosed.

(b) On the filing of an action under this section, each beneficiary of the estate shall be personally served with citation, except for a beneficiary who has waived the issuance and service of citation.

(c) In a proceeding under this section, the court may require the independent executor to file a final account that includes any information the court considers necessary to adjudicate the independent executor's request for a discharge of liability. The court may audit, settle, or approve a final account filed under this subsection.

Added by Acts 1999, 76th Leg., ch. 855, § 6, eff. Sept. 1, 1999. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 3, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 149F. Court Costs and Other Charges Related to Final Account in Judicial Discharge

(a) Except as ordered by the court, the independent executor is entitled to pay from the estate legal fees, expenses, or other costs of a proceeding incurred in relation to a final account required under Section 149E of this code.

(b) The independent executor shall be personally liable to refund any amount not approved by the court as a proper charge against the estate.

Added by Acts 1999, 76th Leg., ch. 855, § 6, eff. Sept. 1, 1999. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 3, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 149G. Rights and Remedies Cumulative

The rights and remedies conferred by Sections 149D, 149E, and 149F of this code are cumulative of other rights and remedies to which a person interested in the estate may be entitled under law.

Added by Acts 1999, 76th Leg., ch. 855, § 6, eff. Sept. 1, 1999. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 3, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 150. Partition and Distribution or Sale of Property Incapable of Division

If the will does not distribute the entire estate of the testator, or provide a means for partition of said estate, or if no will was probated, the independent executor may file his final account in the county court in which the will was probated, or if no will was probated, in the county court in which the order appointing the independent executor was entered, and ask for either partition and distribution of the estate or an order of sale of any portion of the estate alleged by the independent executor and found by the court to be incapable of a fair and equal partition and distribution, or both; and the

same either shall be partitioned and distributed or shall be sold, or both, in the manner provided for the partition and distribution of property and the sale of property incapable of division in estates administered under the direction of the county court.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1977, 65th Leg., p. 1065, ch. 390, § 7, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1752, ch. 713, § 20, eff. Aug. 27, 1979. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 3, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

Statutes in Context § 151 & § 152

There is no requirement that an independent administration be closed. The Code, however, provides two methods for closing the administration. (1) Section 151 permits the independent executor to file a closing report affidavit or a notice of closing affidavit. The court takes no action on the affidavit unless an interested party files an objection within thirty days. (2) Section 152 permits an heir or beneficiary to petition the court for an order closing the estate.

Case law has indicated that the closing methods of §§ 151 and 152 are not exclusive. Final distribution of the estate after creditors are paid results in the closing of the estate by operation of law. *In re Estate of Teinert*, 251 S.W.3d 66 (Tex. App.—Waco 2008, pet. denied).

Section 151(d) prohibits an independent executor from requiring that a beneficiary or heir sign a release or waiver of rights against the executor as a condition of delivery of the property.

§ 151. Closing Independent Administration by Closing Report or Notice of Closing Estate

(a) **Filing of Affidavit.** Filing of Closing Report or Notice of Closing Estate. When all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the hands of the independent executor will permit, when there is no pending litigation, and when the independent executor has distributed to the persons entitled thereto all assets of the estate, if any, remaining after payment of debts, the independent executor may file with the court a closing report or a notice of closing of the estate.

(a-1) **Closing Report.** An independent executor may file a closing report verified by affidavit that:

(1) shows:

(A) the property of the estate which came into the possession of the independent executor;

(B) the debts that have been paid;

(C) the debts, if any, still owing by the estate;

(D) the property of the estate, if any, remaining on hand after payment of debts; and

(E) the names and residences of the persons to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed; and

(2) includes signed receipts or other proof of delivery of property to the distributees named in the closing report if the closing report reflects that there was property remaining on hand after payment of debts.

(b) Notice of Closing Estate.

(1) Instead of filing a closing report under Subsection (a-1) of this section, an independent executor may file a notice of closing estate verified by affidavit that states:

(A) that all debts known to exist against the estate have been paid or have been paid to the extent permitted by the assets in the independent executor's possession;

(B) that all remaining assets of the estate, if any, have been distributed; and

(C) the names and addresses of the distributees to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed.

(2) Before filing the notice, the independent executor shall provide to each distributee of the estate a copy of the notice of closing estate. The notice of closing estate filed by the independent executor must include signed receipts or other proof that all distributees have received a copy of the notice of closing estate.

(c) Effect of Filing Closing Report or Notice of Closing Estate.

(1) The independent administration of an estate is considered closed 30 days after the date of the filing of a closing report or notice of closing estate unless an interested person files an objection with the court within that time. If an interested person files an objection within the 30-day period, the independent administration of the estate is closed when the objection has been disposed of or the court signs an order closing the estate.

(2) The closing of an independent administration by filing of a closing report or notice of closing estate terminates the power and authority of the independent executor, but shall not relieve the independent executor from liability for any mismanagement of the estate or from liability for any false statements contained in the report or notice.

(3) When a closing report or notice of closing estate has been filed, persons dealing with properties of the estate, or with claims against the estate, shall deal directly with the distributees of the estate; and the acts of the distributees with respect to the properties or claims shall in all ways be valid and binding as regards the persons with whom they

deal, notwithstanding any false statements made by the independent executor in the report or notice.

(4) If the independent executor is required to give bond, the independent executor's filing of the closing report and proof of delivery, if required, automatically releases the sureties on the bond from all liability for the future acts of the principal. The filing of a notice of closing estate does not release the sureties on the bond of an independent executor.

(d) Authority to Transfer Property of a Decedent After Filing the Closing Report or Notice of Closing Estate.

An independent executor's closing report or notice of closing estate shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the distributees described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. The distributees described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

(e) Delivery Subject to Receipt or Proof of Delivery.

An independent executor may not be required to deliver tangible or intangible personal property to a distributee unless the independent executor receives, at or before the time of delivery of the property, a signed receipt or other proof of delivery of the property to the distributee. An independent executor may not require a waiver or release from the distributee as a condition of delivery of property to a distributee.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1752, ch. 713, § 21, eff. Aug. 27, 1979. Amended by Acts 1991, 72nd Leg., ch. 895, § 11, eff. Sept. 1, 1991; Subsec. (a) amended by Acts 1995, 74th Leg., ch. 642, § 5, eff. Sept. 1, 1995. Subsec. (e) repealed by Acts 2007, 80th Leg., ch. 301, § 7, eff. Sept. 1, 2007. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 3, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.26, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

**Statutes in Context
§ 152**

See the Statutes in Context to § 151.

§ 152. Closing Independent Administration Upon Application by Distributee

(a) At any time after an estate has been fully administered and there is no further need for an independent administration of such estate, any distributee may file an application to close the administration; and, after citation upon the independent

executor, and upon hearing, the court may enter an order:

- (1) requiring the independent executor to file a verified report meeting the requirements of Section 151(a) of this code;
- (2) closing the administration;
- (3) terminating the power of the independent executor to act as such; and
- (4) releasing the sureties on any bond the independent executor was required to give from all liability for the future acts of the principal.

(b) The order of the court closing the independent administration shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the persons described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. The persons described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset may enforce their right to the payment or transfer by suit.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1752, ch. 713, § 22, eff. Aug. 27, 1979. Subsec. (a) amended by Acts 1991, 72nd Leg., ch. 895, § 12, eff. Sept. 1, 1991. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 3, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 153. Issuance of Letters

At any time before the authority of an independent executor has been terminated in the manner set forth in the preceding Sections, the clerk shall issue such number of letters testamentary as the independent executor shall request.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 3, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 154. Powers of an Administrator Who Succeeds an Independent Executor

(a) **Grant of Powers by Court.** Whenever a person has died, or shall die, testate, owning property in Texas, and such person's will has been or shall be admitted to probate by the proper court, and such probated will names an independent executor or executors, or trustees acting in the capacity of independent executors, to execute the terms and provisions of said will, and such will grants to such independent executor, or executors, or trustees acting in the capacity of independent executors, the power to raise or borrow money and to mortgage, and such independent executor, or executors, or trustees, have died or shall die, resign, fail to qualify, or be removed from office, leaving unexecuted parts or portions of the will of the testator, and an administrator

with the will annexed is appointed by the court having jurisdiction of the estate, and an administrator's bond is filed and approved by the court, then in all such cases, the court may, in addition to the powers conferred upon such administrator under other provisions of the laws of Texas, authorize, direct, and empower such administrator to do and perform the acts and deeds, clothed with the rights, powers, authorities, and privileges, and subject to the limitations, set forth in the subsequent portions of this Section.

(b) **Power to Borrow Money and Mortgage or Pledge Property.** The court, upon application, citation, and hearing, may, by its order, authorize, direct, and empower such administrator to raise or borrow such sums of money and incur such obligations and debts as the court shall, in its said order, direct, and to renew and extend same from time to time, as the court, upon application and order, shall provide; and, if authorized by the court's order, to secure such loans, obligations, and debts, by pledge or mortgage upon property or assets of the estate, real, personal, or mixed, upon such terms and conditions, and for such duration of time, as the court shall deem to be to the best interest of the estate, and by its order shall prescribe; and all such loans, obligations, debts, pledges, and mortgages shall be valid and enforceable against the estate and against such administrator in his official capacity.

(c) **Powers Limited to Those Granted by the Will.** The court may order and authorize such administrator to have and exercise the powers and privileges set forth in the preceding Subsections hereof only to the extent that same are granted to or possessed by the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the probated will of such deceased person, and then only in such cases as it appears, at the hearing of the application, that at the time of the appointment of such administrator, there are outstanding and unpaid obligations and debts of the estate, or of the independent executor, or executors, or trustees, chargeable against the estate, or unpaid expenses of administration, or when the court appointing such administrator orders the business of such estate to be carried on and it becomes necessary, from time to time, under orders of the court, for such administrator to borrow money and incur obligations and indebtedness in order to protect and preserve the estate.

(d) **Powers Other Than Those Relating to Borrowing Money and Mortgaging or Pledging Property.** The court, in addition, may, upon application, citation, and hearing, order, authorize and empower such administrator to assume, exercise, and discharge, under the orders and directions of said court, made from time to time, all or such part of the rights, powers, and authorities vested in and delegated to, or possessed by, the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the will of such deceased person, as the court finds to be to the best interest of the estate and shall, from time to time, order and direct.

(e) **Application for Grant of Powers.** The granting to such administrator by the court of some, or all, of the powers and authorities set forth in this Section shall be upon application filed by such administrator with the county clerk, setting forth such facts as, in the judgment of the administrator, require the granting of the power or authority requested.

(f) **Citation.** Upon the filing of such application, the clerk shall issue citation to all persons interested in the estate, stating the nature of the application, and requiring such persons to appear on the return day named in such citation and show cause why such application should not be granted, should they choose to do so. Such citation shall be served by posting.

(g) **Hearing and Order.** The court shall hear such application and evidence thereon, upon the return day named in the citation, or thereafter, and, if satisfied a necessity exists and that it would be to the best interest of the estate to grant said application in whole or in part, the court shall so order; otherwise, the court shall refuse said application.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 3, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 154A. Court-Appointed Successor Independent Executor

(a) If the will of a person who dies testate names an independent executor who, having qualified, fails for any reason to continue to serve, or is removed for cause by the court, and the will does not name a successor independent executor or if each successor executor named in the will fails for any reason to qualify as executor or indicates by affidavit filed with the application for an order continuing independent administration his inability or unwillingness to serve as successor independent executor, all of the distributees of the decedent as of the filing of the application for an order continuing independent administration may apply to the county court for the appointment of a qualified person, firm, or corporation to serve as successor independent executor. If the county court finds that continued administration of the estate is necessary, the county court shall enter an order continuing independent administration and appointing the person, firm, or corporation designated in the application as successor independent executor, unless the county court finds that it would not be in the best interest of the estate to do so. Such successor shall serve with all of the powers and privileges granted to his predecessor independent executor.

(b) If a distributee described in this section is an incapacitated person, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the county court finds that either the continuing of independent administration or the appointment of the person, firm, or corporation designated in the application as successor independent

executor would not be in the best interest of the incapacitated person, then, notwithstanding anything to the contrary in Subsection (a) of this section, the county court shall not enter an order continuing independent administration of the estate. If the distributee is an incapacitated person and has no guardian of the person, the court may appoint a guardian ad litem to make application on behalf of the incapacitated person if the county court considers such an appointment necessary to protect the interest of such distributee.

(c) If a trust is created in the decedent's will, the person or class of persons first eligible to receive the income from the trust, determined as if the trust were to be in existence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be deemed to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence upon the termination of such trust, and are authorized to apply for an order continuing independent administration on behalf of the trust without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence upon the termination of such trust.

(d) If a life estate is created either in the decedent's will or by law, and if a life tenant is living at the time of the filing of the application for an order continuing independent administration, then the life tenant or life tenants, determined as if the life estate were to commence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be deemed to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for an order continuing independent administration on behalf of the estate without the consent or approval of any remainderman.

(e) If a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, for the purposes of determining who shall be the distributee under this section, it shall be presumed that the distributees living at the time of the filing of the application for an order continuing independent administration of the decedent's estate survived the decedent for the prescribed period.

(f) In the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees under this section, it shall be presumed that no distributee living at the time the application for an order continuing independent administration of the decedent's estate is filed shall subsequently disclaim any portion of such distributee's interest in the decedent's estate.

(g) If a distributee of a decedent's estate should die, and if by virtue of such distributee's death such distributee's share of the decedent's estate shall become payable to such distributee's estate, then the deceased distributee's personal representative may sign the

application for an order continuing independent administration of the decedent's estate under this section.

(h) If a successor independent executor is appointed pursuant to this section, then, unless the county court shall waive bond on application for waiver, the successor independent executor shall be required to enter into bond payable to and to be approved by the judge and his or her successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety.

(i) Absent proof of fraud or collusion on the part of a judge, the judge may not be held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as a successor independent executor under this section. Section 36 of this code does not apply to an appointment of a successor independent executor under this section.

Added by Acts 1977, 65th Leg., p. 1066, ch. 390, § 8, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1753, ch. 713, § 23, eff. Aug. 27, 1979. Subsec. (i) added by Acts 1993, 73rd Leg., ch. 846, § 16, eff. Sept. 1, 1993; Subsec. (b) amended by Acts 1995, 74th Leg., ch. 1039, § 11, eff. Sept. 1, 1995. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 3, eff. Jan. 1, 2014 and amended by deleting the last sentence of subsection (i) by Acts 2009, 81st Leg., ch. 680, § 8, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

Part 5. Administration of Community Property

Statutes in Context § 155 & § 156

Sections 155-156 provide that no administration is necessary for community property if the spouse died intestate and all community property passes to the surviving spouse (that is, either the deceased spouse had no surviving descendants or all of the deceased spouse's descendants were also descendants of the surviving spouse).

§ 155. No Necessity for Administration of Community Property

When a husband or wife dies intestate and the community property passes to the survivor, no administration thereon shall be necessary. Nothing in this part of this chapter prohibits the administration of community property under other provisions of this code relating to the administration of an estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 980, ch. 173, § 11,

eff. Jan. 1, 1972. Amended by Acts 2007, 80th Leg., ch. 301, § 1, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 156. Liability of Community Property for Debts

The community property subject to the sole or joint management, control, and disposition of a spouse during marriage continues to be subject to the liabilities of that spouse upon death. In addition, the interest that the deceased spouse owned in any other nonexempt community property passes to his or her heirs or devisees charged with the debts which were enforceable against such deceased spouse prior to his or her death. The surviving spouse or personal representative shall keep a separate, distinct account of all community debts allowed or paid in the administration and settlement of such estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 980, ch. 173, § 11, eff. Jan. 1, 1972. Acts 2007, 80th Leg., ch. 301, § 2, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context § 160

Section 160 permits the surviving spouse to administer the community property in both testate and intestate situations provided no personal representative has yet been appointed. This procedure is often called an unqualified community administration.

§ 160. Powers of Surviving Spouse When No Administration Is Pending

(a) When no one has qualified as executor or administrator of the estate of a deceased spouse, the surviving spouse, whether the husband or wife, as the surviving partner of the marital partnership has power to sue and be sued for the recovery of community property; to sell, mortgage, lease, and otherwise dispose of community property for the purpose of paying community debts; to collect claims due to the community estate; and has such other powers as shall be necessary to preserve the community property, discharge community obligations, and wind up community affairs.

(b) If an affidavit stating that the affiant is the surviving spouse and that no one has qualified as executor or administrator of the estate of the deceased spouse is furnished to a person owing money to the community estate for current wages at the time of the death of the deceased spouse, the person making payment or delivering to the affiant the deceased spouse's final paycheck for wages, including unpaid sick pay or vacation pay, if any, is released from liability to the same extent as if the payment or delivery was made to a personal representative of the deceased spouse. The person is not required to inquire into the

truth of the affidavit. The affiant to whom the payment or delivery is made is answerable to any person having a prior right and is accountable to any personal representative who is appointed. The affiant is liable for any damage or loss to any person that arises from a payment or delivery made in reliance on the affidavit.

(c) This section does not affect the disposition of the property of the deceased spouse.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 846, § 17, eff. Sept. 1, 1993. Subsec. (a) amended by Acts 2007, 80th Leg., ch. 301, § 3, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§§ 161-167 & 169-175 [repealed]

Sections 161-167 & 169-175 provided a procedure known as *qualified community administration*. The surviving spouse had to formally qualify to obtain powers similar to those of an independent executor but only with respect to the community property. This procedure was available only if (1) the deceased spouse's will named no executor, (2) the executor named in the deceased spouse's will failed to serve, or (3) the deceased spouse died intestate. The 2007 Legislature abolished this procedure for estates of decedents who die on or after September 1, 2007.

§ 161 [repealed]. Community Administration

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 980, ch. 173, § 11, eff. Jan. 1, 1972. Repealed Acts 2007, 80th Leg., ch. 301, § 7, eff. Sept. 1, 2007.

§ 162 [repealed]. Application for Community Administration

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 980, ch. 173, § 11, eff. Jan. 1, 1972. Repealed Acts 2007, 80th Leg., ch. 301, § 7, eff. Sept. 1, 2007.

§ 163 [repealed]. Appointment of Appraisers

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 980, ch. 173, § 11, eff. Jan. 1, 1972. Repealed Acts 2007, 80th Leg., ch. 301, § 7, eff. Sept. 1, 2007.

§ 164 [repealed]. Inventory, Appraisal, and List of Claims

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 980, ch. 173, § 11, eff. Jan. 1, 1972. Repealed Acts 2007, 80th Leg., ch. 301, § 7, eff. Sept. 1, 2007.

§ 165 [repealed]. Bond of Community Administrator

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1965, 59th Leg., p. 717, ch. 339, § 1, eff. June 9, 1965; Acts 1971, 62nd Leg., p. 982, ch. 173, § 12, eff. Jan. 1, 1972. Repealed Acts 2007, 80th Leg., ch. 301, § 7, eff. Sept. 1, 2007.

§ 166 [repealed]. Order of the Court

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed Acts 2007, 80th Leg., ch. 301, § 7, eff. Sept. 1, 2007.

§ 167 [repealed]. Powers of Community Administrator

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 982, ch. 173, § 13, eff. Jan. 1, 1972. Repealed Acts 2007, 80th Leg., ch. 301, § 7, eff. Sept. 1, 2007.

§ 168. Accounting by Survivor

The survivor shall keep a fair and full account and statement of all community debts and expenses paid by him, and of the disposition made of the community property; and, upon final partition of such estate, shall deliver to the heirs, devisees or legatees of the deceased spouse their interest in such estate, and the increase and profits of the same, after deducting therefrom the proportion of the community debts chargeable thereto, unavoidable losses, necessary and reasonable expenses, and a reasonable commission for the management of the same. The survivor may not be liable for losses sustained by the estate, except when the survivor has been guilty of gross negligence or bad faith.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 982, ch. 173, § 13, eff. Jan. 1, 1972; Acts 2007, 80th Leg., ch. 301, § 4, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 169 [repealed]. Payment of Debts

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed Acts 2007, 80th Leg., ch. 301, § 7, eff. Sept. 1, 2007.

§ 170 [repealed]. New Appraisal or New Bond

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed Acts 2007, 80th Leg., ch. 301, § 7, eff. Sept. 1, 2007.

§ 171 [repealed]. Creditor May Require Exhibit

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed Acts 2007, 80th Leg., ch. 301, § 7, eff. Sept. 1, 2007.

§ 172 [repealed]. Action of Court Upon Exhibit

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed Acts 2007, 80th Leg., ch. 301, § 7, eff. Sept. 1, 2007.

§ 173 [repealed]. Approval of Exhibit

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed Acts 2007, 80th Leg., ch. 301, § 7, eff. Sept. 1, 2007.

§ 174 [repealed]. Failure to File Exhibit

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed Acts 2007, 80th Leg., ch. 301, § 7, eff. Sept. 1, 2007.

§ 175 [repealed]. Termination of Community Administration

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed Acts 2007, 80th Leg., ch. 301, § 7, eff. Sept. 1, 2007.

§ 176. Remarriage of Surviving Spouse

The remarriage of a surviving spouse shall not terminate the surviving spouse's powers as a surviving partner.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 39, ch. 24, § 23, eff. Aug. 27, 1979; Acts 2007, 80th Leg., ch. 301, § 5, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 177. Distribution of Powers Among Personal Representatives and Surviving Spouse

When a personal representative of the estate of a deceased spouse has duly qualified, the personal representative is authorized to administer, not only the separate property of the deceased spouse, but also the community property which was by law under the management of the deceased spouse during the continuance of the marriage and all of the community property that was by law under the joint control of the spouses during the continuance of the marriage. The surviving spouse, as surviving partner of the marital partnership, is entitled to retain possession and control of all community property which was legally under the sole management of the surviving spouse during the continuance of the marriage and to exercise over that property all the powers elsewhere in this part of this code authorized to be exercised by the surviving spouse when there is no administration pending on the estate of the deceased spouse. The surviving spouse may by written instrument filed with the clerk waive any right to exercise powers as community survivor, and in such event the personal representative of the deceased spouse shall be authorized to administer upon the entire community estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 982, ch. 173, § 13, eff. Jan. 1, 1972. Subsec. (b) amended by Acts 2001, 77th Leg., ch. 10, § 2, eff. Sept. 1, 2001; Acts 2007, 80th Leg., ch. 301, § 6, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Chapter VII. Executors and Administrators

Part 1. Appointment and Issuance of Letters

**Statutes in Context
§ 178**

Letters are typically one-page documents issued under the seal of the court which indicate that the personal representative has been appointed by the court and has qualified. See § 183. The personal representative may then show this certificate as evidence of the representative's authority when dealing with estate matters or collecting estate property. Third parties who deal with a person who has letters are usually protected from liability to the heirs or beneficiaries if the executor mismanages the property. See § 188. Consequently, third parties often want to retain an original letter for their files. Because the cost of letters is nominal, often under \$10.00 per copy, the personal representative should estimate the number of letters needed before qualifying and obtain all the necessary letters at the same time to prevent multiple trips to the courthouse and the associated time and monetary cost.

Section 178 enumerates the circumstances under which the court will grant either letters testamentary or letters of administration. Note that if letters of administration are issued with respect to a testate decedent, the administration is said to be with the will annexed (also called an administration c.t.a. (*cum testamento annexo*)).

§ 178. When Letters Testamentary or of Administration Shall Be Granted

(a) Letters Testamentary. When a will has been probated, the court shall, within twenty days thereafter, grant letters testamentary, if permitted by law, to the executor or executors appointed by such will, if any there be, or to such of them as are not disqualified, and are willing to accept the trust and qualify according to law.

(b) Letters of Administration. When a person shall die intestate, or where no executor is named in a will, or where the executor is dead or shall fail to accept and qualify within twenty days after the probate of the will, or shall fail for a period of thirty days after the death of the testator to present the will for probate and the court finds there was no good cause for not presenting the will for probate during that period, then administration of the estate of such intestate, or administration with the will annexed of the estate of such testator, shall be granted, should administration appear to be necessary. No administration of any estate shall be granted unless there exists a necessity therefor,

such necessity to be determined by the court hearing the application. Such necessity shall be deemed to exist if two or more debts exist against the estate, or if or when it is desired to have the county court partition the estate among the distributees, or if the administration is necessary to receive or recover funds or other property due the estate, but mention of these three instances of necessity for administration shall not prevent the court from finding other instances of necessity upon proof before it.

(c) Failure to Issue Letters Within Prescribed Time. Failure of a court to issue letters testamentary within the twenty day period prescribed by this Section shall not affect the validity of any letters testamentary which are issued subsequent to such period, in accordance with law.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Subsec. (b) amended by Acts 2007, 80th Leg., ch. 1170, § 7.02, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 179. Opposition to Grant of Letters of Administration

When application is made for letters of administration, any interested person may at any time before the application is granted, file the person's opposition thereto in writing, and may apply for the grant of letters to the person or to any other person; and, upon the trial, the court shall grant letters to the person that may seem best entitled to them, having regard to applicable provisions of this Code, without further notice than that of the original application.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 2007, 80th Leg., ch. 1170, § 7.03, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 180. Effect of Finding that No Necessity for Administration Exists

When application is filed for letters of administration and the court finds that there exists no necessity for administration of the estate, the court shall recite in its order refusing the application that no necessity for administration exists. An order of the court containing such recital shall constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and to persons purchasing or otherwise dealing with the estate, for payment or transfer to the distributees of the decedent, and such distributees shall be entitled to enforce their right to such payment or transfer by suit.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 181. Orders Granting Letters Testamentary or of Administration

When letters testamentary or of administration are granted, the court shall make an order to that effect, which shall specify:

- (a) The name of the testator or intestate; and
- (b) The name of the person to whom the grant of letters is made; and
- (c) If bond is required, the amount thereof; and
- (d) If any interested person shall apply to the court for the appointment of an appraiser or appraisers, or if the court deems an appraisal necessary, the name of not less than one nor more than three disinterested persons appointed to appraise the estate and return such appraisement to the court; and
- (e) That the clerk shall issue letters in accordance with said order when the person to whom said letters are granted shall have qualified according to law.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 1815, ch. 697, § 1, eff. Aug. 28, 1967; Acts 1969, 61st Leg., p. 1922, ch. 641, § 10, eff. June 12, 1969. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context § 182

The clerk will not issue letters until the personal representative qualifies, that is, posts any required bond and takes the oath of office. See § 189.

§ 182. When Clerk Shall Issue Letters

Whenever an executor or administrator has been qualified in the manner required by law, the clerk of the court granting the letters testamentary or of administration shall forthwith issue and deliver the letters to such executor or administrator. When two or more persons qualify as executors or administrators, letters shall be issued to each of them so qualifying.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 183. What Constitutes Letters

Letters testamentary or of administration shall be a certificate of the clerk of the court granting the same, attested by the seal of such court, and stating that the executor or administrator, as the case may be, has duly qualified as such as the law requires, the date of such qualification, and the name of the deceased.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 186. Letters or Certificate Made Evidence

Letters testamentary or of administration or a certificate of the clerk of the court which granted the same, under the seal of such court, that said letters have

been issued, shall be sufficient evidence of the appointment and qualification of the personal representative of an estate and of the date of qualification.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 28, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 187. Issuance of Other Letters

When letters have been destroyed or lost, the clerk shall issue other letters in their stead, which shall have the same force and effect as the original letters. The clerk shall also issue any number of letters as and when requested by the person or persons who hold such letters.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 188. Rights of Third Persons Dealing With Executors or Administrators

When an executor or administrator, legally qualified as such, has performed any acts as such executor or administrator in conformity with his authority and the law, such acts shall continue to be valid to all intents and purposes, so far as regards the rights of innocent purchasers of any of the property of the estate from such executor or administrator, for a valuable consideration, in good faith, and without notice of any illegality in the title to the same, notwithstanding such acts or the authority under which they were performed may afterward be set aside, annulled, and declared invalid.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Part 2. Oaths and Bonds of Personal Representatives

Statutes in Context § 189

Section 189 explains that a personal representative is "qualified" after posting any required bond and taking the oath of office.

§ 189. How Executors, Administrators, and Guardians Shall Qualify

A personal representative shall be deemed to have duly qualified when he shall have taken and filed his oath and made the required bond, had the same approved by the judge, and filed it with the clerk. In case of an executor who is not required to make bond, he shall be deemed to have duly qualified when he shall have taken and filed his oath required by law.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 29, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context § 190

Section 190 sets forth the oaths which personal representatives must take and file before receiving letters.

§ 190. Oaths of Executors and Administrators

(a) Executor, or Administrator With Will Annexed. Before the issuance of letters testamentary or of administration with the will annexed, the person named as executor, or appointed administrator with the will annexed, shall take and subscribe an oath in form substantially as follows: "I do solemnly swear that the writing which has been offered for probate is the last will of _____, so far as I know or believe, and that I will well and truly perform all the duties of executor of said will (or of administrator with the will annexed, as the case may be) of the estate of said _____."

(b) Administrator. Before the issuance of letters of administration, the person appointed administrator shall take and subscribe an oath in form substantially as follows: "I do solemnly swear that _____, deceased, died without leaving any lawful will (or that the named executor in any such will is dead or has failed to offer the same for probate, or to accept and qualify as executor, within the time required, as the case may be), so far as I know or believe, and that I will well and truly perform all the duties of administrator of the estate of said deceased."

(c) Temporary Administrator. Before the issuance of temporary letters of administration, the person appointed temporary administrator shall take and subscribe an oath in form substantially as follows: "I do solemnly swear that I will well and truly perform the duties of temporary administrator of the estate of _____, deceased, in accordance with the law, and with the order of the court appointing me such administrator."

(d) Filing and Recording of Oaths. All such oaths may be taken before any officer authorized to administer oaths, and shall be filed with the clerk of the court granting the letters, and shall be recorded in the judge's probate docket.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Subsec. (b) amended by Acts 2007, 80th Leg., ch. 1170, § 7.04, eff. Sept. 1, 2007. Subsec. (d) amended by Acts 2009, 81st Leg., ch. 602, § 8, eff. June 19, 2009. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 192

The personal representative should take the oath and post any required bond within 20 days of the order granting letters under § 192.

§ 192. Time for Taking Oath and Giving Bond

The oath of a personal representative may be taken and subscribed, or his bond may be given and approved, at any time before the expiration of twenty days after the date of the order granting letters testamentary or of administration, as the case may be, or before such letters shall have been revoked for a failure to qualify within the time allowed. All such oaths may be taken before any person authorized to administer oaths under the laws of this State.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 30, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 194

Personal representatives in Texas must post bond unless one of the exceptions in § 195 applies. The bond is to protect the estate creditors, beneficiaries, and heirs from the personal representative wasting, mismanaging, or misapplying the estate. Section 194 explains how the court establishes the amount of the bond and the methods for posting the bond.

§ 194. Bonds of Personal Representatives of Estates

Except when bond is not required under the provisions of this Code, before the issuance of letters testamentary or of administration, the recipient of letters shall enter into bond conditioned as required by law, payable to the county judge or probate judge of the county in which the probate proceedings are pending and to his successors in office. Such bonds shall bear the written approval of either of such judges in his official capacity, and shall be executed and approved in accordance with the following rules:

1. Court to Fix Penalty. The penalty of the bond shall be fixed by the judge, in an amount deemed sufficient to protect the estate and its creditors, as hereinafter provided.

2. Bond to Protect Creditors Only, When. If the person to whom letters testamentary or of administration is granted is also entitled to all of the decedent's estate, after payment of debts, the bond shall be in an amount sufficient to protect creditors only, notwithstanding the rules applicable generally to bonds of personal representatives of estates.

3. Before Fixing Penalty, Court to Hear Evidence. In any case where a bond is, or shall be,

required of a personal representative of an estate, the court shall, before fixing the penalty of the bond, hear evidence and determine:

(a) The amount of cash on hand and where deposited, and the amount of cash estimated to be needed for administrative purposes, including operation of a business, factory, farm or ranch owned by the estate, and expenses of administration for one (1) year; and

(b) The revenue anticipated to be received in the succeeding twelve (12) months from dividends, interest, rentals, or use of real or personal property belonging to the estate and the aggregate amount of any installments or periodical payments to be collected; and

(c) The estimated value of certificates of stock, bonds, notes, or securities of the estate or ward, the name of the depository, if any, in which said assets are held for safekeeping, the face value of life insurance or other policies payable to the person on whose estate administration is sought, or to such estate, and such other personal property as is owned by the estate, or by one under disability; and

(d) The estimated amount of debts due and owing by the estate or ward.

4. Penalty of Bond. The penalty of the bond shall be fixed by the judge in an amount equal to the estimated value of all personal property belonging to the estate, or to the person under disability, together with an additional amount to cover revenue anticipated to be derived during the succeeding twelve (12) months from interest, dividends, collectible claims, the aggregate amount of any installments or periodical payments exclusive of income derived or to be derived from federal social security payments, and rentals for use of real and personal property; provided, that the penalty of the original bond shall be reduced in proportion to the amount of cash or value of securities or other assets authorized or required to be deposited or placed in safekeeping by order of court, or voluntarily made by the representative or by his sureties as hereinafter provided in Subdivisions 6 and 7 hereof.

5. Agreement as to Deposit of Assets. It shall be lawful, and the court may require such action when deemed in the best interest of an estate, for a personal representative to agree with the surety or sureties, either corporate or personal, for the deposit of any or all cash, and safekeeping of other assets of the estate in a financial institution as defined by Section 201.101, Finance Code, with its main office or a branch office in this state and qualified to act as a depository in this State under the laws of this State or of the United States, if such deposit is otherwise proper, in such manner as to prevent the withdrawal of such moneys or other assets without the written consent of the surety, or an order of the court made on such notice to the surety as the court shall direct. No such agreement shall in any manner release from or change the liability of the principal or sureties as established by the terms of the bond.

6. Deposits Authorized or Required, When. Cash or securities or other personal assets of an estate or which an estate is entitled to receive may, and if deemed by the court in the best interest of such estate shall, be deposited or placed in safekeeping as the case may be, in one or more of the depositories hereinabove described upon such terms as shall be prescribed by the court. The court in which the proceedings are pending, upon its own motion, or upon written application of the representative or of any other person interested in the estate may authorize or require additional assets of the estate then on hand or as they accrue during the pendency of the probate proceedings to be deposited or held in safekeeping as provided above. The amount of the bond of the personal representative shall be reduced in proportion to the cash so deposited, or the value of the securities or other assets placed in safekeeping. Such cash so deposited, or securities or other assets held in safekeeping, or portions thereof, may be withdrawn from a depository only upon order of the court, and the bond of the personal representative shall be increased in proportion to the amount of cash or the value of securities or other assets so authorized to be withdrawn.

7. Representative May Deposit Cash or Securities of His Own in Lieu of Bond. It shall be lawful for the personal representative of an estate, in lieu of giving surety or sureties on any bond which shall be required of him, or for the purpose of reducing the amount of such bond, to deposit out of his own assets cash or securities acceptable to the court, with a depository such as named above or with any other corporate depository approved by the court, if such deposit is otherwise proper, said deposit to be equal in amount or value to the amount of the bond required, or the bond reduced by the value of assets so deposited.

8. Rules Applicable to Making and Handling Deposits in Lieu of Bond or to Reduce Penal Sum of Bond. (a) A receipt for a deposit in lieu of surety or sureties shall be issued by the depository, showing the amount of cash or, if securities, the amount and description thereof, and agreeing not to disburse or deliver the same except upon receipt of a certified copy of an order of the court in which the proceedings are pending, and such receipt shall be attached to the representative's bond and be delivered to and filed by the county clerk after approval by the judge.

(b) The amount of cash or securities on deposit may be increased or decreased, by order of the court from time to time, as the interest of the estate shall require.

(c) Deposits in lieu of sureties on bonds, whether of cash or securities, may be withdrawn or released only on order of a court having jurisdiction.

(d) Creditors shall have the same rights against the representative and such deposits as are provided for recovery against sureties on a bond.

(e) The court may on its own motion, or upon written application by the representative or by any other person interested in the estate, require that adequate bond be given by the representative in lieu of such deposit, or authorize withdrawal of the deposit and

substitution of a bond with sureties therefor. In either case, the representative shall file a sworn statement showing the condition of the estate, and unless the same be filed within twenty (20) days after being personally served with notice of the filing of an application by another, or entry of the court's motion, he shall be subject to removal as in other cases. The deposit may not be released or withdrawn until the court has been satisfied as to the condition of the estate, has determined the amount of bond, and has received and approved the bond.

9. Withdrawal of Deposits When Estate Closed. Upon the closing of an estate, any such deposit or portion thereof remaining on hand, whether of the assets of the representative, or of the assets of the estate, or of the surety, shall be released by order of court and paid over to the person or persons entitled thereto. No writ of attachment or garnishment shall lie against the deposit, except as to claims of creditors of the estate being administered, or persons interested therein, including distributees and wards, and then only in the event distribution has been ordered by the court, and to the extent only of such distribution as shall have been ordered.

10. Who May Act as Sureties. The surety or sureties on said bonds may be authorized corporate sureties, or personal sureties.

11. Procedure When Bond Exceeds Fifty Thousand Dollars (\$50,000). When any such bond shall exceed Fifty Thousand Dollars (\$50,000) in penal sum, the court may require that such bond be signed by two (2) or more authorized corporate sureties, or by one such surety and two (2) or more good and sufficient personal sureties. The estate shall pay the cost of a bond with corporate sureties.

12. Qualifications of Personal Sureties. If the sureties be natural persons, there shall not be less than two (2), each of whom shall make affidavit in the manner prescribed in this Code, and the judge shall be satisfied that he owns property within this State, over and above that exempt by law, sufficient to qualify as a surety as required by law. Except as provided by law, only one surety is required if the surety is an authorized corporate surety; provided, a personal surety, instead of making affidavit, or creating a lien on specific real estate when such is required, may, in the same manner as a personal representative, deposit his own cash or securities, in lieu of pledging real property as security, subject, so far as applicable, to the provisions covering such deposits when made by personal representatives.

13. Bonds of Temporary Appointees. In case of a temporary administrator, the bond shall be in such sum as the judge shall direct.

14. Increased or Additional Bonds When Property Sold, Rented, Leased for Mineral Development, or Money Borrowed or Invested. The provisions in this Section with respect to deposit of cash and safekeeping of securities shall cover, so far as they may be applicable, the orders to be entered by the court when real or personal property of an estate has

been authorized to be sold or rented, or money borrowed thereon, or when real property, or an interest therein, has been authorized to be leased for mineral development or subjected to unitization, the general bond having been found insufficient.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 6(b), eff. Aug. 22, 1957; Acts 1971, 62nd Leg., p. 983, ch. 173, § 14, eff. Jan. 1, 1972; Acts 1979, 66th Leg., p. 1754, ch. 713, § 25, eff. Aug. 27, 1979. Amended by Acts 1993, 73rd Leg., ch. 957, § 31, eff. Sept. 1, 1993; Subsec. 5 amended by Acts 1999, 76th Leg., ch. 344, § 6.003, eff. Sept. 1, 1999. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context § 195

A personal representative is excused from the requirement of posting bond in the following situations: (1) the testator waived bond in the testator's will (§ 195(a)), (2) a corporate fiduciary is serving as the personal representative (§ 195(b)), or (3) the court waives bond for an independent executor (§ 145(p)). It is very common for a testator to waive bond in the will to save the estate, and hence the beneficiaries, the cost of the bond.

§ 195. When No Bond Required

(a) **By Will.** Whenever any will probated in a Texas court directs that no bond or security be required of the person or persons named as executors, the court finding that such person or persons are qualified, letters testamentary shall be issued to the persons so named, without requirement of bond.

(b) **Corporate Fiduciary Exempted From Bond.** If a personal representative is a corporate fiduciary, as said term is defined in this Code, no bond shall be required.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Subsec. (a) amended by Acts 1995, 74th Leg., ch. 1039, § 12, eff. Sept. 1, 1995. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 196. Form of Bond

The following form, or the same in substance, may be used for the bonds of personal representatives:

"The State of Texas

"County of _____

"Know all men by these presents that we, A. B., as principal, and E. F., as sureties, are held and firmly bound unto the county (or probate) judge of the County of _____, and his successors in office, in the sum of _____ Dollars; conditioned that the above bound A. B., who has been appointed executor of the last will and testament of J. C., deceased (or has been appointed by the said judge of _____ County, administrator with the will

annexed of the estate of J. C., deceased, or has been appointed by the said judge of _____ County, administrator of the estate of J. C., deceased, or has been appointed by the said judge of _____ County, temporary administrator of the estate of J. C., deceased, as the case may be), shall well and truly perform all of the duties required of him by law under said appointment."

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 32, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 197. Bonds to Be Filed

All bonds required by preceding provisions of this Code shall be subscribed by both principals and sureties, and, when approved by the court, be filed with the clerk.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 198. Bonds of Joint Representatives

When two or more persons are appointed representatives of the same estate or person and are required by the provisions of this Code or by the court to give a bond, the court may require either a separate bond from each or one joint bond from all of them.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 199. Bonds of Married Persons

When a married person is appointed personal representative, the person may, jointly with, or without, his or her spouse, execute such bond as the law requires; and such bond shall bind the person's separate estate, but shall bind his or her spouse only if signed by the spouse.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 39, ch. 24, § 24, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 200. Bond of Married Person Under Eighteen Years of Age

When a person under eighteen years of age who is or has been married shall accept and qualify as executor or administrator, any bond required to be executed by him shall be as valid and binding for all purposes as if he were of lawful age.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 105, ch. 45, § 3, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 957, § 33, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 201. (a) Affidavit of Personal Surety; (b) Lien on Specific Property, when Required; (c) Subordination of Lien Authorized

(a) Affidavit of Personal Surety. Before the judge may consider a bond with personal sureties, each person offered as surety shall execute an affidavit stating the amount of his assets, reachable by creditors, of a value over and above his liabilities, the total of the worth of such sureties to be equal to at least double the amount of the bond, and such affidavit shall be presented to the judge for his consideration and, if approved, shall be attached to and form part of the bond.

(b) Lien on Specific Property, When Required. If the judge finds that the estimated value of personal property of the estate which cannot be deposited or held in safekeeping as hereinabove provided is such that personal sureties cannot be accepted without the creation of a specific lien on real property of such sureties, he shall enter an order requiring that each surety designate real property owned by him within this State subject to execution, of a value over and above all liens and unpaid taxes, equal at least to the amount of the bond, giving an adequate legal description of such property, all of which shall be incorporated in an affidavit by the surety, approved by the judge, and be attached to and form part of the bond. If compliance with such order is not had, the judge may in his discretion require that the bond be signed by an authorized corporate surety, or by such corporate surety and two (2) or more personal sureties.

(c) Subordination of Lien Authorized. If a personal surety who has been required to create a lien on specific real estate desires to lease such property for mineral development, he may file his written application in the court in which the proceedings are pending, requesting subordination of such lien to the proposed lease, and the judge of such court may, in his discretion, enter an order granting such application. A certified copy of such order, filed and recorded in the deed records of the proper county, shall be sufficient to subordinate such lien to the rights of a lessee, in the proposed lease.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 6(c). Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 202. Bond as Lien on Real Property of Surety

When a personal surety has been required by the court to create a lien on specific real property as a condition of his acceptance as surety on a bond, a lien on the real property of the surety in this State which is described in the affidavit of the surety, and only upon such property, shall arise as security for the performance of the obligation of the bond. The clerk of the court shall, before letters are issued to the representative, cause to be mailed to the office of the county clerk of each county in which is located any real property as set forth in the affidavit of the surety, a

statement signed by the clerk, giving a sufficient description of such real property, the name of the principal and sureties, the amount of the bond, and the name of the estate and the court in which the bond is given. The county clerk to whom such statement is sent shall record the same in the deed records of the county. All such recorded statements shall be duly indexed in such manner that the existence and character of the liens may conveniently be determined, and such recording and indexing of such statement shall constitute and be constructive notice to all persons of the existence of such lien on such real property situated in such county, effective as of date of such indexing.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 6(d). Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 203. When New Bond May Be Required

A personal representative may be required to give a new bond in the following cases:

(a) When the sureties upon the bond, or any one of them, shall die, remove beyond the limits of the state, or become insolvent; or

(b) When, in the opinion of the court, the sureties upon any such bond are insufficient; or

(c) When, in the opinion of the court, any such bond is defective; or

(d) When the amount of any such bond is insufficient; or

(e) When the sureties, or any one of them, petitions the court to be discharged from future liability upon such bond; or

(f) When the bond and the record thereof have been lost or destroyed.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 204. Demand for New Bond by Interested Person

Any person interested in an estate may, upon application in writing filed with the county clerk of the county where the probate proceedings are pending, alleging that the bond of the personal representative is insufficient or defective, or has been, together with the record thereof, lost or destroyed, cause such representative to be cited to appear and show cause why he should not give a new bond.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 205. Judge to Require New Bond

When it shall be known to him that any such bond is in any respect insufficient or that it has, together with the record thereof, been lost or destroyed, the judge shall:

(1) without delay and without notice enter an order requiring the representative to give a new bond; or

(2) without delay cause the representative to be cited to show cause why he should not give a new bond.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 2007, 80th Leg., ch. 683, § 1, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 206. Order Requiring New Bond

(a) The order entered under Section 205(1) of this code must state the reasons for requiring a new bond, the amount of the new bond, and the time within which the new bond must be given, which may not be earlier than the 10th day after the date of the order. If the personal representative opposes the order, the personal representative may demand a hearing on the order. The hearing must be held before the expiration of the time within which the new bond must be given.

(b) Upon the return of a citation ordering a personal representative to show cause why he should not give a new bond, the judge shall, on the day named therein for the hearing of the matter, proceed to inquire into the sufficiency of the reasons for requiring a new bond; and, if satisfied that a new bond should be required, he shall enter an order to that effect, stating in such order the amount of such new bond, and the time within which it shall be given, which shall not be later than twenty days from the date of such order.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Acts 2007, 80th Leg., ch. 683, § 1, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 207. Order Suspends Powers of Personal Representative

When a personal representative is required to give a new bond, the order requiring such bond shall have the effect to suspend his powers, and he shall not thereafter pay out any money of said estate or do any other official act, except to preserve the property of the estate, until such new bond has been given and approved.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 208. Decrease in Amount of Bond

A personal representative required to give bond may at any time file with the clerk a written application to the court to have his bond reduced. Forthwith the clerk shall issue and cause to be posted notice to all persons interested and to the surety or sureties on the bond, apprising them of the fact and nature of the application and of the time when the judge will hear the application. The judge, in his discretion, upon the submission of proof that a smaller bond than the one in effect will be adequate to meet the requirements of the

law and protect the estate, and upon the approval of an accounting filed at the time of the application, may permit the filing of a new bond in a reduced amount.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 209. Discharge of Sureties Upon Execution of New Bond

When a new bond has been given and approved, an order shall be entered discharging the sureties upon the former bond from all liability for the future acts of the principal.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 210. Release of Sureties Before Estate Fully Administered

The sureties upon the bond of a personal representative, or any one of them, may at any time file with the clerk a petition to the court in which the proceedings are pending, praying that such representative be required to give a new bond and that petitioners be discharged from all liability for the future acts of such representative; whereupon, such representative shall be cited to appear and give a new bond.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 211. Release of Lien Before Estate Fully Administered

If a personal surety who has given a lien on specific real property as security applies to the court to have the lien released, the court shall order the release requested, if the court is satisfied that the bond is sufficient without the lien on such property, or if sufficient other real or personal property of the surety is substituted on the same terms and conditions required for the lien which is to be released. If such personal surety who requests the release of the lien does not offer a lien on other real or personal property, and if the court is not satisfied of the sufficiency of the bond without the substitution of other property, the court shall order the personal representative to appear and give a new bond.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 212. Release of Recorded Lien on Surety's Property

A certified copy of the court's order describing the property, and releasing the lien, filed with the county clerk of the county where the property is located, and recorded in the deed records, shall have the effect of cancelling the lien on such property.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 213. Revocation of Letters for Failure to Give Bond

If at any time a personal representative fails to give bond as required by the court, within the time fixed by this Code, another person may be appointed in his stead.
Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

**Statutes in Context
§§ 214–217**

The court may require a personal representative to give bond even if bond was not originally needed, e.g., the testator's will waived bond. See §§ 214-217.

§ 214. Executor or Guardian Without Bond Required to Give Bond

Where no bond is required of an executor appointed by will, any person having a debt, claim, or demand against the estate, to the justice of which oath has been made by himself, his agent, or attorney, or any other person interested in such estate, whether in person or as the representative of another, may file a complaint in writing in the court where such will is probated, and the court shall thereupon cite such executor to appear and show cause why he should not be required to give bond.
Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 34, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 215. Order Requiring Bond

Upon hearing such complaint, if it appears to the court that such executor is wasting, mismanaging, or misapplying such estate, and that thereby a creditor may probably lose his debt, or that thereby some person's interest in the estate may be diminished or lost, the court shall enter an order requiring such executor to give bond within ten days from the date of such order.
Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 34, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 216. Bond in Such Case

Such bond shall be for an amount sufficient to protect the estate and its creditors, to be approved by, and payable to, the judge, conditioned that said executor will well and truly administer such estate, and that he will not waste, mismanage, or misapply the same.
Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 34, eff.

Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 217. Failure to Give Bond

Should the executor fail to give such bond within ten days after the order requiring him to do so, then if the judge does not extend the time, he shall, without citation, remove such executor and appoint some competent person in his stead who shall administer the estate according to the provisions of such will or the law, and who, before he enters upon the administration of said estate, shall take the oath required of an administrator with the will annexed, and shall give bond in the same manner and in the same amount provided in this Code for the issuance of original letters of administration.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 34, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 218. Bonds Not Void Upon First Recovery

The bonds of personal representatives shall not become void upon the first recovery, but may be put in suit and prosecuted from time to time until the whole amount thereof shall have been recovered.
Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Part 3. Revocation of Letters, Death, Resignation, and Removal

**Statutes in Context
§ 220**

Section 220 explains how the court will appoint a replacement personal representative if the currently serving representative dies, resigns, or is removed. This section also handles a variety of other situations where a replacement may be appropriate.

§ 220. Appointment of Successor Representative

(a) Because of Death, Resignation or Removal.
When a person duly appointed a personal representative fails to qualify, or, after qualifying, dies, resigns, or is removed, the court may, upon application appoint a successor if there be necessity therefor, and such appointment may be made prior to the filing of, or action upon, a final accounting. In case of death, the legal representatives of the deceased person shall account for, pay, and deliver to the person or persons legally entitled to receive the same, all the property of every kind belonging to the estate entrusted to his care, at such time and in such manner as the court shall order. Upon the finding that a necessity for the immediate appointment of a successor representative exists, the

court may appoint such successor without citation or notice.

(b) Because of Existence of Prior Right. Where letters have been granted to one, and another whose right thereto is prior and who has not waived such right and is qualified, applies for letters, the letters previously granted shall be revoked and other letters shall be granted to the applicant.

(c) When Named Executor Becomes an Adult. If one named in a will as executor is not an adult when the will is probated and letters in any capacity have been granted to another, such nominated executor, upon proof that he has become an adult and is not otherwise disqualified, shall be entitled to have such former letters revoked and appropriate letters granted to him. And if the will names two or more persons as executor, any one or more of whom are minors when such will is probated, and letters have been issued to such only as are adults, said minor or minors, upon becoming adults, if not otherwise disqualified, shall be permitted to qualify and receive letters.

(d) Upon Return of Sick or Absent Executor. If one named in a will as executor was sick or absent from the State when the testator died, or when the will was proved, and therefore could not present the will for probate within thirty days after the testator's death, or accept and qualify as executor within twenty days after the probate of the will, he may accept and qualify as executor within sixty days after his return or recovery from sickness, upon proof to the court that he was absent or ill; and, if the letters have been issued to others, they shall be revoked.

(e) When Will Is Discovered After Administration Granted. If it is discovered after letters of administration have been issued that the deceased left a lawful will, the letters shall be revoked and proper letters issued to the person or persons entitled thereto.

(f) When Application and Service Necessary. Except when otherwise expressly provided in this Code, letters shall not be revoked and other letters granted except upon application, and after personal service of citation on the person, if living, whose letters are sought to be revoked, that he appear and show cause why such application should not be granted.

(g) Payment or Tender of Money Due During Vacancy. Money or other thing of value falling due to an estate while the office of the personal representative is vacant may be paid, delivered, or tendered to the clerk of the court for credit of the estate, and the debtor, obligor, or payor shall thereby be discharged of the obligation for all purposes to the extent and purpose of such payment or tender. If the clerk accepts such payment or tender, he shall issue a proper receipt therefor.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, § 11, eff. June 12, 1969. Subsecs. (c), (d), (g) amended by Acts 1993, 73rd Leg., ch. 957, § 35, eff. Sept. 1, 1993.

Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 221

Section 221 addresses issues regarding the resignation of a personal representative.

§ 221. Resignation

(a) Application to Resign. A personal representative who wishes to resign his trust shall file with the clerk his written application to the court to that effect, accompanied by a full and complete exhibit and final account, duly verified, showing the true condition of the estate entrusted to his care.

(b) Successor Representatives. If the necessity exists, the court may immediately accept a resignation and appoint a successor, but shall not discharge the person resigning, or release him or the sureties on his bond until final order or judgment shall have been rendered on his final account.

(c) Citation. Upon the filing of an application to resign, supported by exhibit and final account, the clerk shall call the application to the attention of the judge, who shall set a date for a hearing upon the matter. The clerk shall then issue a citation to all interested persons, showing that proper application has been filed, and the time and place set for hearing, at which time said persons may appear and contest the exhibit and account. The citation shall be posted, unless the court directs that it be published.

(d) Hearing. At the time set for hearing, unless it has been continued by the court, if the court finds that citation has been duly issued and served, he shall proceed to examine such exhibit and account, and hear all evidence for and against the same, and shall, if necessary, restate, and audit and settle the same. If the court is satisfied that the matters entrusted to the applicant have been handled and accounted for in accordance with law, he shall enter an order of approval, and require that the estate remaining in the possession of the applicant, if any, be delivered to the person or persons entitled by law to receive it.

(e) Requisites of Discharge. No resigning personal representative shall be discharged until the application has been heard, the exhibit and account examined, settled, and approved, and until he has satisfied the court that he has delivered the estate, if there be any remaining in his possession, or has complied with all lawful orders of the court with relation to his trust.

(f) Final Discharge. When the resigning applicant has complied in all respects with the orders of the court, an order shall be made accepting the resignation, discharging the applicant, and, if he is under bond, his sureties.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Subsec. (d) amended by Acts 1993, 73rd Leg., ch. 957,

§ 36, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 221A

A nonresident of Texas may serve as a personal representative only if the nonresident appoints a resident agent to accept service of process in all actions or proceedings with respect to the estate. See § 78(c). Section 221A provides guidance for how the personal representative may change the resident agent.

§ 221A. Change of Resident Agent

(a) A personal representative may change its resident agent to accept service of process in a probate proceeding or other action relating to the estate by filing a statement of the change titled “Designation of Successor Resident Agent” with the court in which the probate proceeding is pending. The statement must contain the names and addresses of the:

- (1) personal representative;
- (2) resident agent; and
- (3) successor resident agent.

(b) The designation of a successor resident agent made in a statement filed under this section takes effect on the date on which the statement is filed with the court.

Added by Acts 1999, 76th Leg., ch. 855, § 7, eff. Sept. 1, 1999. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 221B

A nonresident of Texas may serve as a personal representative only if the nonresident appoints a resident agent to accept service of process in all actions or proceedings with respect to the estate. See § 78(c). Section 221B provides guidance for how the resident agent may resign.

§ 221B. Resignation of Resident Agent

(a) A resident agent of a personal representative may resign as the resident agent by giving notice to the personal representative and filing with the court in which the probate proceeding is pending a statement titled “Resignation of Resident Agent” that:

- (1) contains the name of the personal representative;
- (2) contains the address of the personal representative most recently known by the resident agent;
- (3) states that notice of the resignation has been given to the personal representative and that the personal representative has not designated a successor resident agent; and

(4) contains the date on which the notice of the resignation was given to the personal representative.
(b) The resident agent shall send, by certified mail, return receipt requested, a copy of a resignation statement filed under Subsection (a) of this section to:

- (1) the personal representative at the address most recently known by the agent; and
- (2) each party in the case or the party’s attorney or other designated representative of record.

(c) The resignation of a resident agent takes effect on the date on which the court enters an order accepting the agent’s resignation. A court may not enter an order accepting the agent’s resignation unless the agent complies with the requirements of this section.

Added by Acts 1999, 76th Leg., ch. 855, § 7, eff. Sept. 1, 1999. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 222 & § 222A

Section 222 explains how a court may remove a personal representative from office. Subsection (a) enumerates when the removal may occur without notice to the personal representative while subsection (b) lists the circumstances where notice to the personal representative is needed before the court may issue an order of removal. See also § 149C (removal of independent executor). Reinstatement is thereafter possible under § 222A.

§ 222. Removal

(a) **Without Notice.** (1) The court, on its own motion or on motion of any interested person, and without notice, may remove any personal representative, appointed under provisions of this Code, who:

- (A) Neglects to qualify in the manner and time required by law;
- (B) Fails to return within ninety days after qualification, unless such time is extended by order of the court, an inventory of the property of the estate and list of claims that have come to his knowledge;
- (C) Having been required to give a new bond, fails to do so within the time prescribed;
- (D) Absents himself from the State for a period of three months at one time without permission of the court, or removes from the State;
- (E) Cannot be served with notices or other processes because of the fact that the:
 - (i) personal representative’s whereabouts are unknown;
 - (ii) personal representative is eluding service; or
 - (iii) personal representative is a nonresident of this state who does not have a resident agent to accept service of process in any probate

proceeding or other action relating to the estate;
or

(F) Has misapplied, embezzled, or removed from the State, or is about to misapply, embezzle, or remove from the State, all or any part of the property committed to the personal representative's care.

(2) The court may remove a personal representative under Paragraph (F), Subdivision (1), of this subsection only on the presentation of clear and convincing evidence given under oath.

(b) With Notice. The court may remove a personal representative on its own motion, or on the complaint of any interested person, after the personal representative has been cited by personal service to answer at a time and place fixed in the notice, when:

(1) Sufficient grounds appear to support belief that the personal representative has misapplied, embezzled, or removed from the state, or that the personal representative is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the personal representative's care;

(2) The personal representative fails to return any account which is required by law to be made;

(3) The personal representative fails to obey any proper order of the court having jurisdiction with respect to the performance of the personal representative's duties;

(4) The personal representative is proved to have been guilty of gross misconduct, or mismanagement in the performance of the personal representative's duties;

(5) The personal representative becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes incapable of properly performing the duties of the personal representative's trust;

(6) As executor or administrator, the personal representative fails to make a final settlement within three years after the grant of letters, unless the time be extended by the court upon a showing of sufficient cause supported by oath; or

(7) As executor or administrator, the personal representative fails to timely file the affidavit or certificate required by Section 128A of this code.

(c) Order of Removal. The order of removal shall state the cause thereof. It shall require that any letters issued to the one removed shall, if he has been personally served with citation, be surrendered, and that all such letters be cancelled of record, whether delivered or not. It shall further require, as to all the estate remaining in the hands of a removed person, delivery thereof to the person or persons entitled thereto, or to one who has been appointed and has qualified as successor representative.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, § 11, eff. June 12, 1969. Subsec. (b) amended by Acts 1989,

71st Leg., ch. 1035, § 11, eff. Sept. 1, 1989; Subsecs. (a), (b) amended by Acts 1993, 73rd Leg., ch. 905, § 11, eff. Sept. 1, 1993; Subsecs. (b), (c) amended by Acts 1993, 73rd Leg., ch. 957, § 37, eff. Sept. 1, 1993; Subsecs. (a), (b) amended by Acts 1995, 74th Leg., ch. 1039, § 13, eff. Sept. 1, 1995; Subsec. (a) amended by Acts 1999, 76th Leg., ch. 855, § 8, eff. Sept. 1, 1999. Subsec. (b) amended by Acts 2007, 80th Leg., ch. 801, § 4, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 222A. Reinstatement After Removal

(a) Not later than the 10th day after the date the court signs the order of removal, a personal representative who is removed under Subsection (a)(1)(F) or (G), Section 222, of this code may file an application with the court for a hearing to determine whether the personal representative should be reinstated.

(b) On the filing of an application for a hearing under this section, the court clerk shall issue a notice stating that the application for reinstatement was filed, the name of the decedent, and the name of the applicant. The clerk shall issue the notice to the applicant and to the successor representative of the decedent's estate. The notice must cite all persons interested in the estate to appear at the time and place stated in the notice if they wish to contest the application.

(c) If, at the conclusion of a hearing under this section, the court is satisfied by a preponderance of the evidence that the applicant did not engage in the conduct that directly led to the applicant's removal, the court shall set aside an order appointing a successor representative, if any, and shall enter an order reinstating the applicant as personal representative of the ward or estate.

(d) If the court sets aside the appointment of a successor representative under this section, the court may require the successor representative to prepare and file, under oath, an accounting of the estate and to detail the disposition the successor has made of the property of the estate.

Added by Acts 1993, 73rd Leg., ch. 905, § 12, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1060, § 12, eff. Sept. 1, 2003. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Part 4. Subsequent Personal Representatives

Statutes in Context §§ 223–227

Sections 223-227 outline the rights and obligations of subsequent personal representatives.

§ 223. Further Administration with or Without Will Annexed

Whenever any estate is unrepresented by reason of the death, removal, or resignation of the personal representative of such estate, the court shall grant further administration of the estate when necessary, and with the will annexed where there is a will, upon application therefor by a qualified person interested in the estate. Such appointments shall be made on notice and after hearing, as in case of original appointments, except that when the court finds that there is a necessity for the immediate appointment of a successor representative, such successor may be appointed upon application but without citation or notice.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, § 11, eff. June 12, 1969. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 224. Successors Succeed to Prior Rights, Powers, and Duties

When a representative of the estate not administered succeeds another, he shall be clothed with all rights, powers, and duties of his predecessor, except such rights and powers conferred on the predecessor by will which are different from those conferred by this Code on personal representatives generally. Subject to this exception, the successor shall proceed to administer such estate in like manner as if his administration were a continuation of the former one. He shall be required to account for all the estate which came into the hands of his predecessor and shall be entitled to any order or remedy which the court has power to give in order to enforce the delivery of the estate and the liability of the sureties of his predecessor for so much as is not delivered. He shall be excused from accounting for such of the estate as he has failed to recover after due diligence.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 225. Additional Powers of Successor Appointee

In addition, such appointee may make himself, and may be made, a party to suits prosecuted by or against his predecessors. He may settle with the predecessor, and receive and receipt for all such portion of the estate as remains in his hands. He may bring suit on the bond or bonds of the predecessor in his own name and capacity, for all the estate that came into the hands of the predecessor and has not been accounted for by him.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 226. Subsequent Executors Also Succeed to Prior Rights and Duties

Whenever an executor shall accept and qualify after letters of administration shall have been granted upon

the estate, such executor shall, in like manner, succeed to the previous administrator, and he shall administer the estate in like manner as if his administration were a continuation of the former one, subject, however, to any legal directions of the testator contained in the will in relation to the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 38, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 227. Successors Return of Inventory, Appraisement, and List of Claims or Affidavit in Lieu of Inventory, Appraisement, and List of Claims

An appointee who has been qualified to succeed to a prior personal representative shall make and return to the court an inventory, appraisement, and list of claims of the estate or, if the appointee is an independent executor, shall make and return to the court that document or file an affidavit in lieu of the inventory, appraisement, and list of claims, within ninety days after being qualified, in like manner as is provided for original appointees; and he shall also in like manner return additional inventories, appraisements, and lists of claims or file additional affidavits. In all orders appointing successor representatives of estates, the court shall appoint appraisers as in original appointments upon the application of any person interested in the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 1922, ch. 641, § 11, eff. June 12, 1969. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.27, eff. Sept. 1, 2011.

Part 5. General Powers of Personal Representatives

Statutes in Context
§ 230

The standard of care which a personal representative must use when dealing with estate property is that of a prudent person. See *McLendon v. McLendon*, 862 S.W.2d 662 (Tex. App. — Dallas 1993, writ denied).

§ 230. Care of Property of Estates

The executor or administrator shall take care of the property of the estate of his testator or intestate as a prudent man would take of his own property, and if there be any buildings belonging to the estate, he shall keep the same in good repair, extraordinary casualties excepted, unless directed not to do so by an order of the court.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 268, ch. 114, § 1, eff. April 30, 1975. Amended by Acts 1993, 73rd Leg.,

ch. 957, § 39, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 232

The personal representative has a duty to collect all of the decedent's property under § 232. This right is superior to that of the heirs or beneficiaries. See § 37.

§ 232. Representative of Estate Shall Take Possession of Personal Property and Records

The personal representative of an estate, immediately after receiving letters, shall collect and take into possession the personal property, record books, title papers, and other business papers of the estate, and all such in his possession shall be delivered to the person or persons legally entitled thereto when the administration has been closed or a successor has received letters.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 233

Section 233 provides the personal representative with guidance in collecting the decedent's property. The section also explains when and how the personal representative may hire an attorney on a contingency fee basis to assist in the recovery and collection process.

§ 233. Collection of Claims and Recovery of Property

(a) Every personal representative of an estate shall use ordinary diligence to collect all claims and debts due the estate and to recover possession of all property of the estate to which its owners have claim or title, provided there is a reasonable prospect of collecting such claims or of recovering such property. If he wilfully neglects to use such diligence, he and the sureties on his bond shall be liable, at the suit of any person interested in the estate, for the use of the estate, for the amount of such claims or the value of such property as has been lost by such neglect.

(b) Except as provided by Subsection (c) of this section, a personal representative may enter into a contract to convey, or may convey, a contingent interest in any property sought to be recovered, not exceeding one-third thereof, for services of attorneys, subject only to approval of the court in which the estate is being administered.

(c) A personal representative, including an independent executor or independent administrator, may convey or contract to convey for services of an

attorney a contingent interest that exceeds one-third of the property sought to be recovered under this section only on the approval of the court in which the estate is being administered. The court must approve a contract entered into or conveyance made under this section before an attorney performs any legal services. A contract entered into or conveyance made in violation of this section is void, unless the court ratifies or reforms the contract or documents relating to the conveyance to the extent necessary to cause the contract or conveyance to meet the requirements of this section.

(d) In approving a contract or conveyance under Subsection (b) or (c) of this section for services of an attorney, the court shall consider:

(1) the time and labor that will be required, the novelty and difficulty of the questions to be involved, and the skill that will be required to perform the legal services properly;

(2) the fee customarily charged in the locality for similar legal services;

(3) the value of property recovered or sought to be recovered by the personal representative under this section;

(4) the benefits to the estate that the attorney will be responsible for securing; and

(5) the experience and ability of the attorney who will be performing the services.

(e) On satisfactory proof to the court, a personal representative of an estate is entitled to all necessary and reasonable expenses incurred by the personal representative in collecting or attempting to collect a claim or debt owed to the estate or in recovering or attempting to recover property to which the estate has a title or claim.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 848, § 1, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 233A. Suits by Executors or Administrators

Suits for the recovery of personal property, debts, or damages and suits for title or possession of lands or for any right attached to or growing out of the same or for injury or damage done thereto may be instituted by executors or administrators appointed in this state; and judgment in such cases shall be conclusive, but may be set aside by any person interested for fraud or collusion on the part of such executor or administrator.

Added by Acts 1985, 69th Leg., ch. 959, § 3, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 957, § 40, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 234

Unlike an independent executor, a dependent executor must seek court approval before taking almost all actions with respect to the estate.

Section 234(a) enumerates when court approval is needed while § 234(b) lists a few situations where the personal representative may act without court order.

§ 234. Exercise of Powers With and Without Court Order

(a) Powers To Be Exercised Under Order of the Court. The personal representative of the estate of any person may, upon application and order authorizing same, renew or extend any obligation owing by or to such estate. When a personal representative deems it for the interest of the estate, he may, upon written application to the court, and by order granting authority:

- (1) Purchase or exchange property;
- (2) Take claims or property for the use and benefit of the estate in payment of any debt due or owing to the estate;
- (3) Compound bad or doubtful debts due or owing to the estate;
- (4) Make compromises or settlements in relation to property or claims in dispute or litigation;
- (5) Compromise or pay in full any secured claim which has been allowed and approved as required by law against the estate by conveying to the holder of such claim the real estate or personalty securing the same, in full payment, liquidation, and satisfaction thereof, and in consideration of cancellation of notes, deeds of trust, mortgages, chattel mortgages, or other evidences of liens securing the payment of such claim;
- (6) Abandon the administration of property of the estate that is burdensome or worthless. Abandoned real or personal property may be foreclosed by a secured party, trustee, or mortgagee without further order of the court.

(b) Powers To Be Exercised Without Court Order. The personal representative of the estate of any person may, without application to or order of the court, exercise the powers listed below, provided, however, that a personal representative under court control may apply and obtain an order if doubtful of the propriety of the exercise of any such powers:

- (1) Release liens upon payment at maturity of the debt secured thereby;
- (2) Vote stocks by limited or general proxy;
- (3) Pay calls and assessments;
- (4) Insure the estate against liability in appropriate cases;
- (5) Insure property of the estate against fire, theft, and other hazards;
- (6) Pay taxes, court costs, bond premiums.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 984, ch. 173, § 15, eff. Jan. 1, 1972. Subsec. (a) amended by Acts 1997, 75th Leg., ch. 1302, § 9, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 235. Possession of Property Held in Common Ownership

If the estate holds or owns any property in common, or as part owner with another, the representative of the estate shall be entitled to possession thereof in common with the other part owner or owners in the same manner as other owners in common or joint owners would be entitled.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 238. Operation of Farm, Ranch, Factory, or Other Business

(a) In this section, “business” includes a farm, ranch, or factory.

(b) A court, after notice to all interested persons and a hearing, may order the personal representative of an estate to operate a business that is part of the estate and may grant the personal representative the powers to operate the business that the court determines are appropriate, after considering the factors listed in Subsection (f) of this section, if:

- (1) the disposition of the business has not been specifically directed by the decedent’s will;
- (2) it is not necessary to sell the business at once for the payment of debts or other lawful purposes; and
- (3) the court determines that the operation of the business by the personal representative is in the best interest of the estate.

(c) A personal representative who is granted the power to operate a business in an order entered under this section has the powers granted under Section 234(b) of this code, regardless of whether the order specifies that the personal representative has those powers, unless the order specifically provides that the personal representative does not have one or more of the powers listed in that section.

(d) In addition to the powers granted to the personal representative under Section 234(b) of this code, subject to any specific limitation on those powers in accordance with Subsection (c) of this section, an order entered under this section may grant the personal representative one or more of the following powers:

- (1) the power to hire, pay, and terminate the employment of employees of the business;
- (2) the power to incur debt on behalf of the business, including debt secured by liens against assets of the business or estate, if permitted or directed in the order;
- (3) the power to purchase and sell property in the ordinary course of the operation of the business, including the power to purchase and sell real property if the court finds that the principal purpose of the business is the purchasing and selling of real property and the order states that finding;
- (4) the power to enter into a lease or contract, the term of which may extend beyond the settlement

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of the estate, but only to the extent granting that power appears to be consistent with the speedy settlement of the estate; and

(5) any other power the court finds is necessary with respect to the operation of the business.

(e) If the order entered under this section gives the personal representative the power to purchase, sell, lease, or otherwise encumber real or personal property:

(1) the purchase, sale, lease, or encumbrance is governed by the terms of the order; and

(2) the personal representative is not required to comply with any other provision of this code regarding the purchase, sale, lease, or encumbrance, including provisions requiring citation or notice.

(f) In determining which powers to grant a personal representative in an order entered under this section, the court shall consider the following factors:

(1) the condition of the estate and the business;

(2) the necessity that may exist for the future sale of the business or of business property to provide for payment of debts or claims against the estate or other lawful expenditures with respect to the estate;

(3) the effect of the order on the speedy settlement of the estate; and

(4) the best interests of the estate.

(g) A personal representative who operates a business under an order entered under this section has the same fiduciary duties as a personal representative who does not operate a business that is part of an estate. The personal representative shall:

(1) in operating the business, consider:

(A) the condition of the estate and the business;

(B) the necessity that may exist for the future sale of the business or of business property to provide for payment of debts or claims against the estate or other lawful expenditures with respect to the estate;

(C) the effect of the order on the speedy settlement of the estate; and

(D) the best interests of the estate; and

(2) report to the court with respect to the operation and condition of the business as part of the accounts required by Parts 11 and 12, Chapter VIII, of this code, unless the court orders the reports regarding the business to be made more frequently or in a different manner or form.

(h) Before purchasing, selling, leasing, or otherwise encumbering any real property of the business in accordance with an order entered under this section, the personal representative shall file a notice in the real property records of the county in which the real property is located. The notice must state:

(1) the name of the decedent;

(2) the county of the court in which the decedent's estate is pending;

(3) the cause number assigned to the pending estate;

(4) that one or more orders have been entered under this section; and

(5) a description of the property that is the subject of the purchase, sale, lease, or other encumbrance.

(i) For purposes of determining a personal representative's powers with respect to a purchase, sale, lease, or other encumbrance of real property of a business that is part of an estate, a third party who deals in good faith with a personal representative with respect to the transaction may rely on the notice under Subsection (h) of this section and an order that is entered under this section and filed as part of the estate records maintained by the clerk of the court in which the estate is pending.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1993, 73rd Leg., ch. 957, § 41, eff. Sept. 1, 1993; Acts 2007, 80th Leg., ch. 668, § 1, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 238A. Administration of Partnership Interest by Personal Representative

If the decedent was a partner in a general partnership and the articles of partnership provide that, on the death of a partner, his or her executor or other personal representative shall be entitled to the place of the deceased partner in the firm, the executor or other personal representative so contracting to come into the partnership shall, to the extent allowed by law, be liable to third persons only to the extent of the deceased partner's capital in the partnership and the estate's assets held by the executor or other personal representative. This section does not exonerate an executor or other personal representative from liability for his or her negligence.

Added by Acts 1979, 66th Leg., p. 71, ch. 46, § 1, eff. April 11, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 239. Payment or Credit of Income

In all cases where the estate of a deceased person is being administered under the direction, control, and orders of a court in the exercise of its probate jurisdiction, upon the application of the executor or administrator of said estate, or of any interested party, after notice thereof has been given by posting, if it appears from evidence introduced at the hearing upon said application, and the court finds, that the reasonable market value of the assets of the estate then on hand, exclusive of the annual income therefrom, is at least twice the aggregate amount of all unpaid debts, administration expenses, and legacies, and that no creditor or legatee of the estate has then appeared and objected, the court may order and direct the executor or administrator to pay to, or credit to the account of, those persons who the court finds will own the assets of the estate when the administration thereon is completed, and in the same proportions, such part of the annual net

income received by or accruing to said estate, as the court believes and finds can conveniently be paid to such owners without prejudice to the rights of creditors, legatees, or other interested parties. Nothing herein contained shall authorize the court to order paid over to such owners of the estate any part of the corpus or principal of the estate, except as otherwise provided by sections of this Code; provided, however, in this connection, bonuses, rentals, and royalties received for, or from, an oil, gas, or other mineral lease shall be treated and regarded as income, and not as corpus or principal.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1973, 63rd Leg., p. 407, ch. 182, § 1, eff. May 25, 1973. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 240

Section 240 provides that the acts of one of several co-personal representatives are valid except that all personal representatives must join in a conveyance of real property. Accordingly, a testator must take great care in the appointment of multiple personal representatives because the act of one (as contrasted with all or a majority) is binding under most circumstances.

§ 240. Joint Executors or Administrators

Should there be more than one executor or administrator of the same estate at the same time, the acts of one of them as such executor or administrator shall be as valid as if all had acted jointly; and, in case of the death, resignation or removal of an executor or administrator, if there be a co-executor or co-administrator of such estate, he shall proceed with the administration as if no such death, resignation or removal had occurred. Provided, however, that this Section shall not be construed to authorize one of several executors or administrators to convey real estate, but in such case all the executors or administrators who have qualified as such and are acting as such shall join in the conveyance, unless the court, after due hearing, authorizes less than all to act.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Part 6. Compensation, Expenses, and Court Costs

Statutes in Context
§ 241

The testator may establish the amount of compensation for a personal representative by including a provision in the will (e.g., a fixed

amount, a “reasonable” amount, or no compensation). See *Stanley v. Henderson*, 162 S.W.2d 95 (Tex. 1942). If the will is silent, the personal representative is entitled to compensation as set forth in § 241 provided the court finds that the personal representative managed the estate prudently.

The amount of the compensation is basically a commission on what the personal representative expends and collects, unless it is “too easy” to justify the compensation. The personal representative is entitled to 5 percent of the sums received in cash (e.g., selling estate assets) plus 5 percent of the sums paid out in cash (e.g., paying debts). However, this commission is not available for collecting cash on hand, bank accounts, or life insurance policies nor for making payments to the beneficiaries or heirs.

The personal representative can attempt to get a larger amount of compensation by showing that the personal representative is managing a business or farm or that the 5 percent commission is unreasonably low.

§ 241. Compensation of Personal Representatives

(a) Executors, administrators, and temporary administrators shall be entitled to receive a commission of five per cent (5%) on all sums they may actually receive in cash, and the same per cent on all sums they may actually pay out in cash, in the administration of the estate on a finding by the court that the executor or administrator has taken care of and managed the estate in compliance with the standards of this code; provided, no commission shall be allowed for receiving funds belonging to the testator or intestate which were on hand or were held for the testator or intestate at the time of his death in a financial institution or a brokerage firm, including cash or a cash equivalent held in a checking account, savings account, certificate of deposit, or money market account; nor for collecting the proceeds of any life insurance policy; nor for paying out cash to the heirs or legatees as such; provided, further, however, that in no event shall the executor or administrator be entitled in the aggregate to more than five per cent (5%) of the gross fair market value of the estate subject to administration. If the executor or administrator manages a farm, ranch, factory, or other business of the estate, or if the compensation as calculated above is unreasonably low, the court may allow him reasonable compensation for his services, including unusual effort to collect funds or life insurance. For this purpose, the county court shall have jurisdiction to receive, consider, and act on applications from independent executors. The court may, on application of an interested person or on its own motion, deny a commission allowed by this subsection in whole or in part if:

(1) the court finds that the executor or administrator has not taken care of and managed estate property prudently; or

(2) the executor or administrator has been removed under Section 149C or 222 of this code.

(b) Definition. In this section, “financial institution” means an organization authorized to do business under state or federal laws relating to financial institutions, including banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations, and credit unions.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 8. Amended by Acts 1987, 70th Leg., ch. 919, § 1, eff. Sept. 1, 1987; Sec. (a) amended by Acts 1991, 72nd Leg., ch. 468, § 1, eff. Sept. 1, 1991; Sec. (c) added by Acts 1991, 72nd Leg., ch. 468, § 2, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 957, § 42, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 242

Section 242 allows the personal representative to be reimbursed for all necessary and reasonable expenses, including attorneys’ fees, incurred in administering the estate.

§ 242. Expenses Allowed

Personal representatives of estates shall also be entitled to all necessary and reasonable expenses incurred by them in the preservation, safe-keeping, and management of the estate, and in collecting or attempting to collect claims or debts, and in recovering or attempting to recover property to which the estate has a title or claim, and all reasonable attorney’s fees, necessarily incurred in connection with the proceedings and management of such estate, on satisfactory proof to the court.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 243

Section 243 explains when a person may be reimbursed from the estate for expenses incurred in (1) attempting to probate a will or (2) defending a will already admitted to probate, provided the actions are both in good faith and with just cause.

§ 243. Allowance for Defending Will

When any person designated as executor in a will or an alleged will, or as administrator with the will or alleged will annexed, defends it or prosecutes any proceeding in good faith, and with just cause, for the

purpose of having the will or alleged will admitted to probate, whether successful or not, he shall be allowed out of the estate his necessary expenses and disbursements, including reasonable attorney’s fees, in such proceedings. When any person designated as a devisee, legatee, or beneficiary in a will or an alleged will, or as administrator with the will or alleged will annexed, defends it or prosecutes any proceeding in good faith, and with just cause, for the purpose of having the will or alleged will admitted to probate, whether successful or not, he may be allowed out of the estate his necessary expenses and disbursements, including reasonable attorney’s fees, in such proceedings.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1983, 68th Leg., p. 5227, ch. 957, § 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 462, § 1, eff. Sept. 1, 1987. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 244. Expense Accounts

All expense charges shall be made in writing, showing specifically each item of expense and the date thereof, and shall be verified by affidavit of the representative, filed with the clerk and entered on the claim docket, and shall be acted on by the court in like manner as other claims against the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 245. When Costs Are Adjudged Against Representative

When a personal representative neglects to perform a required duty or if a personal representative is removed for cause, the personal representative and the sureties on the personal representative’s bond are liable for:

(1) costs of removal and other additional costs incurred that are not authorized expenditures, as defined by this code; and

(2) reasonable attorney’s fees incurred in removing the personal representative or in obtaining compliance regarding any statutory duty the personal representative has neglected.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1977, 65th Leg., p. 1171, ch. 448, § 3, eff. Aug. 29, 1977. Amended by Acts 1983, 68th Leg., p. 631, ch. 140, § 1, eff. Aug. 29, 1983. Amended by Acts 2003, 78th Leg., ch. 1060, § 13, eff. Sept. 1, 2003. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Chapter VIII. Proceedings During Administration

Part 1. Inventory, Appraisement, and List of Claims

Statutes in Context
§ 248

If an interested person applies or if the court deems it necessary, the court will appoint appraisers to value the property in the decedent's estate. These values will be included on the inventory required by § 250. The appraiser's fee is provided for in § 253.

In 2005, § 248 was amended to require that good cause be shown before a court may appoint appraisers, either on the court's own motion or upon the application of an interested party.

§ 248. Appointment of Appraisers

At any time after the grant of letters testamentary or of administration, the court for good cause on its own motion or on the motion of an interested party shall appoint not less than one nor more than three disinterested persons, citizens of the county in which letters were granted, to appraise the property of the estate. In such event and when part of the estate is situated in a county other than the county in which letters were granted, if the court shall deem necessary it may appoint not less than one nor more than three disinterested persons, citizens of the county where such part of the estate is situated, to appraise the property of the estate situated therein.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 1815, ch. 697, § 2, eff. Aug. 28, 1967; Amended by Acts 1993, 73rd Leg., ch. 957, § 44, eff. Sept. 1, 1993. Amended by Acts 2005, 79th Leg., ch. 701, § 1, eff. June 17, 2005. Amended by Acts 2005, 79th Leg., ch. 765, § 2, eff. Sept. 1, 2005. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(b), eff. Jan. 1, 2014.

§ 249. Failure of Appraisers to Serve

If any appraiser so appointed shall fail or refuse to act, the court shall by a like order or orders remove such appraiser and appoint another appraiser or appraisers, as the case shall require.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 1816, ch. 697, § 3, eff. Aug. 28, 1967. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 250

The personal representative in both dependent and independent administrations must normally file an inventory, appraisalment, and list of claims within 90 days after qualification. This document helps the creditors to determine which assets are available to pay their claims and thus provides them with valuable insight into how they should proceed to have the best chance of getting paid.

Additionally, the inventory helps the heirs and beneficiaries to determine the property to which they may be entitled.

The inventory must include all real property located in Texas and all personal property wherever located. (Out of state real property is not listed because Texas courts have no jurisdiction over this property.) Non-probate assets, that is, property which passes outside of the probate process such as survivorship interests and life insurance proceeds, are not included in the inventory.

If the decedent was married at the time of death, the inventory must designate whether the property is separate or community.

The 2011 Legislature authorized an independent executor or administrator to file an affidavit in lieu of the inventory, appraisalment, and list of claims if no debts other than secured debts, taxes, and administration expenses remain by the inventory due date. The executor or administrator must still prepare a sworn inventory and provide a copy to all beneficiaries other than those receiving specific gifts. An interested person such as an intestate heir or beneficiary under a prior will, may obtain a copy of the inventory from the executor or administrator upon written request.

§ 250. Inventory and Appraisalment; Affidavit in Lieu of Inventory, Appraisalment, and List of Claims

(a) Within ninety days after the representative's qualification, unless a longer time shall be granted by the court, the representative shall prepare and file with the clerk of court a verified, full, and detailed inventory, in one written instrument, of all the property of such estate which has come to the representative's possession or knowledge, which inventory shall include:

- (1) all real property of the estate situated in the State of Texas; and
- (2) all personal property of the estate wherever situated.

(b) The representative shall set out in the inventory the representative's appraisalment of the fair market value of each item thereof as of the date of death in the case of grant of letters testamentary or of administration, as the case may be; provided that if the court shall appoint an appraiser or appraisers of the estate, the representative shall determine the fair market value of each item of the inventory with the assistance of such appraiser or appraisers and shall set out in the inventory such appraisalment. The inventory shall specify what portion of the property, if any, is separate property and what portion, if any, is community property. Such inventory, when approved by the court and duly filed with the clerk of court, shall constitute for all purposes the inventory and appraisalment of the estate referred to in this Code. The court for good

cause shown may require the filing of the inventory and appraisal at a time prior to ninety days after the qualification of the representative.

(c) Notwithstanding Subsection (a) of this section, if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions, an independent executor may file with the court clerk, in lieu of the inventory, appraisal, and list of claims, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries have received a verified, full, and detailed inventory. The affidavit in lieu of the inventory, appraisal, and list of claims must be filed within the 90-day period prescribed by Subsection (a) of this section, unless the court grants an extension.

(d) In this section, "beneficiary" means a person, entity, state, governmental agency of the state, charitable organization, or trust entitled to receive real or personal property:

(1) under the terms of a decedent's will, to be determined for purposes of this subsection with the assumption that each person who is alive on the date of the decedent's death survives any period required to receive the bequest as specified by the terms of the will; or

(2) as an heir of the decedent.

(e) If the independent executor files an affidavit in lieu of filing an inventory, appraisal, and list of claims as authorized under Subsection (c) of this section:

(1) any person interested in the estate, including a possible heir of the decedent or a beneficiary under a prior will of the decedent, is entitled to receive a copy of the inventory, appraisal, and list of claims from the independent executor on written request;

(2) the independent executor may provide a copy of the inventory, appraisal, and list of claims to any person the independent executor believes in good faith may be a person interested in the estate without liability to the estate or its beneficiaries; and

(3) a person interested in the estate may apply to the court for an order compelling compliance with Subdivision (1) of this subsection and the court, in its discretion, may compel the independent executor to provide a copy of the inventory, appraisal, and list of claims to the interested person or may deny the application.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 1816, ch. 697, § 4, eff. Aug. 28, 1967; Acts 1993, 73rd Leg., ch. 957, § 45, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.28, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

Statutes in Context
§ 251

The list of claims is part of the inventory and appraisal. The list is of claims due or owing to the decedent's estate, that is, claims on which the decedent was a creditor. It is not a list of claims against the decedent's estate.

§ 251. List of Claims

There shall also be made out and attached to said inventory a full and complete list of all claims due or owing to the estate, which shall state:

(a) The name of each person indebted to the estate and his address when known.

(b) The nature of such debt, whether by note, bill, bond, or other written obligation, or by account or verbal contract.

(c) The date of such indebtedness, and the date when the same was or will be due.

(d) The amount of each claim, the rate of interest thereon, and time for which the same bears interest.

(e) In the case of decedent's estate, which of such claims are separate property and which are of the community.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Subsec. (f) repealed by Acts 2011, 82nd Leg., ch. 1338, § 1.42, eff. Sept. 1, 2011.

Statutes in Context
§ 252

The inventory, appraisal, and list of claims must be supported by the personal representative's sworn affidavit.

§ 252. Affidavit to be Attached

The representative of the estate shall also attach to such inventory and list of claims his affidavit subscribed and sworn to before an officer in the county authorized by law to administer oaths, that the said inventory and list of claims are a true and complete statement of the property and claims of the estate that have come to his knowledge.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 253. Fees of Appraisers

Each appraiser appointed by the court, as herein authorized, shall be entitled to receive a minimum compensation of Five Dollars (\$5) per day, payable out of the estate, for each day that he actually serves in performance of his duties as such.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 9.

Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 255

The court will either approve or disapprove the inventory, appraisalment, and list of claims under § 255.

§ 255. Action by the Court

Upon return of the inventory, appraisalment, and list of claims, the judge shall examine and approve, or disapprove, them, as follows:

(a) **Order of Approval.** Should the judge approve the inventory, appraisalment, and list of claims, he shall issue an order to that effect.

(b) **Order of Disapproval.** Should the judge not approve the inventory, appraisalment, or list of claims, or any of them, an order to that effect shall be entered, and it shall further require the return of another inventory, appraisalment, and list of claims, or whichever of them is disapproved, within a time specified in such order, not to exceed twenty days from the date of the order; and the judge may also, if deemed necessary, appoint new appraisers.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 256. Discovery of Additional Property

(a) If, after the filing of the inventory and appraisalment, property or claims not included in the inventory shall come to the possession or knowledge of the representative, the representative shall forthwith file with the clerk of court a verified, full, and detailed supplemental inventory and appraisalment.

(b) If, after the filing of an affidavit in lieu of the inventory and appraisalment, property or claims not included in the inventory given to the beneficiaries shall come to the possession or knowledge of the representative, the representative shall forthwith file with the clerk of court a supplemental affidavit in lieu of the inventory and appraisalment stating that all beneficiaries have received a verified, full, and detailed supplemental inventory and appraisalment.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1967, 60th Leg., p. 1816, ch. 697, § 5, eff. Aug. 28, 1967. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.29, eff. Sept. 1, 2011.

§ 257. Additional Inventory or List of Claims Required by Court

Any representative of an estate, on the written complaint of any interested person that property or claims of the estate have not been included in the inventory and list of claims filed, shall be cited to appear before the court in which the cause is pending

and show cause why he should not be required to make and return an additional inventory or list of claims, or both. After hearing such complaint, and being satisfied of the truth thereof, the court shall enter its order requiring such additional inventory or list of claims, or both, to be made and returned in like manner as original inventories, and within such time, not to exceed twenty days, from the date of said order, as may be fixed by the court, but to include only property or claims theretofore not inventoried or listed.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 258

The appellate court will review an appeal of a court's finding of the correctness of an inventory under Probate Code § 258 using the abuse of discretion standard. *In re Estate of Walker*, 250 S.W.3d 212 (Tex. App.—Dallas 2008, pet. denied).

§ 258. Correction Required when Inventory, Appraisalment, or List of Claims Erroneous or Unjust

Any person interested in an estate who deems an inventory, appraisalment, or list of claims returned therein erroneous or unjust in any particular may file a complaint in writing setting forth and pointing out the alleged erroneous or unjust items, and cause the representative to be cited to appear before the court and show cause why such errors should not be corrected. If, upon the hearing of such complaint, the court be satisfied from the evidence that the inventory, appraisalment, or list of claims is erroneous or unjust in any particular as alleged in the complaint, an order shall be entered specifying the erroneous or unjust items and the corrections to be made, and appointing appraisers to make a new appraisalment correcting such erroneous or unjust items and requiring the return of said new appraisalment within twenty days from the date of the order. The court may also, on its own motion or that of the personal representative of the estate, have a new appraisal made for the purposes above set out.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 259. Effect of Reappraisalment

When any reappraisalment is made, returned, and approved by the court, it shall stand in place of the original appraisalment. Not more than one reappraisalment shall be made, but any person interested in the estate may object to the reappraisalment either before or after it is approved, and if the court finds that the reappraisalment is erroneous or unjust, the court shall appraise the property upon the basis of the evidence before it.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 260. Failure of Joint Personal Representatives to Return an Inventory, Appraisement, and List of Claims or Affidavit in Lieu of Inventory, Appraisement, and List of Claims

If there be more than one representative qualified as such, any one or more of them, on the neglect of the others, may make and return an inventory and appraisement and list of claims or file an affidavit in lieu of an inventory, appraisement, and list of claims; and the representative so neglecting shall not thereafter interfere with the estate or have any power over same; but the representative so returning the inventory, appraisement, and list of claims or filing the affidavit in lieu of an inventory, appraisement, and list of claims shall have the whole administration, unless, within sixty days after the return or the filing, the delinquent or delinquents shall assign to the court in writing and under oath a reasonable excuse which the court may deem satisfactory; and if no excuse is filed or if the excuse filed is not deemed sufficient, the court shall enter an order removing any and all such delinquents and revoking their letters.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.30, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 261. Use of Inventories, Appraisements, and Lists of Claims as Evidence

All inventories, appraisements, and lists of claims which have been taken, returned, and approved in accordance with law, or the record thereof, or copies of either the originals or the record thereof, duly certified under the seal of the county court affixed by the clerk, may be given in evidence in any of the courts of this State in any suit by or against the representative of the estate, but shall not be conclusive for or against him, if it be shown that any property or claims of the estate are not shown therein, or that the value of the property or claims of the estate actually was in excess of that shown in the appraisement and list of claims.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Part 2. Withdrawing Estates of Deceased Persons from Administration

**Statutes in Context
§§ 262–269**

After the filing of the inventory, appraisement, and list of claims, a person entitled to the estate

may ask the court to withdraw the estate from administration by posting a bond at least double the gross appraised value of the estate. See §§ 262-269.

§ 262. Executor or Administrator Required to Report on Condition of Estate

At any time after the return of inventory, appraisement, and list of claims of a deceased person, any one entitled to a portion of the estate may, by a written complaint filed in the court in which such case is pending, cause the executor or administrator of the estate to be cited to appear and render under oath an exhibit of the condition of the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 263. Bond Required to Withdraw Estate from Administration

When the executor or administrator has rendered the required exhibit, the persons entitled to such estate, or any of them, or any persons for them, may execute and deliver to the court a bond payable to the judge, and his successors in office, to be approved by the court, for an amount equal to at least double the gross appraised value of the estate as shown by the appraisement and list of claims returned, conditioned that the persons who execute such bond shall pay all the debts against the estate not paid that have been or shall be allowed by the executor or administrator and approved by the court, or that have been or shall be established by suit against said estate, and will pay to the executor or administrator any balance that shall be found to be due him by the judgment of the court on his exhibit.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 264. Court's Order

When such bond has been given and approved, the court shall thereupon enter an order directing and requiring the executor or administrator to deliver forthwith to all persons entitled to any portion of the estate the portion or portions of such estate to which they are entitled.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 265. Order of Discharge

When an estate has been so withdrawn from further administration, an order shall be entered discharging the executor or administrator and declaring the administration closed.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 266. Lien on Property of Estate Withdrawn From Administration

A lien shall exist on all of the estate withdrawn from administration in the hands of the distributees, and those claiming under them with notice of such lien, to secure the ultimate payment of the aforesaid bond and of the debts and claims secured thereby.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 267. Partition of Estate Withdrawn from Administration

Any person entitled to any portion of the estate withdrawn from further administration may, on written application to the court, cause a partition and distribution to be made among the persons entitled thereto, in accordance with the provisions of this Code pertaining to the partition and distribution of estates.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 268. Creditors May Sue on Bond

Any creditor of an estate withdrawn from administration whose debt or claim is unpaid and is not barred by limitation shall have the right to sue on the bond in his own name, and shall be entitled to judgment thereon for such debt or claim as he shall establish against the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 269. Creditors May Sue Distributees

Any creditor of an estate withdrawn from administration whose debt or claim is unpaid and is not barred by limitation may sue any distributee who has received any of the estate, or he may sue all the distributees together, but no one of such distributees shall be liable beyond his just proportion according to the amount of the estate he shall have received in the distribution.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Part 3. Setting Apart Homestead and Other Exempt Property, and Fixing the Family Allowance

**Statutes in Context
§ 270**

A homestead is "the dwelling house constituting the family residence, together with the land on which it is situated and the appurtenances connected therewith." *Farrington v. First Nat'l Bank*

of Bellville, 753 S.W.2d 248 (Tex. App. — Houston [1st Dist.] 1988, writ denied). Homesteads are classified by property type as either a rural homestead or an urban homestead, and the size of the exemption varies depending on this classification. See *Statutes in Context* to Texas Constitution Article XVI, § 51.

The source of the tremendous protection granted to Texas homesteads is Article XVI, § 50 of the Texas Constitution. This section establishes the protection without dollar value limitation and then lists exceptions, that is, situations in which the homestead is not protected. See *Statutes in Context* to Texas Constitution Article XVI, § 50.

§ 270. Liability of Homestead for Debts

The homestead shall not be liable for the payment of any of the debts of the estate, except for:

- (1) the purchase money thereof;
- (2) the taxes due thereon;
- (3) work and material used in constructing improvements thereon if the requirements of Section 50(a)(5), Article XVI, Texas Constitution, are met;
- (4) an owelty of partition imposed against the entirety of the property by court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;
- (5) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the decedent;
- (6) an extension of credit on the homestead if the requirements of Section 50(a)(6), Article XVI, Texas Constitution, are met; or
- (7) a reverse mortgage.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 35, ch. 24, § 1, eff. Aug. 27, 1979. Amended by Acts 1999, 76th Leg., ch. 487, § 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 855, § 9, eff. Sept. 1, 1999. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

**Statutes in Context
§ 271**

The exempt property which the court sets aside includes the homestead as discussed in § 270 as well as exempt personal property under Property Code §§ 42.001 - 42.005.

§ 271. Exempt Property to Be Set Apart

(a) Unless an affidavit is filed under Subsection (b) of this section, immediately after the inventory, appraisal, and list of claims have been approved or after the affidavit in lieu of the inventory, appraisal,

and list of claims has been filed, the court shall, by order, set apart:

(1) the homestead for the use and benefit of the surviving spouse and minor children; and

(2) all other property of the estate that is exempt from execution or forced sale by the constitution and laws of this state for the use and benefit of the surviving spouse, minor children, unmarried adult children remaining with the family of the deceased, and each other adult child who is incapacitated.

(b) Before the approval of the inventory, appraisal, and list of claims or, if applicable, before the filing of the affidavit in lieu of the inventory, appraisal, and list of claims:

(1) a surviving spouse or any person who is authorized to act on behalf of minor children of the deceased may apply to the court to have exempt property, including the homestead, set aside by filing an application and a verified affidavit listing all of the property that the applicant claims is exempt; and

(2) any unmarried adult child remaining with the family of the deceased, any other adult child who is incapacitated, or a person who is authorized to act on behalf of the adult incapacitated child may apply to the court to have all exempt property other than the homestead set aside by filing an application and a verified affidavit listing all of the other property that the applicant claims is exempt.

(c) An applicant under Subsection (b) of this section bears the burden of proof by a preponderance of the evidence at any hearing on the application. The court shall set aside property of the decedent's estate that the court finds is exempt.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 35, ch. 24, § 2, eff. Aug. 27, 1979; Amended by Acts 1993, 73rd Leg., ch. 846, § 18, eff. Sept. 1, 1993. Subsecs. (a), (b), (c) amended by Acts 2005, 79th Leg., ch. 551, § 4, eff. Sept. 1, 2005. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.31, eff. Sept. 1, 2011. Amended by Acts 2011, 82nd Leg., ch. 810, § 1.02, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 810, § 2.17, eff. Jan. 1, 2014

Statutes in Context § 272

For a discussion of the rights of the surviving spouse and minor children to occupy the homestead, see *Statutes in Context* to Texas Constitution Article XVI, § 52.

§ 272. To Whom Delivered

The exempt property set apart to the surviving spouse and children shall be delivered by the executor or administrator without delay as follows: (a) If there be a surviving spouse and no children, or if the children,

including any adult incapacitated children, be the children of the surviving spouse, the whole of such property shall be delivered to the surviving spouse. (b) If there be children and no surviving spouse, such property, except the homestead, shall be delivered to the guardian of each of those children who is a minor, to each of those children who is of lawful age and not incapacitated, and to the guardian of each of those children who is an incapacitated adult or to another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian. (c) If there be children of the deceased of whom the surviving spouse is not the parent, the share of such children in such exempted property, except the homestead, shall be delivered to the guardian of each of those children who is a minor, to each of those children who is of lawful age and not incapacitated, and to the guardian of each of those children who is an incapacitated adult or to another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian. (d) In all cases, the homestead shall be delivered to the surviving spouse, if there be one, and if there be no surviving spouse, to the guardian of the minor children.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 35, ch. 24, § 3, eff. Aug. 27, 1979. Amended by Acts 2005, 79th Leg., ch. 551, § 5, eff. Sept. 1, 2005. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 810, § 1.03, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 810, § 2.17, eff. Jan. 1, 2014

Statutes in Context § 273

If the decedent did not have a homestead (e.g., the decedent lived in rental accommodations), then other property up to a value of \$15,000 may be set aside instead. Likewise, if the decedent did not have exempt personal property, an allowance of up to \$5,000 of other property may be set aside. Note that these "in lieu of" values are significantly less than the amounts available if the actual exempt property is in the estate (unlimited value of homestead; larger dollar values for exempt personal property).

A court may award both exempt personal property and, if the value of this property does not reach the monetary limits, an allowance in lieu thereof up to \$5,000. "In other words, the trial court must make an allowance for those exempt items that it cannot set aside because they are not on hand. If some exempt items are on hand, it must set those aside for the surviving spouse and award an allowance in lieu of those exempt items that are not on hand." *In re Estate of Rhea*, 257 S.W.3d 787, 792 (Tex. App.—Fort Worth 2008, no pet.).

§ 273. Allowance in Lieu of Exempt Property

In case there should not be among the effects of the deceased all or any of the specific articles exempted from execution or forced sale by the Constitution and laws of this state, the court shall make a reasonable allowance in lieu thereof, to be paid to such surviving spouse and children, or such of them as there are, as hereinafter provided. The allowance in lieu of a homestead shall in no case exceed \$45,000 [~~\$15,000~~] and the allowance for other exempted property shall in no case exceed \$30,000 [~~\$5,000~~], exclusive of the allowance for the support of the surviving spouse, minor children, and adult incapacitated children which is hereinafter provided for.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1977, 65th Leg., p. 351, ch. 172, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 35, ch. 24, § 4, eff. Aug. 27, 1979; Amended by Acts 1993, 73rd Leg., ch. 846, § 19, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 810, § 1.03, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 810, § 2.17, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 647, § 1.01, eff. Sept. 1, 2013 and repealed by § 2.02, eff. Jan. 1, 2014.

§ 274. How Allowance Paid

The allowance made in lieu of any of the exempted property shall be paid either in money out of the funds of the estate that come to the hands of the executor or administrator, or in any property of the deceased that such surviving spouse, children who are of lawful age, guardian of children who are minors, or guardian of each adult incapacitated child or other appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian, shall choose to take at the appraisal, or a part thereof, or both, as they shall select; provided, however, that property specifically bequeathed or devised to another may be so taken, or may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 36, ch. 24, § 5, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 810, § 1.03, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 810, § 2.17, eff. Jan. 1, 2014

§ 275. To Whom Allowance Paid

The allowance in lieu of exempt property shall be paid by the executor or administrator, as follows:

(a) If there be a surviving spouse and no children, or if all the children, including any adult incapacitated children, be the children of the surviving spouse, the whole shall be paid to such surviving spouse.

(b) If there be children and no surviving spouse, the whole shall be equally divided among them and each of their shares shall be paid as follows:

(1) if the child is of lawful age and not incapacitated, to the child;

(2) if the child is a minor, to the child's guardian; or

(3) if the child is an incapacitated adult, to the adult incapacitated child's guardian or another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian.

(c) If there be a surviving spouse, and children of the deceased, some of whom are not children of the surviving spouse, the surviving spouse shall receive one-half of the whole, plus the shares of the children of whom the survivor is the parent, and the remaining shares shall be paid with respect to each of the children of whom the survivor is not the parent as follows:

(1) if the child is an adult who is not incapacitated, to the child;

(2) if the child is a minor, to the child's guardian; or

(3) if the child is an incapacitated adult, to the adult incapacitated child's guardian or another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 36, ch. 24, § 6, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 810, § 1.03, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 810, § 2.17, eff. Jan. 1, 2014.

§ 276. Sale to Raise Allowance

If there be no property of the deceased that such surviving spouse or children are willing to take for such allowance, or not a sufficiency, and there be no funds, or not sufficient funds, of the estate in the hands of such executor or administrator to pay such allowance, or any part thereof, the court, on the application in writing of such surviving spouse and children, or of a person authorized to represent any of those children, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 36, ch. 24, § 7, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 810, § 1.03, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 810, § 2.17, eff. Jan. 1, 2014

§ 277. Preference of Liens

If property upon which there is a valid subsisting lien or encumbrance shall be set apart to the surviving spouse or children as exempt property, or appropriated

to make up allowances made in lieu of exempt property or for the support of the surviving spouse or children, the debts secured by such lien shall, if necessity requires, be either paid or continued as against such property. This provision applies to all estates, whether solvent or insolvent.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 36, ch. 24, § 8, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 278

If the estate is solvent, the exempt personal property passes to the heirs or beneficiaries under § 278. Although this may seem to harm the surviving spouse and minor children, it actually does not because if the estate is solvent, there will be property to award a family allowance under § 286.

§ 278. When Estate Is Solvent

If, upon a final settlement of the estate, it shall appear that the same is solvent, the exempted property, except the homestead or any allowance in lieu thereof, shall be subject to partition and distribution among the heirs and distributees of such estate in like manner as the other property of the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 279

If the estate is insolvent, the surviving spouse and children retain the exempt property free and clear of the claims of creditors as well as of the decedent's beneficiaries or heirs under § 279. This rule does not, however, actually deprive the beneficiaries or heirs of their property because if the property were not given to the surviving spouse and children, the estate creditors would have been able to reach it and the beneficiaries and heirs would not have received it anyway.

§ 279. When Estate is Insolvent

Should the estate, upon final settlement, prove to be insolvent, the title of the surviving spouse and children to all the property and allowances set apart or paid to them under the provisions of this Code shall be absolute, and shall not be taken for any of the debts of the estate except as hereinafter provided.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 9, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 280. Exempt Property Not Considered in Determining Solvency

In ascertaining whether an estate is solvent or insolvent, the exempt property set apart to the surviving spouse or children, or the allowance in lieu thereof, and the family allowance hereinafter provided for, shall not be estimated or considered as assets of the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 10, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 281

Exempt personal property is liable for the payment of the decedent's funeral and last sickness expenses up to a total of \$15,000. See § 322 (defining "Class 1" claims).

§ 281. Exempt Property Liable for Certain Debts

The exempt property, other than the homestead or any allowance made in lieu thereof, shall be liable for the payment of Class 1 claims, but such property shall not be liable for any other debts of the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1997, 75th Leg., ch. 1302, § 10, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 282. Nature of Homestead Property Immaterial

The homestead rights of the surviving spouse and children of the deceased are the same whether the homestead be the separate property of the deceased or community property between the surviving spouse and the deceased, and the respective interests of such surviving spouse and children shall be the same in one case as in the other.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 11, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 283

For a discussion of the rights of the surviving spouse, minor children, and unmarried children living at home to occupy the homestead, see *Statutes in Context* to Texas Constitution Article XVI, § 52.

§ 283. Homestead Rights of Surviving Spouse

On the death of the husband or wife, leaving a spouse surviving, the homestead shall descend and vest in like manner as other real property of the deceased and shall be governed by the same laws of descent and distribution.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 12, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 284. When Homestead Not Partitioned

The homestead shall not be partitioned among the heirs of the deceased during the lifetime of the surviving spouse, or so long as the survivor elects to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased is permitted, under the order of the proper court having jurisdiction, to use and occupy the same.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 13, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 285. When Homestead Can Be Partitioned

When the surviving spouse dies or sells his or her interest in the homestead, or elects no longer to use or occupy the same as a homestead, or when the proper court no longer permits the guardian of the minor children to use and occupy the same as a homestead, it may be partitioned among the respective owners thereof in like manner as other property held in common.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 37, ch. 24, § 14, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

**Statutes in Context
§§ 286–293**

Sections 286-293 provide an allowance for the surviving spouse, minor children, and adult incapacitated children based on need. There is no allowance if the spouse or child has adequate property. See § 288. (There is no allowance for an adult unmarried child remaining with the family who is competent.)

Unlike many states, there is no statutorily set maximum amount. The amount is based on what is necessary to support the surviving spouse or children for one year from the time of death. The family allowance is available not just to provide necessities but to provide the standard of living to which the surviving spouse was accustomed while both spouses were alive. See § 287 and *In re Estate of Rhea*, 257 S.W.3d 787 (Tex. App.—Fort Worth 2008, no pet.).

The family allowance is treated as a debt of the estate. In other words, it does not reduce the value of property the surviving spouse and children receive under the will or by intestacy (that is, the family allowance is not an advancement or satisfaction).

§ 286. Family Allowance to Surviving Spouses, Minors, and Adult Incapacitated Children

(a) Unless an affidavit is filed under Subsection (b) of this section, immediately after the inventory, appraisal, and list of claims have been approved or the affidavit in lieu of the inventory, appraisal, and list of claims has been filed, the court shall fix a family allowance for the support of the surviving spouse, minor children, and adult incapacitated children of the deceased.

(b) Before the approval of the inventory, appraisal, and list of claims or, if applicable, before the filing of the affidavit in lieu of the inventory, appraisal, and list of claims, a surviving spouse or any person who is authorized to act on behalf of minor children or adult incapacitated children of the deceased may apply to the court to have the court fix the family allowance by filing an application and a verified affidavit describing the amount necessary for the maintenance of the surviving spouse, minor children, and adult incapacitated children for one year after the date of the death of the decedent and describing the spouse's separate property and any property that minor children or adult incapacitated children have in their own right. The applicant bears the burden of proof by a preponderance of the evidence at any hearing on the application. The court shall fix a family allowance for the support of the surviving spouse, minor children, and adult incapacitated children of the deceased.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 15, eff. Aug. 27, 1979; Amended by Acts 1993, 73rd Leg., ch. 846, § 20, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.32, eff. Sept. 1, 2011. Amended by Acts 2011, 82nd Leg., ch. 810, § 1.03, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 810, § 2.17, eff. Jan. 1, 2014.

**Statutes in Context
§ 287**

The family allowance is available not just to provide necessities but to provide the standard of living to which the surviving spouse was accustomed while both spouses were alive. For example, in *Estate of Wolfe*, 268 S.W.3d 780 (Tex. App.—Fort Worth 2008, no pet.), the court approved a family allowance of \$126,840 for a surviving spouse and also noted that a surviving spouse may successfully claim a family allowance even if the surviving spouse actually has sufficient property on hand to cover one year of maintenance as long as that property was not the surviving spouse's separate property prior to the deceased spouse's death.

§ 287. Amount of Family Allowance

Such allowance shall be of an amount sufficient for the maintenance of such surviving spouse, minor children, and adult incapacitated children for one year from the time of the death of the testator or intestate. The allowance shall be fixed with regard to the facts or circumstances then existing and those anticipated to exist during the first year after such death. The allowance may be paid either in a lump sum or in installments, as the court shall order.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 16, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 810, § 1.03, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 810, § 2.17, eff. Jan. 1, 2014

§ 288. When Family Allowance Not Made

No such allowance shall be made for the surviving spouse when the survivor has separate property adequate to the survivor's maintenance; nor shall such allowance be made for the minor children or adult incapacitated children when they have property in their own right adequate to their maintenance.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 17, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 810, § 1.03, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 810, § 2.17, eff. Jan. 1, 2014.

§ 289. Order Fixing Family Allowance

When an allowance has been fixed, an order shall be entered stating the amount thereof, providing how the same shall be payable, and directing the executor or administrator to pay the same in accordance with law.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Aug. 27, 1979; Amended by Acts 1997, 75th Leg., ch. 1302, § 11, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 810, § 1.03, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 810, § 2.17, eff. Jan. 1, 2014.

§ 291. To Whom Family Allowance Paid

The executor or administrator shall apportion and pay the family allowance:

(a) To the surviving spouse, if there be one, for the use of the survivor and the minor children and adult incapacitated children, if such children be the survivor's.

(b) If the surviving spouse is not the parent of such minor children and adult incapacitated children, or of some of them, the portion of such allowance necessary for the support of such minor child or children of which the survivor is not the parent shall be paid to the guardian or guardians of such child or children who are minors, and to the guardian of each adult incapacitated child or another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian.

(c) If there be no surviving spouse, the allowance to the minor child or children shall be paid to the guardian or guardians of such minor child or children, and the allowance to each adult incapacitated child shall be paid to the guardian of the adult incapacitated child or another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian.

(d) If there be a surviving spouse and no minor child or adult incapacitated child, the entire allowance shall be paid to the surviving spouse.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 19, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 810, § 1.03, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 810, § 2.17, eff. Jan. 1, 2014

§ 292. May Take Property for Family Allowance

The surviving spouse, the guardian of the minor children, or the guardian of an adult incapacitated child or another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian, as the case may be, shall have the right to take in payment of such allowance, or any part thereof, any of the personal property of the estate at its appraised value as shown by the appraisal; provided, however, that property specifically devised or bequeathed to another may be so taken, or may be sold to raise funds for the allowance as hereinafter provided, only if the other available property shall be insufficient to provide the allowance.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 39, ch. 24, § 20, eff.

Statutes in Context
§ 290

The family allowance has priority over the claims of other creditors except for the first \$15,000 of funeral and last illness expenses. See § 322 (defining "Class 1" claims).

§ 290. Family Allowance Preferred

The family allowance made for the support of the surviving spouse, minor children, and adult incapacitated children of the deceased shall be paid in preference to all other debts or charges against the estate, except Class 1 claims.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 38, ch. 24, § 18, eff.

Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 810, § 1.03, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 810, § 2.17, eff. Jan. 1, 2014

§ 293. Sale to Raise Funds for Family Allowance

If there be no personal property of the deceased that the surviving spouse or guardian is willing to take for such allowance, or not a sufficiency of them, and if there be no funds or not sufficient funds in the hands of such executor or administrator to pay such allowance, or any part thereof, then the court, as soon as the inventory, appraisalment, and list of claims are returned and approved or, if applicable, the affidavit in lieu of the inventory, appraisalment, and list of claims is filed, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 39, ch. 24, § 21, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.33, eff. Sept. 1, 2011.

Part 4. Presentment and Payment of Claims

Statutes in Context § 294

The personal representative must alert the decedent's creditors that the decedent has died and that the court has appointed a personal representative. This information permits the creditors to take the proper steps to present their claims so they can get paid. There are four types of notice.

1. Notice to Comptroller of Public Accounts.

The personal representative must give notice to the comptroller of public accounts within one month of receiving letters if the decedent remitted or should have remitted taxes administered by the comptroller. Service is by certified or registered mail. See § 294(a). Because the personal representative may not yet know whether the decedent remitted or should have remitted these taxes, it may be good practice to give the notice in all cases.

2. General Notice to Creditors. Within one month of receiving letters, the personal representative must publish notice in a newspaper in the county where letters were issued. See § 294(a). In large population counties, this notice is often published in specialized legal newspapers rather than the local paper.

3. Notice to Unsecured Creditors. The personal representative has the option to give notice by certified or registered mail to the

unsecured creditors of the estate (e.g., credit card issuers and utility providers). If the creditor does not present a claim within 4 months of receipt of the notice, the creditor is barred from pursuing the claim even if the statute of limitations on the claim has not otherwise run. This provision is often called the non-claim statute. See § 294(d).

4. Notice to Secured Creditors. See *Statutes in Context* to § 295.

§ 294. Notice by Representative of Appointment

(a) Giving of Notice Required. Within one month after receiving letters, personal representatives of estates shall send to the comptroller of public accounts by certified or registered mail if the decedent remitted or should have remitted taxes administered by the comptroller of public accounts and publish in some newspaper, printed in the county where the letters were issued, if there be one, a notice requiring all persons having claims against the estate being administered to present the same within the time prescribed by law. The notice shall include the date of issuance of letters held by the representative, the address to which claims may be presented, and an instruction of the representative's choice that claims be addressed in care of the representative, in care of the representative's attorney, or in care of "Representative, Estate of _____" (naming the estate).

(b) Proof of Publication. A copy of such printed notice, together with the affidavit of the publisher, duly sworn to and subscribed before a proper officer, to the effect that the notice was published as provided in this Code for the service of citation or notice by publication, shall be filed in the court where the cause is pending.

(c) When No Newspaper Printed in the County. When no newspaper is printed in the county, the notice shall be posted and the return made and filed as required by this Code.

(d) Permissive Notice to Unsecured Creditors. At any time before an estate administration is closed, the personal representative may give notice by certified or registered mail, with return receipt requested, to an unsecured creditor having a claim for money against the estate expressly stating that the creditor must present a claim within four months after the date of the receipt of the notice or the claim is barred, if the claim is not barred by the general statutes of limitation. The notice must include:

- (1) the dates of issuance of letters held by the representative;
- (2) the address to which claims may be presented; and
- (3) an instruction of the representative's choice that the claim be addressed in care of:
 - (A) the representative;
 - (B) the representative's attorney; or
 - (C) "Representative, Estate of" (naming the estate).

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Subsec. (a) amended by Acts 1981, 67th Leg., p. 243, ch. 102, § 9, eff. Aug. 31, 1981; Subsec. (a) amended by Acts 1991, 72nd Leg., ch. 464, § 1, eff. Aug. 26, 1991; Subsec. (a) amended by and (d) added by Acts 1995, 74th Leg., ch. 1054, § 2, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 295

Within 2 months of receiving letters, the personal representative must give notice to the holders of claims which are secured by mortgages, deeds of trust, Article 9 security interests, etc. Service is by registered or certified mail. See § 295.

§ 295. Notice to Holders of Secured Claims

(a) When notice required for secured claimants. Within two months after receiving letters, the personal representative of an estate shall give notice of the issuance of such letters to each and every person known to the personal representative to have a claim for money against the estate of a decedent that is secured by real or personal property of the estate. Within a reasonable time after the personal representative obtains actual knowledge of the existence of a person having a secured claim for money and to whom notice was not previously given, the personal representative shall give notice to the person of the issuance of letters.

(b) How notice shall be given. The notice stating the original grant of letters shall be given by mailing same by certified or registered mail, with return receipt requested, addressed to the record holder of such indebtedness or claim at the record holder's last known post office address.

(c) Proof of service of notice. A copy of each notice required by Subsection (a) of this section and a copy of the return receipt and an affidavit of the representative, stating that said notice was mailed as required by law, giving the name of the person to whom the notice was mailed, if not shown on the notice or receipt, shall be filed with the clerk of the court from which letters were issued.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Subsec. (b) amended by Acts 1987, 70th Leg., ch. 461, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 895, § 13, eff. Sept. 1, 1991; Subsecs. (a), (b) amended by Acts 1993, 73rd Leg., ch. 957, § 46, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1054, § 3, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 296. One Notice Sufficient

If the notices required by the two preceding Sections have been given by a former representative, or by one where several are acting, that shall be sufficient,

and need not be repeated by any successor or co-representative.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 297. Penalty for Failure to Give Notice

If the representative fails to give the notices required in preceding Sections, or to cause such notices to be given, the representative and the sureties on the representative's bond shall be liable for any damage which any person suffers by reason of such neglect, unless it appears that such person had notice otherwise.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1995, 74th Leg., ch. 1054, § 4, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 298

Normally, a creditor may present a claim anytime before the estate is closed. There are two main exceptions to this rule: (1) if the statute of limitations on the claim has run or (2) an unsecured creditor did not present the claim within 4 months after receiving notice. See § 298. (See also Civil Practice & Remedies Code § 16.062 which extends the running of a limitations period for 12 months after the decedent's death, unless a personal representative is appointed sooner, in which case limitations resumes running at the time the personal representative qualifies.)

§ 298. Claims Against Estates of Decedents

(a) Time for Presentation of Claims. A claim may be presented to the personal representative at any time before the estate is closed if suit on the claim has not been barred by the general statutes of limitation. If a claim of an unsecured creditor for money is not presented within four months after the date of receipt of the notice permitted by Section 294(d), the claim is barred.

(b) Claims Barred by Limitation Not to Be Allowed or Approved. No claims for money against a decedent, or against the estate of the decedent, on which a suit is barred under Subsection (a) of this section, Section 313, or Section 317(a) or by a general statute of limitation applicable thereto shall be allowed by a personal representative. If allowed by the representative and the court is satisfied that the claim is barred or that limitation has run, the claim shall be disapproved.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 2992, ch. 988, § 1, eff. June 15, 1971; Amended by Acts 1993, 73rd Leg., ch. 957, § 47, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, § 5, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 299

Section 299 provides that the statute of limitations is tolled when a creditor files or deposits a claim for money.

§ 299. Tolling of General Statutes of Limitation

The general statutes of limitation are tolled on the date:

(1) a claim for money is filed or deposited with the clerk; or

(2) suit is brought against the personal representative of an estate with respect to a claim of the estate that is not required to be presented to the personal representative.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1997, 75th Leg., ch. 1302, § 12, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 301

The creditor must submit a sworn affidavit supporting the claim under § 301.

§ 301. Claims for Money Must Be Authenticated

No personal representative of a decedent's estate shall allow, and the court shall not approve, a claim for money against such estate, unless such claim be supported by an affidavit that the claim is just and that all legal offsets, payments, and credits known to the affiant have been allowed. If the claim is not founded on a written instrument or account, the affidavit shall also state the facts upon which the claim is founded. A photostatic copy of any exhibit or voucher necessary to prove a claim may be offered with and attached to the claim in lieu of the original.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1993, 73rd Leg., ch. 957, § 48, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, § 6, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 302. When Defects of Form Are Waived

Any defect of form, or claim of insufficiency of exhibits or vouchers presented, shall be deemed waived by the personal representative unless written objection thereto has been made within thirty days after presentment of the claim, and filed with the county clerk.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 303. Evidence Concerning Lost or Destroyed Claims

If evidence of a claim is lost or destroyed, the claimant or an authorized representative or agent of the claimant, may make affidavit to the fact of such loss or destruction, stating the amount, date, and nature of the claim and when due, and that the same is just, and that all legal offsets, payments and credits known to the affiant have been allowed, and that the claimant is still the owner of the claim; and the claim must be proved by disinterested testimony taken in open court, or by oral or written deposition, before the claim is approved. If such claim is allowed or approved without such affidavit, or if it is approved without satisfactory proof, such allowance or approval shall be void.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1995, 74th Leg., ch. 1054, § 7, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 304. Authentication of Claim by Others than Individual Owners

An authorized officer or representative of a corporation or other entity shall make the affidavit required to authenticate a claim of such corporation or entity. When an affidavit is made by an officer of a corporation, or by an executor, administrator, trustee, assignee, agent, representative, or attorney, it shall be sufficient to state in such affidavit that the person making it has made diligent inquiry and examination, and that he believes that the claim is just and that all legal offsets, payments, and credits made known to the affiant have been allowed.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1993, 73rd Leg., ch. 957, § 49, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, § 8, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 306

A secured creditor must determine how the creditor wants the claim handled. The creditor must make this election by the later of (a) 4 months after the receipt of notice or (b) 6 months after letters are issued. See § 306(b)

1. Preferred Debt and Lien. If the creditor elects preferred debt and lien status, the creditor receives top priority over the collateral. However, if the value of the collateral is less than the debt, the creditor will not have a right to recover the deficiency from the estate. In other words, the creditor gives up the right to pursue the debtor's personal liability on the debt. See § 306(d). Preferred debt and lien status is presumed unless the creditor affirmatively elects otherwise. See § 306(b).

2. Matured Secured Claim. If the creditor elects matured secured claim status, the creditor retains the right to seek a deficiency if the value of the collateral is less than the amount owed. However, the creditor must subordinate the claim to (a) the first \$15,000 of funeral and last illness expenses, (b) the family allowance, and (c) administration and other expenses. See § 306(c).

Because of the repeal of the common law doctrine of exoneration by Probate Code § 71A by the 2005 Legislature, subsection (c-1) was added to Probate Code 306 to handle the situation where a secured creditor elects matured secured claim status. First, the personal representative is required to collect from the beneficiary the amount of the debt and pay that amount to the secured creditor. If there is more than one beneficiary of the encumbered property, each pays a pro rata share of the debt.

Second, if the personal representative is unable to collect enough money to pay off the debt, then the property is sold. The proceeds of the sale are first used to pay the debt and any expenses associated with the sale. If there is a surplus, it will be divided pro rata among the beneficiaries of the specific gift. If there is a deficiency, the creditor has an unsecured claim for that amount.

§ 306. Method of Handling Secured Claims for Money

(a) Specifications of Claim. When a secured claim for money against an estate is presented, the claimant shall specify therein, in addition to all other matters required to be specified in claims:

(1) Whether it is desired to have the claim allowed and approved as a matured secured claim to be paid in due course of administration, in which event it shall be so paid if allowed and approved; or

(2) Whether it is desired to have the claim allowed, approved, and fixed as a preferred debt and lien against the specific property securing the indebtedness and paid according to the terms of the contract which secured the lien, in which event it shall be so allowed and approved if it is a valid lien; provided, however, that the personal representative may pay said claim prior to maturity if it is for the best interest of the estate to do so.

(b) Time for Specification of Secured Claim. Within six months after the date letters are granted, or within four months after the date notice is received under Section 295 of this code, whichever is later, the secured creditor may present the creditor's claim and shall specify whether the claim is to be allowed and approved under Paragraph (1) or (2) of Subsection (a) of this section. If a secured claim is not presented within the time prescribed by this subsection or if the claim is presented without specifying how the claim is to be

paid, it shall be treated as a claim to be paid in accordance with Paragraph (2) of Subsection (a) hereof.

(c) Matured Secured Claims. If a claim has been allowed and approved as a matured secured claim under Paragraph (1) of Subsection (a) of this section, the claim shall be paid in due course of administration and the secured creditor is not entitled to exercise any other remedies in a manner that prevents the preferential payment of claims and allowances described by Paragraphs (1) through (3) of Section 320(a) of this code.

(c-1) If a claimant presents a secured claim against an estate for a debt that would otherwise pass with the property securing the debt to one or more devisees in accordance with Section 71A(a) of this code and the claim is allowed and approved as a matured secured claim under Subsection (a)(1) of this section, the personal representative shall collect from the devisees the amount of the debt and pay that amount to the claimant in satisfaction of the claim. Each devisee's share of the debt is an amount equal to a fraction representing the devisee's ownership interest in the property, multiplied by the amount of the debt. If the personal representative is unable to collect from the devisees an amount sufficient to pay the debt, the personal representative shall sell the property securing the debt, subject to Part 5 of this chapter. The personal representative shall use the sale proceeds to pay the debt and any expenses associated with the sale and shall distribute the remaining sale proceeds to each devisee in an amount equal to a fraction representing the devisee's ownership interest in the property, multiplied by the amount of the remaining sale proceeds. If the sale proceeds are insufficient to pay the debt and any expenses associated with the sale, the difference between the sum of the amount of the debt and the expenses associated with the sale and the sale proceeds shall be paid under Subsection (c) of this section.

(d) Approved Claim as Preferred Lien Against Property. When an indebtedness has been allowed and approved under Paragraph (2) of Subsection (a) hereof, no further claim shall be made against other assets of the estate by reason thereof, but the same thereafter shall remain a preferred lien against the property securing same, and the property shall remain security for the debt in any distribution or sale thereof prior to final maturity and payment of the debt.

(e) Payment of Maturities on Preferred Debt and Lien Claims. If property securing a claim allowed, approved, and fixed under Paragraph (2) of Subsection (a) hereof is not sold or distributed within six months from the date letters are granted, the representative of the estate shall promptly pay all maturities which have accrued on the debt according to the terms thereof, and shall perform all the terms of any contract securing same. If the representative defaults in such payment or performance, on application of the claimholder, the court shall:

(1) require the sale of said property subject to the unmatured part of such debt and apply the proceeds of the sale to the liquidation of the maturities;

(2) require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt; or

(3) authorize foreclosure by the claimholder as provided by Subsections (f) through (k) of this section.

(f) Foreclosure of Preferred Liens. An application by a claimholder under Subsection (e) of this section to foreclose the claimholder's lien or security interest on property securing a claim that has been allowed, approved, and fixed under Paragraph (2) of Subsection (a) of this section shall be supported by affidavit of the claimholder that:

(1) describes the property or part of the property to be sold by foreclosure;

(2) describes the amounts of the claimholder's outstanding debt;

(3) describes the maturities that have accrued on the debt according to the terms of the debt;

(4) describes any other debts secured by a mortgage, lien, or security interest against the property that are known by the claimholder;

(5) contains a statement that the claimholder has no knowledge of the existence of any debts secured by the property other than those described by the application; and

(6) requests permission for the claimholder to foreclose the claimholder's mortgage, lien, or security interest.

(g) Citation. On the filing of an application, the clerk shall issue citation by personal service to the personal representative and to any person described by the application as having other debts secured by a mortgage, lien, or security interest against the property and by posting to any other person interested in the estate. The citation must require the person to appear and show cause why foreclosure should or should not be permitted.

(h) Setting of Hearing on Application. When an application is filed, the clerk shall immediately notify the judge. The judge shall schedule in writing a date for a hearing on the application. The judge may, by entry on the docket or otherwise, continue the hearing for a reasonable time to allow an interested person to obtain an appraisal or other evidence concerning the fair market value of the property that is the subject of the application. If the interested person requests an unreasonable time for a continuance, the person must show good cause for the continuance.

(i) Hearing. (1) At the hearing, if the court finds that there is a default in payment or performance under the contract that secures the payment of the claim, the court shall:

(A) require the sale of the property subject to the unmatured part of the debt and apply the

proceeds of the sale to the liquidation of the maturities;

(B) require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt; or

(C) authorize foreclosure by the claimholder as provided by Subsection (f) of this section.

(2) When the court grants a claimholder the right of foreclosure, the court shall authorize the claimholder to foreclose the claimholder's mortgage, lien, or security interest in accordance with the provisions of the document creating the mortgage, lien, or security interest or in any other manner allowed by law. In the discretion of the court and based on the evidence presented at the hearing, the court may fix a minimum price for the property to be sold by foreclosure that does not exceed the fair market value of the property. If the court fixes a minimum price, the property may not be sold at the foreclosure sale for a lower price.

(j) Appeal. Any person interested in the estate may appeal an order issued under Subsection (i)(1)(c) of this section.

(k) Unsuccessful Foreclosure. If a foreclosure sale authorized under this section is conducted and the property is not sold because no bid at the sale met the minimum price set by the court, the claimholder may file another application under Subsection (f) of this section. The court may, in the court's discretion, eliminate or modify the minimum price requirement and grant permission for another foreclosure sale.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Subsec. (d) amended by Acts 1993, 73rd Leg., ch. 957, § 50, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1054, § 9, eff. Jan. 1, 1996. Subsecs. (e), (f), (i), (j) amended by Acts 1997, 75th Leg., ch. 1302, § 13, eff. Sept. 1, 1997. Subsec. (c-1) added by Acts 2005, 79th Leg., ch. 551, § 6, eff. Sept. 1, 2005. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 307. Claims Providing for Attorney's Fees

If the instrument evidencing or supporting a claim provides for attorney's fees, then the claimant may include as a part of the claim the portion of such fee that he has paid or contracted to pay to an attorney to prepare, present, and collect such claim.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 308. Depositing Claims with Clerk

Claims may also be presented by depositing same, with vouchers and necessary exhibits and affidavit attached, with the clerk, who, upon receiving same, shall advise the representative of the estate, or the representative's attorney, by letter mailed to the representative's last known address, of the deposit of same. Should the representative fail to act on said claim within thirty days after it is deposited, then it shall be

presumed to be rejected. Failure of the clerk to give notice as required herein shall not affect the validity of the presentment or the presumption of rejection because not acted upon within said thirty day period. The clerk shall enter a deposited claim on the claim docket.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1995, 74th Leg., ch. 1054, § 10, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context § 309

A personal representative in a dependent administration has three options once a creditor presents a claim.

1. Accept. The personal representative may accept the claim which means that the personal representative agrees that the creditor's claim is valid. It does not mean that the claim will actually get paid; the claim merely goes in the stack of valid claims to be paid according to the priority rules set forth in the Code.

2. Reject. The personal representative may reject the claim, that is, indicate that the personal representative will not pay the claim. The creditor in a dependent (but not independent) administration must then bring suit within 90 days of the rejection or else the claim is barred. See § 313. See also *Statutes in Context* to § 146.

3. Do Nothing. If the personal representative takes no action with respect to the claim within 30 days, the claim is deemed rejected. See § 310. This then triggers the running of the creditor's obligation in a dependent administration to bring suit within 90 days under § 313.

Section 309 does not apply to independent administrations. See *Bunting v. Pearson*, 430 S.W.2d 470 (Tex. 1968).

§ 309. Memorandum of Allowance or Rejection of Claim

When a duly authenticated claim against an estate is presented to the representative, or deposited with the clerk as heretofore provided, the representative shall, within thirty days after the claim is presented or deposited, endorse thereon, annex thereto, or file with the clerk a memorandum signed by the representative, stating the date of presentation or depositing of the claim, and that the representative allows or rejects it, or what portion thereof the representative allows or rejects.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1995, 74th Leg., ch. 1054, § 11, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context § 310

Section 310 does not apply to independent administrations. See *Bunting v. Pearson*, 430 S.W.2d 470 (Tex. 1968).

§ 310. Failure to Endorse or Annex Memorandum

The failure of a representative of an estate to timely allow or reject a claim under Section 309 of this code shall constitute a rejection of the claim. If the claim is thereafter established by suit, the costs shall be taxed against the representative, individually, or the representative may be removed on the written complaint of any person interested in the claim, after personal service of citation, hearing, and proof, as in other cases of removal.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1995, 74th Leg., ch. 1054, § 12, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 311. When Claims Entered in Docket

After a claim against an estate has been presented to and allowed or rejected by the personal representative, in whole or in part, the claim must be filed with the county clerk of the proper county. The clerk shall enter the claim on the claim docket.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 2992, ch. 988, § 2, eff. June 15, 1971; Amended by Acts 1993, 73rd Leg., ch. 957, § 51, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, § 13, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 312. Contest of Claims, Action by Court, and Appeals

(a) Contest of Claims. Any person interested in an estate may, at any time before the court has acted upon a claim, appear and object in writing to the approval of the same, or any part thereof, and in such case the parties shall be entitled to process for witnesses, and the court shall hear proof and render judgment as in ordinary suits.

(b) Court's Action Upon Claims. All claims which have been allowed and entered upon the claim docket for a period of ten days shall be acted upon by the court and be either approved in whole or in part or rejected, and they shall also at the same time be classified by the court.

(c) Hearing on Claims. Although a claim may be properly authenticated and allowed, if the court is not satisfied that it is just, the court shall examine the claimant and the personal representative under oath, and hear other evidence necessary to determine the issue. If not then convinced that the claim is just, the court shall disapprove it.

(d) Order of the Court. When the court has acted upon a claim, the court shall also endorse thereon, or

annex thereto, a written memorandum dated and signed officially, stating the exact action taken upon such claim, whether approved or disapproved, or approved in part or rejected in part, and stating the classification of the claim. Such orders shall have the force and effect of final judgments.

(e) **Appeal.** When a claimant or any person interested in an estate shall be dissatisfied with the action of the court upon a claim, the claimant or person may appeal therefrom to the courts of appeals, as from other judgments of the county court in probate matters.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, § 4, eff. June 21, 1975; Subsecs. (a), (e) amended by Acts 1993, 73rd Leg., ch. 957, § 52, eff. Sept. 1, 1993; Subsecs. (c) to (e) amended by Acts 1995, 74th Leg., ch. 1054, § 14, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 313

Section 313 does not apply to independent administrations. See *Bunting v. Pearson*, 430 S.W.2d 470 (Tex. 1968).

§ 313. Suit on Rejected Claim

When a claim or a part thereof has been rejected by the representative, the claimant shall institute suit thereon in the court of original probate jurisdiction in which the estate is pending within ninety days after such rejection, or the claim shall be barred. When a rejected claim is sued on, the endorsement made on or annexed thereto, or any memorandum of rejection filed with respect to the claim, shall be taken to be true without further proof, unless denied under oath. When a rejected claim or part thereof has been established by suit, no execution shall issue, but the judgment shall be filed in the court in which the cause is pending, entered upon the claim docket, classified by the court, and handled as if originally allowed and approved in due course of administration.

Amended by Acts 1995, 74th Leg., ch. 1054, § 15, eff. Jan. 1, 1996; Acts 2001, 77th Leg., ch. 10, § 3, eff. Sept. 1, 2001. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 314

A claim for money must first be presented and rejected before the creditor may sue on the claim. However, this requirement does not apply to a claim which is not "for money" such as an unliquidated tort claim or a claim based on quantum meruit for services rendered.

§ 314. Presentment of Claims a Prerequisite for Judgment

No judgment shall be rendered in favor of a claimant upon any claim for money which has not been legally presented to the representative of an estate, and rejected by the representative or by the court, in whole or in part.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1993, 73rd Leg., ch. 957, § 53, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, § 16, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 315. Costs of Suit with Respect to Claims

All costs incurred in the probate court with respect to claims shall be taxed as follows:

(a) If allowed and approved, the estate shall pay the costs.

(b) If allowed, but disapproved, the claimant shall pay the costs.

(c) If rejected, but established by suit, the estate shall pay the costs.

(d) If rejected, but not established by suit, the claimant shall pay the costs, except as provided by Section 310 of this code.

(e) In suits to establish a claim after rejection in part, if the claimant fails to recover judgment for a greater amount than was allowed or approved, the claimant shall pay all costs.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1995, 74th Leg., ch. 1054, § 17, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 316. Claims Against Personal Representatives

The naming of an executor in a will shall not operate to extinguish any just claim which the deceased had against the person named as executor; and, in all cases where a personal representative is indebted to the testator or intestate, the representative shall account for the debt in the same manner as if it were cash in the representative's hands; provided, however, that if said debt was not due at the time of receiving letters, the representative shall be required to account for it only from the date when it becomes due.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1995, 74th Leg., ch. 1054, § 18, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 317

Section 317 provides special rules for claims which a personal representative has against the estate the personal representative is administering.

§ 317. Claims by Personal Representatives

(a) **By Executors or Administrators.** The foregoing provisions of this Code relative to the presentation of claims against an estate shall not be construed to apply to any claim of a personal representative against the testator or intestate; but a personal representative holding such claim shall file the same in the court granting the letters, verified by affidavit as required in other cases, within six months after the representative has qualified, or such claim shall be barred.

(b) **Action on Such Claims.** When a claim by a personal representative has been filed with the court within the required time, such claim shall be entered upon the claim docket and acted upon by the court in the same manner as in other cases, and, when the claim has been acted upon by the court, an appeal from the judgment of the court may be taken as in other cases.

(c) **Provisions Not Applicable to Certain Claims.** The foregoing provisions relative to the presentment of claims shall not be so construed as to apply to a claim:

(1) of any heir, devisee, or legatee who claims in such capacity;

(2) that accrues against the estate after the granting of letters for which the representative of the estate has contracted; or

(3) for delinquent ad valorem taxes against a decedent's estate that is being administered in probate in:

(A) a county other than the county in which the taxes were imposed; or

(B) the same county in which the taxes were imposed, if the probate proceedings have been pending for more than four years.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1993, 73rd Leg., ch. 957, § 54, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, § 19, eff. Jan. 1, 1996; Subsec. (c) amended by Acts 1999, 76th Leg., ch. 1481, § 37, eff. Sept. 1, 1999. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 318. Claims Not Allowed After Order for Partition and Distribution

No claim for money against the estate of a decedent shall be allowed by a personal representative and no suit shall be instituted against the representative on any such claim, after an order for final partition and distribution has been made; but, after such an order has been made, the owner of any claim not barred by the laws of limitation shall have an action thereon against the heirs, devisees, legatees, or creditors of the estate, limited to the value of the property received by them in distributions from the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1995, 74th Leg., ch. 1054, § 20, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 319. Claims Not to Be Paid Unless Approved

No claim for money against the estate of a decedent, or any part thereof, shall be paid until it has been approved by the court or established by the judgment of a court of competent jurisdiction.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1993, 73rd Leg., ch. 957, § 55, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

**Statutes in Context
§§ 320–322**

Sections 320 and 322 provide the priority order for the payment of claims. However, other factors may come into play in determining the payment order. Below is a priority order which attempts to combine the priority rules in a unified list.

1. Federal government claims, e.g., the federal tax lien. 31 U.S.C. § 3713(a). However, federal claims do not have priority over funeral expenses, expenses of administration, or the family allowance because the decedent did not owe those while alive. (Federal claims do have priority over expenses of last illness because those expenses were obligations of the decedent.) See Rev. Rul. 80-112, 1980-1 C.B. 306.

2. Secured creditor who has preferred debt and lien status vis-à-vis the collateral only. See § 306(a)(2).

3. Homestead (or the allowance in lieu thereof). See § 281.

4. Funeral expenses and expenses of last sickness up to a combined total of \$15,000. See §§ 320(a)(1) and 322 (Class 1).

5. Exempt personal property. See § 281.

6. Family allowance. See §§ 290 and 320(a)(2).

7. Administration and related expenses. See §§ 320(a)(3) and 322 (Class 2).

8. Secured creditor who elected matured secured claim status vis-à-vis the collateral only. See § 322 (Class 3).

9. Child support, both arrearages and accelerated amounts under Family Code § 154.015. See § 322 (Class 4).

10. Certain Texas tax claims. See § 322 (Class 5).

11. Confinement claims. See § 322 (Class 6) and Government Code § 501.017.

12. State medical assistance payments. See § 322 (Class 7). For an explanation of the Texas Medicaid Estate Recovery Program, see http://www.dads.state.tx.us/services/estate_recovery/.

13. Unsecured claims approved by the personal representative (may include deficiency amounts of secured claimants who elected matured secured claim status). See § 322 (Class 8).

14. Beneficiaries and heirs. See § 322B for the abatement order of testamentary gifts.

§ 320. Order of Payment of Claims and Allowances

(a) **Priority of Payments.** Personal representatives, when they have funds in their hands belonging to the estate, shall pay in the following order:

(1) Funeral expenses and expenses of last sickness, in an amount not to exceed Fifteen Thousand Dollars.

(2) Allowances made to the surviving spouse and children, or to either.

(3) Expenses of administration and the expenses incurred in the preservation, safekeeping, and management of the estate.

(4) Other claims against the estate in the order of their classification.

(b) **Sale of Mortgaged Property.** If a personal representative has the proceeds of a sale that has been made for the satisfaction of a mortgage, lien, or security interest, and the proceeds, or any part of the proceeds, are not required for the payment of any debts against the estate that have a preference over the mortgage, lien, or security interest, the personal representative shall pay the proceeds to any holder of a mortgage, lien, or security interest. If there is more than one mortgage, lien, or security interest against the property, the personal representative shall pay the holders in the order of the holders' priority. If the personal representative fails to pay proceeds under this subsection, a holder, on proof of the failure to pay, may obtain an order from the court directing the payment to be made.

(c) **Claimant's Petition.** A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitations and upon due proof procure an order for its allowance and payment from the estate.

(d) **Permissive Order of Payment.** After the sixth month after the date letters are granted and on application by the personal representative stating that the personal representative has no actual knowledge of any outstanding enforceable claims against the estate other than the claims already approved and classified by the court, the court may order the personal representative to pay any claim that is allowed and approved.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 1818, ch. 554, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 352, ch. 173, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1876, ch. 758, § 1, eff. Aug. 27, 1979; Subsec. (a) amended by Acts 1987, 70th Leg., ch. 461, § 2, eff. Sept. 1, 1987.

Amended by Acts 1993, 73rd Leg., ch. 957, § 56, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, § 21, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 540, § 4, eff. Sept. 1, 1997; Subsec. (a) amended by Acts 1997, 75th Leg., ch. 1361, § 1, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 320A. Funeral Expenses

When personal representatives pay claims for funeral expenses and for items incident thereto, such as tombstones, grave markers, crypts or burial plots, they shall charge the whole of such claims to the decedent's estate and shall charge no part thereof to the community share of a surviving spouse.

Added by Acts 1967, 60th Leg., p. 768, ch. 321, § 1, eff. May 27, 1967; Amended by Acts 1995, 74th Leg., ch. 1054, § 22, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 321. Deficiency of Assets

When there is a deficiency of assets to pay all claims of the same class, other than secured claims for money, the claims in such class shall be paid pro rata, as directed by the court, and in the order directed. No personal representative shall be allowed to pay the claims, whether the estate is solvent or insolvent, except with the pro rata amount of the funds of the estate that have come to hand.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1993, 73rd Leg., ch. 957, § 57, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, § 23, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 322

See Statutes in Context to § 320.

§ 322. Classification of Claims Against Estate of Decedent

Claims against an estate of a decedent shall be classified and have priority of payment, as follows:

Class 1. Funeral expenses and expenses of last sickness for a reasonable amount to be approved by the court, not to exceed a total of Fifteen Thousand Dollars, with any excess to be classified and paid as other unsecured claims.

Class 2. Expenses of administration and expenses incurred in the preservation, safekeeping, and management of the estate, including fees and expenses awarded under Section 243 of this code, and unpaid expenses of administration awarded in a guardianship of the decedent.

Class 3. Secured claims for money under Section 306(a)(1), including tax liens, so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and when more than one mortgage, lien, or security interest shall exist upon the

same property, they shall be paid in order of their priority.

Class 4. Claims for the principal amount of and accrued interest on delinquent child support and child support arrearages that have been confirmed and reduced to money judgment, as determined under Subchapter F, Chapter 157, Family Code, and claims for unpaid child support obligations under Section 154.015, Family Code.

Class 5. Claims for taxes, penalties, and interest due under Title 2, Tax Code; Chapter 8, Title 132, Revised Statutes; Section 81.111, Natural Resources Code; the Municipal Sales and Use Tax Act (Chapter 321, Tax Code); Section 451.404, Transportation Code; or Subchapter I, Chapter 452, Transportation Code.

Class 6. Claims for the cost of confinement established by the Texas Department of Criminal Justice under Section 501.017, Local Government Code.

Class 7. Claims for repayment of medical assistance payments made by the state under Chapter 32, Human Resources Code, to or for the benefit of the decedent.

Class 8. All other claims.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1971, 62nd Leg., p. 2992, ch. 988, § 3, eff. June 15, 1971; Acts 1979, 66th Leg., p. 869, ch. 394, § 1, eff. Aug. 27, 1979; Amended by Acts 1981, 67th Leg., p. 242, ch. 102, § 8, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 1785, ch. 389, § 38A, 39(1), eff. Jan. 1, 1982; Acts 1987, 70th Leg., ch. 1049, § 51, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 1052, § 2.07, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 2, § 14.27(a)(6), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1035, § 13, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 1054, § 24, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 165, § 30.243, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1361, § 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 69, § 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1060, § 14, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 551, § 7, eff. Sept. 1, 2005. Class 4 amended by Acts 2007, 80th Leg., ch. 1404, § 3, eff. Sept. 1, 2007. Class 6 amended by Acts 2009, 81st Leg., ch. 87, § 25.151, eff. Sept. 1, 2009. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.34, eff. Sept. 1, 2011.

Statutes in Context

§ 322A

The testator's estate may be subject to a tax on the privilege of making gratuitous transfers upon the testator's death, that is, the federal or Texas estate tax. What testamentary gifts bear the burden of these tax obligations? Some states do not have any special rules for tax liabilities. In other words, gifts abate to pay tax liabilities just like they do to pay other claims against the estate. On the other hand, an increasing number of states, including Texas in § 322A, have tax apportionment

statutes so that the amount of each gift is reduced by the amount of estate tax attributable to the transfer. In effect, each transfer is reduced by its fair share of the tax rather than being subsidized by lower ranking gifts. Tax apportionment prevents the residual gift, which is often the most important gift in the will, from bearing the entire estate tax burden in addition to all of the other claims against the estate.

State and federal governments include many non-probate transfers in a testator's taxable estate. Section 322A covers these non-probate assets as well as testamentary transfers. Federal law mandates that life insurance beneficiaries and recipients under powers of appointment shoulder their fair share of transfer taxes. See I.R.C. §§ 2206 and 2207. Texas extends apportionment to other transfers, such as multiple-party bank accounts, survivorship rights, and trusts over which the testator held the power of revocation.

Section 322A is designed to carry out the testator's presumed intent. The legislature believed that most testators would want each transfer, be it probate or non-probate, to be responsible for its own tax. If the testator does not agree, the testator may provide otherwise in the will and those instructions will prevail over the apportionment statute. Note that the apportionment statute may be inadvertently trumped if the testator includes a generic clause in the will such as, "The executor shall pay all taxes payable because of my death from my residuary estate." See *Peterson v. Mayse*, 993 S.W.2d 217 (Tex. App. — Tyler 1999, writ denied).

§ 322A. Apportionment of Taxes

(a) In this section:

(1) "Estate" means the gross estate of a decedent as determined for the purpose of estate taxes.

(2) "Estate tax" means any estate, inheritance, or death tax levied or assessed on the property of a decedent's estate, because of the death of a person, imposed by federal, state, local, or foreign law, including the federal estate tax and the additional inheritance tax imposed by Chapter 211, Tax Code, and including interest and penalties imposed in addition to those taxes. Estate tax does not include a tax imposed under Section 2701(d)(1)(A), Internal Revenue Code of 1986 (26 U.S.C. § 2701 (d)).

(3) "Person" includes a trust, natural person, partnership, association, joint stock company, corporation, government, political subdivision, or governmental agency.

(4) "Person interested in the estate" means a person, or a fiduciary on behalf of that person, who is entitled to receive, or who has received, from a decedent or because of the death of the decedent,

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property included in the decedent's estate for purposes of the estate tax, but does not include a creditor of the decedent or of the decedent's estate.

(5) "Representative" means the representative, executor, or administrator of an estate, or any other person who is required to pay estate taxes assessed against the estate.

(b)(1) The representative shall charge each person interested in the estate a portion of the total estate tax assessed against the estate. The portion of each estate tax that is charged to each person interested in the estate must represent the same ratio as the taxable value of that person's interest in the estate included in determining the amount of the tax bears to the total taxable value of all the interests of all persons interested in the estate included in determining the amount of the tax. In apportioning an estate tax under this subdivision, the representative shall disregard a portion of the tax that is apportioned under the law imposing the tax, otherwise apportioned by federal law, or apportioned as otherwise provided by this section.

(2) Subdivision (1) of this subsection does not apply to the extent the decedent in a written inter vivos or testamentary instrument disposing of or creating an interest in property specifically directs the manner of apportionment of estate tax or grants a discretionary power of apportionment to another person. A direction for the apportionment or nonapportionment of estate tax is limited to the estate tax on the property passing under the instrument unless the instrument is a will that provides otherwise.

(3) If under Subdivision (2) of this subsection directions for the apportionment of an estate tax in two or more instruments executed by the same person conflict, the instrument disposing of or creating an interest in the property to be taxed controls. If directions for the apportionment of estate tax in two or more instruments executed by different persons conflict, the direction of the person in whose estate the property is included controls.

(4) Subdivisions (2) and (3) of this subsection do not grant or enlarge the power of a person to apportion estate tax to property passing under an instrument created by another person in excess of the estate tax attributable to the property. Subdivisions (2) and (3) of this subsection do not apply to the extent federal law directs a different manner of apportionment.

(c) Any deduction, exemption, or credit allowed by law in connection with the estate tax inures to a person interested in the estate as provided by Subsections (d)-(f) of this section.

(d) If the deduction, exemption, or credit is allowed because of the relationship of the person interested in the estate to the decedent, or because of the purpose of the gift, the deduction, exemption, or credit inures to the person having the relationship or receiving the gift, unless that person's interest in the estate is subject to a

prior present interest that is not allowable as a deduction. The estate tax apportionable to the person having the present interest shall be paid from the corpus of the gift or the interest of the person having the relationship.

(e) A deduction for property of the estate that was previously taxed and a credit for gift taxes or death taxes of a foreign country that were paid by the decedent or his estate inures proportionally to all persons interested in the estate who are liable for a share of the estate tax.

(f) A credit for inheritance, succession, or estate taxes, or taxes of a similar nature applicable to property or interests includable in the estate, inures to the persons interested in the estate who are chargeable with payment of a portion of those taxes to the extent that the credit reduces proportionately those taxes.

(g) To the extent that property passing to or in trust for a surviving spouse or a charitable, public, or similar gift or devise is not an allowable deduction for purposes of the estate tax solely because of an inheritance tax or other death tax imposed on and deductible from the property, the property is not included in the computation provided for by Subsection (b) of this section, and to that extent no apportionment is made against the property. The exclusion provided by this subsection does not apply if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d), Internal Revenue Code of 1986,¹ relating to deductions for state death taxes on transfers for public, charitable, or religious uses.

(h) Except as provided by Subsection (i)(3) of this section, an interest in income, an estate for years or for life, or another temporary interest in any property or fund is not subject to apportionment. The estate tax apportionable to the temporary interest and the remainder, if any, is chargeable against the corpus of the property or the funds that are subject to the temporary interest and remainder.

(i)(1) In this subsection, "qualified real property" has the meaning assigned by Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. § 2032A).

(2) If an election is made under Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. § 2032A), the representative shall apportion estate taxes according to the amount of federal estate tax that would be payable if the election were not made. The amount of the reduction of the estate tax resulting from the election shall be applied to reduce the amount of the estate tax allocated based on the value of the qualified real property that is the subject of the election. If the amount applied to reduce the taxes allocated based on the value of the qualified real property is greater than the amount of those taxes, the excess shall be applied to the portion of the taxes allocated for all other property.

¹ 26 U.S.C. §2053(d).

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This amount is to be apportioned under Subsection (b)(1) of this section.

(3) If additional federal estate tax is imposed under Section 2032A(c), Internal Revenue Code of 1986 (26 U.S.C. § 2032A) because of an early disposition or cessation of a qualified use, the additional tax shall be equitably apportioned among the persons who have an interest in the portion of the qualified real property to which the additional tax is attributable in proportion to their interests. The additional tax is a charge against such qualified real property. If the qualified real property is split between one or more life or term interests and remainder interests, the additional tax shall be apportioned to each person whose action or cessation of use caused the imposition of additional tax, unless all persons with an interest in the qualified real property agree in writing to dispose of the property, in which case the additional tax shall be apportioned among the remainder interests.

(j) (Repealed)

(k) If the date for the payment of any portion of an estate tax is extended, the amount of the extended tax shall be apportioned to the persons who receive the specific property that gives rise to the extension. Those persons are entitled to the benefits and shall bear the burdens of the extension.

(l) If federal law directs the apportionment of the federal estate tax, a similar state tax shall be apportioned in the same manner.

(m) Interest on an extension of estate tax and interest and penalties on a deficiency shall be apportioned equitably to reflect the benefits and burdens of the extension or deficiency and of any tax deduction associated with the interest and penalties, but if the assessment or penalty and interest is due to delay caused by the negligence of the representative, the representative shall be charged with the amount of assessed penalty and interest.

(n) If property includable in an estate does not come into possession of the representative obligated to pay the estate tax, the representative shall recover from each person interested in the estate the amount of the estate tax apportioned to the person under this section or assign to persons affected by the tax obligation the representative's right of recovery. The obligation to recover a tax under this subsection does not apply if:

(1) the duty is waived by the parties affected by the tax obligation or by the instrument under which the representative derives powers; or

(2) in the reasonable judgment of the representative, proceeding to recover the tax is not cost-effective.

(o) If a representative cannot collect from a person interested in the estate an unpaid amount of estate tax apportioned to the person, the amount not collected shall be apportioned among the other persons interested in the estate who are subject to apportionment in the same manner as provided by Subsection (b)(1) of this section. A person who is charged with or who pays an

apportioned amount under this subsection because another person failed to pay an amount of estate tax apportioned to the person has a right of reimbursement for that amount from the person who failed to pay the tax. The representative may enforce the right of reimbursement, or the person who is charged with or who pays an apportioned amount under this subsection may enforce the right of reimbursement directly by an assignment from the representative. A person assigned the right under this subsection is subrogated to the rights of the representative. A representative who has a right of reimbursement may petition a court to determine the right of reimbursement.

(p) This section shall be applied after giving effect to any disclaimers made in accordance with Section 37A of this code.

(q) Interest and penalties assessed against the estate by a taxing authority shall be apportioned among and charged to the persons interested in the estate in the manner provided by Subsection (b) of this section, unless, on application by any person interested in the estate, the court determines that the proposed apportionment is not equitable or that the assessment of interest or penalties was caused by a breach of fiduciary duty of a representative. If the apportionment is not equitable, the court may apportion interest and penalties in an equitable manner. If the assessment of interest or penalties was caused by a breach of fiduciary duty of a representative, the court may charge the representative with the amount of the interest and penalties assessed attributable to his conduct.

(r) Expenses reasonably incurred by a representative in determination of the amount, apportionment, or collection of the estate tax shall be apportioned among and charged to persons interested in the estate in the manner provided by Subsection (b) of this section unless, on application by any person interested in the estate, the court determines that the proposed apportionment is not equitable. If the court determines that the assessment is not equitable, the court may apportion the expenses in an equitable manner.

(s) For the purposes of this section, "court" means a court in which proceedings for administration of the estate are pending or have been completed or, if no proceedings are pending or have been completed, a court in which venue lies for the administration of the estate of the decedent.

(t) A representative who has possession of any property of an estate that is distributable to a person interested in the estate may withhold from that property an amount equal to the person's apportioned share of the estate tax.

(u) A representative shall recover from any person interested in the estate the unpaid amount of the estate tax apportioned and charged to the person under this section, unless the representative determines in good faith that an attempt to recover this amount would be economically impractical.

(v) A representative required to recover unpaid amounts of estate tax apportioned to persons interested

in the estate under this section may not be required to initiate the necessary actions until the expiration of 90 days after the date of the final determination of the amount of the estate tax by the Internal Revenue Service. A representative who initiates an action under this section within a reasonable time after the 90-day period is not subject to any liability or surcharge because any portion of the estate tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible.

(w) A representative acting in another state may initiate an action in a court of this state to recover a proportionate amount of the federal estate tax, of an estate tax payable to another state, or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is domiciled in this state or owns property in this state subject to attachment or execution. In the action, a determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct. This section applies only if the state in which the determination of apportionment was made affords a substantially similar remedy.

(x) A reference in this section to a section of the Internal Revenue Code of 1986 refers to the section as it exists at the time in question. The reference also includes a corresponding section of a subsequent Internal Revenue Code and the referenced section as renumbered if it is renumbered.

(y) The prevailing party in an action initiated by a person for the collection of estate taxes from a person interested in the estate to whom estate taxes were apportioned and charged under Subsection (b) of this section shall be awarded necessary expenses, including reasonable attorney's fees.

Added by Acts 1987, 70th Leg., ch. 742, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 410, § 1, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 1060, § 16, eff. Sept. 1, 2003. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 322B

A testator may attempt to give away more property in the testator's will than the testator is actually able to give. This could occur because the testator misjudged the value of the testator's estate. Just because a testator leaves a \$500,000 legacy in the testator's will does not mean the testator actually has that money to give. The testator may also not have accounted for all of the testator's debts, including funeral and burial costs and expenses of last illness. In most situations, the claims of creditors have priority over assertions to property by beneficiaries.

Abatement is the reduction or elimination of a testamentary gift to pay an obligation of the estate

or a testamentary gift of a higher priority. The abatement order is set forth in § 322B.

§ 322B. Abatement of Bequests

(a) Except as provided by Subsections (b)-(d) of this section, a decedent's property is liable for debts and expenses of administration other than estate taxes, and bequests abate in the following order:

- (1) property not disposed of by will, but passing by intestacy;
- (2) personal property of the residuary estate;
- (3) real property of the residuary estate;
- (4) general bequests of personal property;
- (5) general devises of real property;
- (6) specific bequests of personal property; and
- (7) specific devises of real property.

(b) This section does not affect the requirements for payment of a claim of a secured creditor who elects to have the claim continued as a preferred debt and lien against specific property under Section 306 of this code.

(c) This section does not apply to the payment of estate taxes under Section 322A of this code.

(d) A decedent's intent, as expressed in a will, controls over the abatement of bequests provided by this section.

Added by Acts 1987, 70th Leg., ch. 742, § 2, eff. Sept. 1, 1987. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 323. Joint Obligation

When two or more persons are jointly bound for the payment of a debt, or for any other purpose, upon the death of any of the persons so bound, the decedent's estate shall be charged by virtue of such obligation in the same manner as if the obligors had been bound severally as well as jointly.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1995, 74th Leg., ch. 1054, § 25, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 324. Representatives Not to Purchase Claims

It shall be unlawful, and cause for removal, for a personal representative whether acting under appointment by will or under orders of the court, to purchase for the personal representative's own use or for any purposes whatsoever, any claim against the estate the personal representative represents. Upon written complaint by any person interested in the estate, and satisfactory proof of violation of this provision, after citation and hearing, the court shall enter its order cancelling the claim, and no part thereof shall be paid out of the estate; and the court may, in the court's discretion, remove such representative.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1993, 73rd Leg., ch. 957, § 58, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, § 26, eff.

Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 326. Owner May Obtain Order for Payment

Any creditor of an estate of a decedent whose claim, or part thereof, has been approved by the court or established by suit, may, at any time after twelve months from the granting of letters testamentary, upon written application and proof showing that the estate has on hand sufficient available funds, obtain an order directing that payment be made; or, if there are no available funds, and if to await the receipt of funds from other sources would unreasonably delay payment, the court shall then order sale of property of the estate sufficient to pay the claim; provided, the representative of the estate shall have first been cited on such written complaint to appear and show cause why such order should not be made.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 328. Liability for Nonpayment of Claims

(a) Procedure to Force Payment. If any representative of an estate shall fail to pay on demand any money ordered by the court to be paid to any person, except to the State Treasury, when there are funds of the estate available, the person or claimant entitled to such payment, upon affidavit of the demand and failure to pay, shall be authorized to have execution issued against the property of the estate for the amount due, with interest and costs; or

(b) Penalty Against Representative. Upon return of the execution not satisfied, or merely upon the affidavit of demand and failure to pay, the court may cite the representative and the sureties on the representative's bond to show cause why they should not be held liable for such debt, interest, costs, and damages. Upon return of citation duly served, if good cause to the contrary be not shown, the court shall render judgment against the representative and sureties so cited, in favor of the holder of such claim, for the amount theretofore ordered to be paid or established by suit, and remaining unpaid, together with interest and costs, and also for damages upon the amount neglected to be paid, at the rate of five per cent per month for each month, or fraction thereof, that the payment was neglected to be paid after demand made therefor, which damages may be collected in any court of competent jurisdiction.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Subsec. (b) amended by Acts 1995, 74th Leg., ch. 1054, § 27, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 329

Section 329 explains when and how a personal representative may borrow money for estate administration purposes.

§ 329. Borrowing Money

(a) Circumstances Under Which Money May Be Borrowed. Any real or personal property of an estate may be mortgaged or pledged by deed of trust or otherwise as security for an indebtedness, under order of the court, when necessary for any of the following purposes:

- (1) For the payment of any ad valorem, income, gift, estate, inheritance, or transfer taxes upon the transfer of an estate or due from a decedent or the estate, regardless of whether such taxes are assessed by a state, or any of its political subdivisions, or by the federal government or by a foreign country; or
- (2) For payment of expenses of administration, including sums necessary for operation of a business, farm, or ranch owned by the estate; or
- (3) For payment of claims allowed and approved, or established by suit, against the estate; or
- (4) To renew and extend a valid, existing lien.

(b) Procedure for Borrowing Money. When it is necessary to borrow money for any of the aforementioned purposes, or to create or extend a lien upon property of the estate as security, a sworn application for such authority shall be filed with the court, stating fully and in detail the circumstances which the representative of the estate believes make necessary the granting of such authority. Thereupon, the clerk shall issue and cause to be posted a citation to all interested persons, stating the nature of the application and requiring such persons, if they choose so to do, to appear and show cause, if any, why such application should not be granted.

(c) Order Authorizing Such Borrowing, or Extension of Lien. The court, if satisfied by the evidence adduced at the hearing upon said application that it is to the interest of the estate to borrow money, or to extend and renew an existing lien, shall issue its order to that effect, setting out the terms and conditions of the authority granted; provided, however, the loan or renewal shall not be for a term longer than three years from the granting of original letters to the representative of such estate, but the court may authorize an extension of such lien for not more than one additional year without further citation or notice. If a new lien is created on property of an estate, the court may require that the representative's general bond be increased, or an additional bond given, for the protection of the estate and the creditors, as for the sale of real property belonging to the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1973, 63rd Leg., p. 408, ch. 182, § 3,

eff. May 25, 1973; Subsec. (a) amended by Acts 1987, 70th Leg., ch. 766, § 1, eff. Aug. 31, 1987; Subsecs. (a), (c) amended by Acts 1993, 73rd Leg., ch. 957, § 59, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1054, § 28, eff. Jan. 1, 1996. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Part 5. Sales

Statutes in Context Part 5

Part 5 provides extensive (endless) guidance on how a personal representative sells estate property. The personal representative must ask the court for permission to sell, the court sets a hearing, citation is given to the interested parties, a hearing is conducted, the court authorizes the sale, the personal representative sells the property, the personal representative reports the sale to the court, and then the court approves the sale.

However, if the testator authorized the executor to sell estate property in the will, no court action is necessary. See § 332. Accordingly, it is extremely common for a will to grant the executor the power to sell.

The 2007 Legislature made it easier for the dependent personal representative to sell real estate if there is no opposition. See § 345A.

§ 331. Court Must Order Sales

Except as hereinafter provided, no sale of any property of an estate shall be made without an order of court authorizing the same. The court may order property sold for cash or on credit, at public auction or privately, as it may consider most to the advantage of the estate, except when otherwise specially provided herein.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 332. Sales Authorized by Will

Whenever by the terms of a will an executor is authorized to sell any property of the testator, no order of court shall be necessary to authorize the executor to make such sale, and the sale may be made at public auction or privately as the executor deems to be in the best interest of the estate and may be made for cash or upon such credit terms as the executor shall determine; provided, that when particular directions are given by a testator in his will respecting the sale of any property belonging to his estate, the same shall be followed, unless such directions have been annulled or suspended by order of the court.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 333. Certain Personal Property to be Sold

(a) The representative of an estate, after approval of inventory and appraisal, shall promptly apply for an order of the court to sell at public auction or privately, for cash or on credit not exceeding six months, all of the estate that is liable to perish, waste, or deteriorate in value, or that will be an expense or disadvantage to the estate if kept. Property exempt from forced sale, specific legacies, and personal property necessary to carry on a farm, ranch, factory, or any other business which it is thought best to operate, shall not be included in such sales.

(b) In determining whether to order the sale of an asset under Subsection (a) of this section, the court shall consider:

(1) the representative's duty to take care of and manage the estate as a person of ordinary prudence, discretion, and intelligence would exercise in the management of the person's own affairs; and

(2) whether the asset constitutes an asset that a trustee is authorized to invest under Chapter 117 or Subchapter F, Chapter 113, Property Code.¹

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1993, 73rd Leg., ch. 846, § 21, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 1103, § 14, eff. Jan. 1, 2004. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 334. Sales of Other Personal Property

Upon application by the personal representative of the estate or by any interested person, the court may order the sale of any personal property of the estate not required to be sold by the preceding Section, including growing or harvested crops or livestock, but not including exempt property or specific legacies, if the court finds that so to do would be in the best interest of the estate in order to pay expenses of administration, funeral expenses, expenses of last illness, allowances, or claims against the estate, from the proceeds of the sale of such property. In so far as possible, applications and orders for the sale of personal property shall conform to the requirements hereinafter set forth for applications and orders for the sale of real estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 335. Special Provisions Pertaining to Livestock

When the personal representative of an estate has in his possession any livestock which he deems necessary or to the advantage of the estate to sell, he may, in addition to any other method provided by law for the

¹ Property Code, § 113.171 et seq.

sale of personal property, obtain authority from the court in which the estate is pending to sell such livestock through a bonded livestock commission merchant, or a bonded livestock auction commission merchant. Such authority may be granted by the court upon written and sworn application by the personal representative, or by any person interested in the estate, describing the livestock sought to be sold, and setting out the reasons why it is deemed necessary or to the advantage of the estate that the application be granted. The court shall forthwith consider any such application, and may, in its discretion, hear evidence for or against the same, with or without notice, as the facts warrant. If the application be granted, the court shall enter its order to that effect, and shall authorize delivery of the livestock to any bonded livestock commission merchant or bonded livestock auction commission merchant for sale in the regular course of business. The commission merchant shall be paid his usual and customary charges, not to exceed five per cent of the sale price, for the sale of such livestock. A report of such sale, supported by a verified copy of the merchant's account of sale, shall be made promptly by the personal representative to the court, but no order of confirmation by the court is required to pass title to the purchaser of such livestock.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 2001, 77th Leg., ch. 443, § 1, eff. Sept. 1, 2001. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 336. Sales of Personal Property at Public Auction

All sales of personal property at public auction shall be made after notice has been issued by the representative of the estate and posted as in case of posting for original proceedings in probate, unless the court shall otherwise direct.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 337. Sales of Personal Property on Credit

No more than six months credit may be allowed when personal property is sold at public auction, based upon the date of such sale. The purchaser shall be required to give his note for the amount due, with good and solvent personal security, before delivery of such property can be made to him, but security may be waived if delivery is not to be made until the note, with interest, has been paid.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 338. Sale of Mortgaged Property

Any creditor holding a claim secured by a valid mortgage or other lien, which has been allowed and approved or established by suit, may obtain from the court in which the estate is pending an order that said property, or so much thereof as necessary to satisfy his

claim, shall be sold, by filing his written application therefor. Upon the filing of such application, the clerk shall issue citation requiring the representative of the estate to appear and show cause why such application should not be granted. If it appears to the court that it would be advisable to discharge the lien out of the general assets of the estate or that it be refinanced, he may so order; otherwise, he shall grant the application and order that the property be sold at public or private sale, as deemed best, as in ordinary cases of sales of real estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 339. Sales of Personal Property to Be Reported; Decree Vests Title

All sales of personal property shall be reported to the court, and the laws regulating sales of real estate as to confirmation or disapproval of sales shall apply, but no conveyance shall be necessary. The decree confirming the sale of personal property shall vest the right and title of the estate of the intestate in the purchaser who has complied with the terms of the sale, and shall be prima facie evidence that all requirements of the law in making the sale have been met. The representative of an estate may, upon request, issue a bill of sale without warranty to the purchaser as evidence of title, the expense thereof to be borne by the purchaser.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1993, 73rd Leg., ch. 957, § 60, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 340. Selection of Real Property to Be Sold for Payment of Debts

Real property of the estate which is selected to be sold for the payment of expenses or claims shall be that which the court deems most advantageous to the estate to be sold.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 341. Application for Sale of Real Estate

Application may be made to the court for an order to sell property of the estate when it appears necessary or advisable in order to:

(1) Pay expenses of administration, funeral expenses and expenses of last sickness of decedents, and allowances and claims against the estates of decedents.

(2) Dispose of any interest in real property of the estate of a decedent, when it is deemed to the best interest of the estate to sell such interest.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1969, 61st Leg., p. 2030, ch. 695, § 1, eff. June 12, 1969; Acts 1973, 63rd Leg., p. 408, ch. 182,

§ 4, *eff. May 25, 1973; Acts 1975, 64th Leg., p. 975, ch. 372, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 976, ch. 373, § 1, eff. June 19, 1975; Acts 1979, 66th Leg., p. 1755, ch. 713, § 27, eff. Aug. 27, 1979; Amended by Acts 1993, 73rd Leg., ch. 957, § 61, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.*

§ 342. Contents of Application for Sale of Real Estate

An application for the sale of real estate shall be in writing, shall describe the real estate or interest in or part thereof sought to be sold, and shall be accompanied by an exhibit, verified by affidavit, showing fully and in detail the condition of the estate, the charges and claims that have been approved or established by suit, or that have been rejected and may yet be established, the amount of each such claim, the property of the estate remaining on hand liable for the payment of such claims, and any other facts tending to show the necessity or advisability of such sale. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), *eff. Jan. 1, 2014.*

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

§ 343 [repealed]. Setting of Hearing on Application

Repealed by Acts 2007, 80th Leg., ch. 1170, § 9.05, eff. Sept. 1, 2007.

§ 344. Citation on Application

Upon the filing of such application and exhibit, the clerk shall issue a citation to all persons interested in the estate, describing the land or interest or part thereof sought to be sold, and informing them of the right under Section 345 of this code to file an opposition to the sale during the period prescribed by the court as shown in the citation, if they so elect. Service of such citation shall be by posting.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

Amended by Acts 2007, 80th Leg., ch. 1170, § 9.01, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 345. Opposition to Application

When an application for an order of sale is made, any person interested in the estate may, during the period provided in the citation issued under Section 344 of this code, file his opposition to the sale, in writing, or may make application for the sale of other property of the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

Amended by Acts 2007, 80th Leg., ch. 1170, § 9.02, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 345A. Hearing on Application and Any Opposition

(a) The clerk of a court in which an application for an order of sale is filed shall immediately call to the attention of the judge any opposition to the sale that is

filed during the period provided in the citation issued under Section 344 of this code. The court shall hold a hearing on an application if an opposition to the sale is filed during the period provided in the citation.

(b) A hearing on an application for an order of sale is not required under this section if no opposition to the application is filed during the period provided in the citation. The court, in its discretion, may determine that a hearing is necessary on the application even if no opposition was filed during that period.

(c) If the court orders a hearing under Subsection (a) or (b) of this section, the court shall designate in writing a date and time for hearing the application and any opposition, together with the evidence pertaining to the application and opposition. The clerk shall issue a notice to the applicant and to each person who files an opposition to the sale, if applicable, of the date and time of the hearing.

(d) The judge may, by entries on the docket, continue a hearing held under this section from time to time until the judge is satisfied concerning the application.

Added by Acts 2007, 80th Leg., ch. 1170, § 9.03, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 346. Order of Sale

If satisfied that the sale of the property of the estate described in the application is necessary or advisable, the court shall order the sale to be made; otherwise, the court may deny the application and may, if it deems best, order the sale of other property the sale of which would be more advantageous to the estate. An order for the sale of real estate shall specify:

(a) The property to be sold, giving such description as will identify it; and

(b) Whether the property is to be sold at public auction or at private sale, and, if at public auction, the time and place of such sale; and

(c) The necessity or advisability of the sale and its purpose; and

(d) Except in cases in which no general bond is required, that, having examined the general bond of the representative of the estate, the court finds it to be sufficient as required by law, or finds the same to be insufficient and specifies the necessary or increased bond, as the case may be; and

(e) That the sale shall be made and the report returned in accordance with law; and

(f) The terms of the sale.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956.

Amended by Acts 2007, 80th Leg., ch. 1170, § 9.04, eff. Sept. 1, 2007. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 347. Procedure When Representative Neglects to Apply for Sale

When the representative of an estate neglects to apply for an order to sell sufficient property to pay the

charges and claims against the estate that have been allowed and approved, or established by suit, any interested person may, upon written application, cause such representative to be cited to appear and make a full exhibit of the condition of such estate, and show cause why a sale of the property should not be ordered. Upon hearing such application, if the court is satisfied that a sale of the property is necessary or advisable in order to satisfy such claims, it shall enter an order of sale as provided in the preceding Section.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 348. Permissible Terms of Sale of Real Estate

(a) **For Cash or Credit.** The real estate may be sold for cash, or for part cash and part credit, or the equity in land securing an indebtedness may be sold subject to such indebtedness, or with an assumption of such indebtedness, at public or private sale, as appears to the court to be for the best interest of the estate. When real estate is sold partly on credit, the cash payment shall not be less than one-fifth of the purchase price, and the purchaser shall execute a note for the deferred payments payable in monthly, quarterly, semi-annual or annual installments, of such amounts as appears to the court to be for the best interest of the estate, to bear interest from date at a rate of not less than four percent (4%) per annum, payable as provided in such note. Default in the payment of principal or interest, or any part thereof when due, shall, at the election of the holder of such note, mature the whole debt. Such note shall be secured by vendor's lien retained in the deed and in the note upon the property sold, and be further secured by deed of trust upon the property sold, with the usual provisions for foreclosure and sale upon failure to make the payments provided in the deed and notes.

(b) **Reconveyance Upon Redemption.** When an estate owning real estate by virtue of foreclosure of vendor's lien or mortgage belonging to the estate, either by judicial sale or by a foreclosure suit or through sale under deed of trust or by acceptance of a deed in cancellation of a lien or mortgage owned by the estate, and it appears to the court that an application to redeem the property foreclosed upon has been made by the former owner of the real estate to any corporation or agency now created or hereafter to be created by any Act or Acts of the Congress of the United States or of the State of Texas in connection with legislation for the relief of owners of mortgaged or encumbered homes, farms, ranches, or other real estate, and it further appears to the court that it would be to the best interest of the estate to own bonds of one of the above named federal or state corporations or agencies instead of the real estate, then upon proper application and proof, the court may dispense with the provisions of credit sales as provided above, and may order reconveyance of the property to the former mortgage debtor, or former

owner, reserving vendor's lien notes for the total amount of the indebtedness due or for the total amount of bonds which the corporation or agency above named is under its rules and regulations allowed to advance, and, upon obtaining such an order, it shall be proper for the representative to indorse and assign the notes so obtained over to any one of the corporations or agencies above named in exchange for bonds of that corporation or agency.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1959, 56th Leg., p. 636, ch. 290, § 1, eff. May 30, 1959. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 349. Public Sales of Real Estate

(a) **Notice of Sale.** Except as hereinafter provided, all public sales of real estate shall be advertised by the representative of the estate by a notice published in the county in which the estate is pending, as provided in this Code for publication of notices or citations. Reference shall be made to the order of sale, the time, place, and the required terms of sale, and a brief description of the property to be sold shall be given. It need not contain field notes, but if rural property, the name of the original survey, the number of acres, its locality in the county, and the name by which the land is generally known, if any, shall be given.

(b) **Method of Sale.** All public sales of real estate shall be made at public auction to the highest bidder.

(c) **Time and Place of Sale.** All such sales shall be made in the county in which the proceedings are pending, at the courthouse door of said county, or other place in such county where sales of real estate are specifically authorized to be made, on the first Tuesday of the month after publication of notice shall have been completed, between the hours of ten o'clock A.M. and four o'clock P.M., provided, that if deemed advisable by the court, he may order such sale to be made in the county in which the land is situated, in which event notice shall be published both in such county and in the county where the proceedings are pending.

(d) **Continuance of Sales.** If sales are not completed on the day advertised, they may be continued from day to day by making public announcement verbally of such continuance at the conclusion of the sale each day, such continued sales to be within the same hours as hereinbefore prescribed. If sales are so continued, the fact shall be shown in the report of sale made to the court.

(e) **Failure of Bidder to Comply.** When any person shall bid off property of an estate offered for sale at public auction, and shall fail to comply with the terms of sale, such property shall be readvertised and sold without any further order; and the person so defaulting shall be liable to pay to the representative of the estate, for its benefit, ten per cent of the amount of his bid, and also any deficiency in price on the second sale, such amounts to be recovered by such representative by suit

in any court having jurisdiction of the amount claimed, in the county in which the sale was made.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 350. Private Sales of Real Estate

All private sales of real estate shall be made in such manner as the court directs in its order of sale, and no further advertising, notice, or citation concerning such sale shall be required, unless the court shall direct otherwise.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1755, ch. 713, § 29, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 351. Sales of Easements and Right of Ways

It shall be lawful to sell and convey easements and rights of ways on, under, and over the lands of an estate being administered under orders of a court, regardless of whether the proceeds of such a sale are required for payment of charges or claims against the estate, or for other lawful purposes. The procedure for such sales shall be the same as now or hereafter provided by law for sales of real property of estates of decedents at private sale.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1993, 73rd Leg., ch. 957, § 62, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 352

Self-dealing is generally not allowed, that is, the personal representative may not purchase estate property. However, § 352 permits the personal representative to purchase if (1) the testator granted express permission in the will or (2) the court finds that it is in the best interest of the estate to permit the personal representative to purchase estate property after giving notice the distributees and creditors.

§ 352. Representative Purchasing Property of the Estate

(a) Except as provided by Subsection (b), (c), or (d) of this section, the personal representative of an estate shall not become the purchaser, directly or indirectly, of any property of the estate sold by him, or by any co-representative if one be acting.

(b) A personal representative of an estate may purchase property from the estate if the will, duly admitted to probate, appointing the personal representative expressly authorizes the sale.

(c) A personal representative of a decedent may purchase property from the estate of the decedent in

compliance with the terms of a written executory contract signed by the decedent, including a contract for deed, earnest money contract, buy/sell agreement, or stock purchase or redemption agreement.

(d) After issuing the notice required by this subsection, a personal representative of an estate, including an independent administrator, may purchase property from the estate on the court's determination that the sale is in the best interest of the estate. The personal representative shall give notice by certified mail, return receipt requested, unless the court requires another form of notice, to each distributee of a deceased person's estate and to each creditor whose claim remains unsettled after presenting a claim within six months of the original grant of letters. The court may require additional notice or it may allow for the waiver of the notice required for a sale made under this subsection.

(e) If a purchase is made in violation of this section, any person interested in the estate may file a written complaint with the court in which the proceedings are pending, and upon service of citation upon the representative, after hearing and proof, such sale shall be by the court declared void, and shall be set aside by the court and the property ordered to be reconveyed to the estate. All costs of the sale, protest, and suit, if found necessary, shall be adjudged against the representative.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1985, 69th Leg., ch. 709, § 1, eff. Aug. 26, 1985; Subsecs. (a) and (c) amended by Acts 1989, 71st Leg., ch. 651, § 1, eff. June 14, 1989; Subsecs. (a), (d) and (e) amended by Acts 1991, 72nd Leg., ch. 895, § 14, eff. Sept. 1, 1991; Subsecs. (c) and (d) amended by Acts 1993, 73rd Leg., ch. 957, § 63, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 353. Reports of Sale

All sales of real property of an estate shall be reported to the court ordering the same within thirty days after the sales are made. Reports shall be in writing, sworn to, and filed with the clerk, and noted on the probate docket. They shall show:

- (a) The date of the order of sale.
- (b) The property sold, describing it.
- (c) The time and place of sale.
- (d) The name of the purchaser.

(e) The amount for which each parcel of property or interest therein was sold.

(f) The terms of the sale, and whether made at public auction or privately.

(g) Whether the purchaser is ready to comply with the order of sale.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 354. Bond on Sale of Real Estate

If the personal representative of the estate is not required by this Code to furnish a general bond, the sale may be confirmed by the court if found to be satisfactory and in accordance with law. Otherwise, before any sale of real estate is confirmed, the court shall determine whether the general bond of said representative is sufficient to protect the estate after the proceeds of the sale are received. If the court so finds, the sale may be confirmed. If the general bond be found insufficient, the sale shall not be confirmed until and unless the general bond be increased to the amount required by the court, or an additional bond given, and approved by the court. The increase, or the additional bond, shall be equal to the amount for which such real estate is sold, plus, in either instance, such additional sum as the court shall find necessary and fix for the protection of the estate; provided, that where the real estate sold is encumbered by a lien to secure a claim against the estate and is sold to the owner or holder of such secured claim and is in full payment, liquidation, and satisfaction thereof, no increased general bond or additional bond shall be required except for the amount of cash, if any, actually paid to the representative of the estate in excess of the amount necessary to pay, liquidate, and satisfy such claim in full.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 355. Action of Court on Report of Sale

After the expiration of five days from the filing of a report of sale, the court shall inquire into the manner in which the sale was made, hear evidence in support of or against such report, and determine the sufficiency or insufficiency of the representative's general bond, if any has been required and given; and, if he is satisfied that the sale was for a fair price, was properly made and in conformity with law, and has approved any increased or additional bond which may have been found necessary to protect the estate, the court shall enter a decree confirming such sale, showing conformity with the foregoing provisions of the Code, and authorizing the conveyance of the property to be made by the representative of the estate upon compliance by the purchaser with the terms of the sale, detailing such terms. If the court is not satisfied that the sale was for a fair price, was properly made, and in conformity with law, an order shall be made setting the same aside and ordering a new sale to be made, if necessary. The action of the court in confirming or disapproving a report of sale shall have the force and effect of a final judgment; and any person interested in the estate or in the sale shall have the right to have such decrees reviewed as in other final judgments in probate proceedings.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 2197, ch. 701, § 6, eff. June 21, 1975. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 356. Deed Conveys Title to Real Estate

When real estate is sold, the conveyance shall be by proper deed which shall refer to and identify the decree of the court confirming the sale. Such deed shall vest in the purchaser all right, title, and interest of the estate to such property, and shall be prima facie evidence that said sale has met all applicable requirements of the law.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 357. Delivery of Deed, Vendor's and Deed of Trust Lien

After a sale is confirmed by the court and the terms of sale have been complied with by the purchaser, the representative of the estate shall forthwith execute and deliver to the purchaser a proper deed conveying the property. If the sale is made partly on credit, the vendor's lien securing the purchase money note or notes shall be expressly retained in said deed, and in no event waived, and before actual delivery of said deed to purchaser, he shall execute and deliver to the representative of the estate a vendor's lien note or notes, with or without personal sureties as the court shall have ordered, and also a deed of trust or mortgage on the property as further security for the payment of said note or notes. Upon completion of the transaction, the personal representative shall promptly file or cause to be filed and recorded in the appropriate records in the county where the land is situated said deed of trust or mortgage.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 358. Penalty for Neglect

Should the representative of an estate neglect to comply with the preceding Section, or to file the deed of trust securing such lien in the proper county, he and the sureties on his bond shall, after complaint and citation, be held liable for the use of the estate, for all damages resulting from such neglect, which damages may be recovered in any court of competent jurisdiction, and he may be removed by the court.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Part 6. Hiring and Renting

**Statutes in Context
Part 6**

Part 6 provides guidance to the personal representative who wishes to rent estate property. Short-term leases are permitted without court order under § 359 while court permission is

needed for leases more than one year in length. See § 361.

§ 359. Hiring or Renting Without Order of Court

The personal representative of an estate may, without order of court, rent any of its real property or hire out any of its personal property, either at public auction or privately, as may be deemed in the best interest of the estate, for a period not to exceed one year.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 360. Liability of Personal Representative

If property of the estate is hired or rented without an order of court, the personal representative shall be required to account to the estate for the reasonable value of the hire or rent of such property, to be ascertained by the court upon satisfactory evidence, upon sworn complaint of any person interested in the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 361. Order to Hire or Rent

Representatives of estates, if they prefer, may, and, if the proposed rental period exceeds one year, shall, file a written application with the court setting forth the property sought to be hired or rented. If the court finds that it would be to the interest of the estate, he shall grant the application and issue an order which shall describe the property to be hired or rented, state whether such hiring or renting shall be at public auction or privately, whether for cash or on credit, and, if on credit, the extent of same and the period for which the property may be rented. If to be hired or rented at public auction, the court shall also prescribe whether notice thereof shall be published or posted.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 362. Procedure in Case of Neglect to Rent Property

Any person interested in an estate may file his written and sworn complaint in a court where such estate is pending, and cause the personal representative of such estate to be cited to appear and show cause why he did not hire or rent any property of the estate, and the court, upon hearing such complaint, shall make such order as seems for the best interest of the estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 363. When Property is Hired or Rented on Credit

When property is hired or rented on credit, possession thereof shall not be delivered until the hirer or renter has executed and delivered to the representative of the estate a note with good personal security for the amount of such hire or rent; and, if any such property so hired or rented is delivered without receiving such security, the representative and the sureties on his bond shall be liable for the full amount of such hire or rent; provided, that when the hire or rental is payable in installments, in advance of the period of time to which they relate, this Section shall not apply.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 364. Property Hired or Rented to be Returned in Good Condition

All property hired or rented, with or without an order of court, shall be returned to the possession of the estate in as good condition, reasonable wear and tear excepted, as when hired or rented, and it shall be the duty and responsibility of the representative of the estate to see that this is done, to report to the court any loss, damage or destruction of property hired or rented, and to ask for authority to take such action as is necessary; failing so to do, he and the sureties on his bond shall be liable to the estate for any loss or damage suffered through such fault.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 365. Report of Hiring or Renting

(a) When any property of the estate with an appraised value of Three Thousand Dollars or more has been hired or rented, the representative shall, within thirty days thereafter, file with the court a sworn and written report, stating:

- (1) The property involved and its appraised value.
- (2) The date of hiring or renting, and whether at public auction or privately.
- (3) The name of the person or persons hiring or renting such property.
- (4) The amount of such hiring or rental.
- (5) Whether the hiring or rental was for cash or on credit, and, if on credit, the length of time, the terms, and the security taken therefor.

(b) When the value of the property involved is less than Three Thousand Dollars, the hiring or renting thereof may be reported upon in the next annual or final account which shall be filed as required by law.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 366. Action of Court on Report

At any time after five days from the time such report of hiring or renting is filed, it shall be examined by the court and approved and confirmed by order of the court if found just and reasonable; but, if disapproved, the estate shall not be bound and the court may order another offering of the property for hire or rent, in the same manner and subject to the same rules heretofore provided. If the report has been approved and it later appears that, by reason of any fault of the representative of the estate, the property has not been hired or rented for its reasonable value, the court shall cause the representative of the estate and his sureties to appear and show cause why the reasonable value of hire or rent of such property shall not be adjudged against him.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Part 7. Mineral Leases, Pooling or Unitization Agreements, and Other Matters Relating to Mineral Properties

**Statutes in Context
Part 7**

Part 7 provides the personal representative with guidance for dealing with mineral interests of the decedent's estate.

§ 367. Mineral Leases After Public Notice

(a) Certain Words and Terms Defined. As used throughout in this Part of this Chapter, the words "land" or "interest in land" include minerals or any interest in any of such minerals in place. The word "property" includes land, minerals in place, whether solid, liquid or gaseous, as well as an interest of any kind in such property, including royalty, owned by the estate. "Mineral development" includes exploration, by geophysical or by any other means, drilling, mining, developing, and operating, and producing and saving oil, other liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, sulphur, metals, and all other minerals, solid or otherwise.

(b) Mineral Leases, With or Without Pooling or Unitization. Personal representatives of the estates of decedents, appointed and qualified under the laws of this State, and acting solely under orders of court, may be authorized by the court in which the probate proceedings on such estates are pending to make, execute, and deliver leases, with or without unitization clauses or pooling provisions, providing for the exploration for, and development and production of, oil, other liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase), metals, and other

solid minerals, and other minerals, or any of such minerals in place, belonging to such estates.

(c) Rules Concerning Applications, Orders, Notices, and Other Essential Matters. All such leases, with or without pooling provisions or unitization clauses, shall be made and entered into pursuant to and in conformity with the following rules:

1. Contents of Application. The representative of the estate shall file with the county clerk of the county where the probate proceeding is pending his written application, addressed to the court or the judge of such court, asking for authority to lease property of the estate for mineral exploration and development, with or without pooling provisions or unitization clauses. The application shall (a) describe the property fully enough by reference to the amount of acreage, the survey name or number, or abstract number, or other description adequately identifying the property and its location in the county in which situated; (b) specify the interest thought to be owned by the estate, if less than the whole, but asking for authority to include all interest owned by the estate, if that be the intention; and (c) set out the reasons why such particular property of the estate should be leased. Neither the name of any proposed lessee, nor the terms, provisions, or form of any desired lease, need be set out or suggested in any such application for authority to lease for mineral development.

2. Order Designating Time and Place for Hearing Application

(a) Duties of Clerk and Judge. When an application to lease, as above prescribed, is filed, the county clerk shall immediately call the filing of such application to the attention of the court, and the judge shall promptly make and enter a brief order designating the time and place for the hearing of such application.

(b) Continuance of Hearing. If the hearing is not had at the time originally designated by the court or by timely order or orders of continuance duly entered, then, in such event, the hearing shall be automatically continued, without further notice, to the same hour or time the following day (except Sundays and holidays on which the county courthouse is officially closed to business) and from day to day until the application is finally acted upon and disposed of by order of the court. No notice of such automatic continuance shall be required.

3. Notice of Application to Lease, Service of Notice, and Proof of Service

(a) Notice and Its Contents. The personal representative, and not the county clerk, shall give notice in writing of the time designated by the judge for the hearing on the application to lease. The notice shall be directed to all persons interested in the estate. It shall state the date on which the application was filed, describe briefly the property sought to be leased, specifying the

fractional interest sought to be leased if less than the entire interest in the tract or tracts identified, state the time and place designated by the judge for the hearing, and be dated.

(b) **Service of Notice.** The personal representative shall give at least ten days notice, exclusive of the date of notice and of the date set for hearing, by publication in one issue of a newspaper of general circulation in the county in which the proceeding is pending, or, if there be no such newspaper, then by posting by the personal representative or at his instance. The date of notice when published shall be the date the newspaper bears.

4. Preceding Requirements Mandatory. In the absence of: (a) a written order originally designating a time and place for hearing; (b) a notice issued by the personal representative of the estate in compliance with such order; and (c) proof of publication or posting of such notice as required, any order of the judge or court authorizing any acts to be performed pursuant to said application shall be null and void.

5. Hearing on Application to Lease and Order Thereon. At the time and place designated for the hearing, or at any time to which it shall have been continued as hereinabove provided, the judge shall hear such application, requiring proof as to the necessity or advisability of leasing for mineral development the property described in the application and in the notice; and, if he is satisfied that the application is in due form, that notice has been duly given in the manner and for the time required by law, that the proof of necessity or advisability of leasing is sufficient, and that the application should be granted, then an order shall be entered so finding, and authorizing the making of one or more leases, with or without pooling provisions or unitization clauses (with or without cash consideration if deemed by the court to be in the best interest of the estate) affecting and covering the property, or portions thereof, described in the application. Said order authorizing leasing shall also set out the following mandatory contents:

- (a) The name of the lessee.
- (b) The actual cash consideration, if any, to be paid by the lessee.
- (c) Finding that the personal representative is exempted by law from giving bond, if that be a fact and if not a fact, then a finding as to whether or not the representative's general bond on file is sufficient to protect the personal property on hand, inclusive of any cash bonus to be paid, if any. If the court finds the general bond insufficient to meet these requirements, the order shall show the amount of increased or additional bond required to cover the deficiency.
- (d) A complete exhibit copy, either written or printed, of each lease thus authorized to be

made, shall either be set out in the order or attached thereto and incorporated by reference in said order and made a part thereof. It shall show the name of the lessee, the date of the lease, an adequate description of the property being leased, the delay rental, if any, to be paid to defer commencement of operations, and all other terms and provisions authorized; provided, that if no date of the lease appears in such exhibit copy, or in the court's order, then the date of the court's order shall be considered for all purposes as the date of the authorized lease, and if the name and address of the depository bank, or either of them, for receiving rental is not shown in said exhibit copy, the same may be inserted or caused to be inserted in the lease by the estate's personal representative at the time of its execution, or at any other time agreeable to the lessee, his successors, or assigns.

6. Conditional Validity of Lease; Bond; Time of Execution; Confirmation Not Needed. If, upon the hearing of an application for authority to lease, the court shall grant the same as above provided, the personal representative of the estate shall then be fully authorized to make, within thirty days after date of the judge's order, but not afterwards unless an extension be granted by the court upon sworn application showing good cause, the lease or leases as evidenced by the aforesaid true exhibit copies, in accordance with said order; but, unless the personal representative is not required to give a general bond, no such lease, for which a cash consideration is required, though ordered, executed, and delivered, shall be valid unless the order authorizing same actually makes findings with respect to the general bond, and, in case such bond has been found insufficient, then unless and until the bond has been increased, or an additional bond given, as required by the court's order, with the sureties required by law, has been approved by the judge and filed with the clerk of the court in which the proceedings are pending. In the event two or more leases on different lands are authorized by the same order, the general bond shall be increased, or additional bonds given, to cover all. It shall not be necessary for the judge to make any order confirming such leases.

7. Term of Lease Binding. Every such lease, when executed and delivered in compliance with the rules hereinabove set out, shall be valid and binding upon the property or interest therein owned by the estate and covered by the lease for the full duration of the term as provided therein, subject only to its terms and conditions, even though the primary term shall extend beyond the date when the estate shall have been closed in accordance with law; provided the authorized primary term shall not exceed five (5) years, subject to terms and provisions of the lease extending it beyond the

primary term by paying production, by bona fide drilling or reworking operations, whether in or on the same or additional well or wells, with no cessation of operations of more than sixty (60) consecutive days before production has been restored or obtained, or by the provisions of the lease relating to a shut-in gas well.

7(a). Validation of Certain Provisions of Leases Heretofore Executed by Personal Representatives. As to any valid mineral lease heretofore executed and delivered in compliance with the provisions of the Texas Probate Code and which lease is still in force, any provisions of any such lease continuing such lease in force after its five (5) year primary term by a shut-in gas well are hereby validated; provided, however, that this provision shall not be applicable to any such provision of any such lease which is involved in any lawsuit pending in this state on the effective date of this Act wherein the validity of such provision is an issue.

8. Amendment of Leases. Any oil, gas, and mineral lease heretofore or hereafter executed by a personal representative pursuant to the Texas Probate Code may be amended by an instrument which provides that a shut-in gas well on the land covered by the lease or on land pooled with all or some part thereof shall continue such lease in force after its five (5) year primary term. Such instrument shall be executed by the personal representative, with the approval of the court, and on such terms and conditions as may be prescribed therein.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 10(a); Acts 1961, 57th Leg., p. 441, ch. 215, § 1 to 3, eff. May 25, 1961; Subsec. (b) amended by Acts 1993, 73rd Leg., ch. 957, § 64, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 368. Mineral Leases at Private Sale

(a) Authorization Allowed. Notwithstanding the preceding mandatory requirements for setting a time and place for hearing of an application to lease and the issuance, service, and return of notice, the court may authorize the making of oil, gas, and mineral leases at private sale (without public notice or advertising) if, in the opinion of the court, sufficient facts are set out in the application required above to show that it would be more advantageous to the estate that a lease be made privately and without compliance with said mandatory requirements mentioned above. Leases so authorized may include pooling provisions or unitization clauses as in other cases.

(b) Action of the Court When Public Advertising Not Required. At any time after the expiration of five (5) days and prior to the expiration of ten (10) days from the date of filing and without an order setting time and place of hearing, the court shall hear the application to lease at private sale and shall inquire into the manner

in which the proposed lease has been or will be made, and shall hear evidence for or against the same; and, if satisfied that the lease has been or will be made for a fair and sufficient consideration and on fair terms, and has been or will be properly made in conformity with law, the court shall enter an order authorizing the execution of such lease without the necessity of advertising, notice, or citation, said order complying in all other respects with the requirements essential to the validity of mineral leases as hereinabove set out, as if advertising or notice were required. No order confirming a lease or leases made at private sale need be issued, but no such lease shall be valid until the increased or additional bond required by the court, if any, has been approved by the court and filed with the clerk of the court.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 10(b). Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 369. Pooling or Unitization of Royalty or Minerals

(a) Authorization for Pooling or Unitization.

When an existing lease or leases on property owned by the estate does not adequately provide for pooling or unitization, the court may authorize the commitment of royalty or mineral interests in oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, and other minerals, or any one or more of them, owned by the estate being administered, to agreements that provide for the operation of areas as a pool or unit for the exploration, development, and production of all such minerals, where the court finds that the pool or unit to which the agreement relates will be operated in such a manner as to protect correlative rights, or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject thereto, and that it is to the best interest of the estate to execute the agreement. Any agreement so authorized to be executed may, among others things, provide:

(1) That operations incident to the drilling of or production from a well upon any portion of a pool or unit shall be deemed for all purposes to be the conduct of operations upon or production from each separately owned tract in the pool or unit.

(2) That any lease covering any part of the area committed to a pool or unit shall continue in force in its entirety as long as oil, gas, or other mineral subject to the agreement is produced in paying quantities from any part of the pooled or unitized area, or as long as operations are conducted as provided in the lease on any part of the pooled or unitized area, or as long as there is a shut-in gas well on any part of the pooled or unitized area, if

the presence of such shut-in gas well is a ground for continuation of the lease by the terms of said lease.

(3) That the production allocated by the agreement to each tract included in a pool or unit shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

(4) That the royalties provided for on production from any tract or portion thereof within the pool or unit shall be paid only on that portion of the production allocated to the tract in accordance with the agreement.

(5) That the dry gas, before or after extraction of hydrocarbons, may be returned to a formation underlying any lands or leases committed to the agreement, and that no royalties are required to be paid on the gas so returned.

(6) That gas obtained from other sources or other lands may be injected into a formation underlying any lands or leases committed to the agreement, and that no royalties are required to be paid on the gas so injected when same is produced from the unit.

(b) Procedure for Authorizing Pooling or Unitization. Pooling or unitization, when not adequately provided for by an existing lease or leases on property owned by the estate, may be authorized by the court in which the proceedings are pending pursuant to and in conformity with the following rules:

(1) Contents of Application. The personal representative of the estate shall file with the county clerk of the county where the probate proceeding is pending his written application for authority (a) to enter into pooling or unitization agreements supplementing, amending, or otherwise relating to, any existing lease or leases covering property owned by the estate, or (b) to commit royalties or other interest in minerals, whether subject to lease or not, to a pooling or unitization agreement. The application shall also (c) describe the property sufficiently, as required in original application to lease, (d) describe briefly the lease or leases, if any, to which the interest of the estate is subject, and (e) set out the reasons why the proposed agreement concerning such property should be made. A true copy of the proposed agreement shall be attached to the application and by reference made a part thereof, but the agreement shall not be recorded in the judge's probate docket. The clerk shall immediately, after such application is filed, call it to the attention of the judge.

(2) Notice Not Necessary. No notice of the filing of such application by advertising, citation, or otherwise, is required.

(3) Hearing of Application. A hearing on such application may be held by the judge at any time agreeable to the parties to the proposed agreement, and the judge shall hear proof and satisfy himself as to whether or not it is to the best interest of the estate that the proposed agreement be authorized.

The hearing may be continued from day to day and from time to time as the court finds to be necessary.

(4) Action of Court and Contents of Order. If the court finds that the pool or unit to which the agreement relates will be operated in such a manner as to protect correlative rights or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject thereto; that it is to the best interest of the estate that the agreement be executed; and that the agreement conforms substantially with the permissible provisions of Subsection (a) hereof, he shall enter an order setting out the findings made by him, authorizing execution of the agreement (with or without payment of cash consideration according to the agreement). If cash consideration is to be paid for the agreement, findings as to the necessity of increased or additional bond, as in making of leases upon payment of the cash bonus therefor, shall also be made, and no such agreement shall be valid until the increased or additional bond required by the court, if any, has been approved by the judge and filed with the clerk. The date of the court's order shall be the effective date of the agreement, if not stipulated in such agreement.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1961, 57th Leg., p. 441, ch. 215, § 4, eff. May 25, 1961. Subsec. (b) amended by Acts 2009, 81st Leg., ch. 602, § 9, eff. June 19, 2009. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 370. Special Ancillary Instruments which May Be Executed Without Court Order

As to any valid mineral lease or pooling or unitization agreement, executed on behalf of the estate prior to the effective date of this Code, or pursuant to its provisions, or by a former owner of land, minerals, or royalty affected thereby, the personal representative of the estate which is being administered may, without further order of the court, and without consideration, execute division orders, transfer orders, instruments of correction, instruments designating depository banks for the reception of delay rentals or shut-in gas well royalty to accrue or become payable under the terms of any such lease or leases, and similar instruments pertaining to any such lease or agreement and the property covered thereby.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 10(c). Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 371. Procedure when Representative of Estate Neglects to Apply for Authority

When the personal representative of an estate shall neglect to apply for authority to subject property of the estate to a lease for mineral development, pooling or

unitization, or to commit royalty or other interest in minerals to pooling or unitization, any person interested in the estate may, upon written application filed with the county clerk, cause such representative to be cited to show cause why it is not for the best interest of the estate for such a lease to be made, or such an agreement entered into. The clerk shall immediately call the filing of such application to the attention of the judge of the court in which the probate proceedings are pending, and the judge shall set a time and place for a hearing on the application, and the representative of the estate shall be cited to appear and show cause why the execution of such lease or agreement should not be ordered. Upon hearing, if satisfied from the proof that it would be in the best interest of the estate, the court shall enter an order requiring the personal representative forthwith to file his application to subject such property of the estate to a lease for mineral development, with or without pooling or unitization provisions, or to commit royalty or other minerals to unitization, as the case may be. The procedure prescribed with respect to original application to lease, or with respect to original application for authority to commit royalty or minerals to pooling or unitization, whichever is appropriate, shall then be followed.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 372. Validation of Certain Leases and Pooling or Unitization Agreements Based on Previous Statutes

All presently existing leases on the oil, gas, or other minerals, or one or more of them, belonging to the estates of decedents, and all agreements with respect to pooling, or unitization thereof, or one or more of them, or any interest therein, with like properties of others having been authorized by the court having venue, and executed and delivered by the executors, administrators, or other fiduciaries of their estates in substantial conformity to the rules set forth in statutes heretofore existing, providing for only seven days notice in some instances, and also for a brief order designating a time and place for hearing, are hereby validated in so far as said period of notice is concerned, and in so far as the absence of any order setting a time and place for hearing is concerned; provided, this shall not apply to any lease or pooling or unitization agreement involved in any suit pending on the effective date of this Code wherein either the length of time of said notice or the absence of such order is in issue.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1993, 73rd Leg., ch. 957, § 65, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Part 8. Partition and Distribution of Estates of Decedents

**Statutes in Context
§ 373**

Distribution of the estate is typically done when the administration is finished. However, an heir or beneficiary may request partial distribution at any time or total distribution after 12 months have passed from the date the court issued letters.

§ 373. Application for Partition and Distribution of Estates of Decedents

(a) Who May Apply. At any time after the expiration of twelve months after the original grant of letters testamentary or of administration, the executor or administrator, or the heirs, devisees, or legatees of the estate, or any of them, may, by written application filed in the court in which the estate is pending, request the partition and distribution of the estate.

(b) Contents of Application. The application shall state:

- (1) The name of the person whose estate is sought to be partitioned and distributed; and
- (2) The names and residences of all persons entitled to shares of such estate, and whether adults or minors; and, if these facts be unknown to the applicant, it shall be so stated in the application; and
- (3) The reasons why partition and distribution should be had.

(c) Partial Distribution. At any time after the original grant of letters testamentary or of administration, and the filing and approval of the inventory, the executor or administrator, or the heirs, devisees, or legatees of the estate, or any of them, may, by written application filed in the court in which the estate is pending, request a distribution of any portion of the estate. All interested parties shall be personally cited, as in other distributions, including known creditors. The court may upon proper citation and hearing distribute any portion of the estate it deems advisable. In the event a distribution is to be made to one or more heirs or devisees, and not to all the heirs or devisees, the court shall require a refunding bond in an amount to be determined by the court to be filed with the court and, upon its approval, the court shall order the distribution of that portion of the estate, unless such requirement is waived in writing and the waiver is filed with the court by all interested parties. This section shall apply to corpus as well as income, notwithstanding any other provisions of this Code.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1973, 63rd Leg., p. 408, ch. 182, § 2, eff. May 25, 1973. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 374. Citation of Interested Persons

Upon the filing of such application, the clerk shall issue a citation which shall state the name of the person whose estate is sought to be partitioned and distributed, and the date upon which the court will hear the

application, and the citation shall require all persons interested in the estate to appear and show cause why such partition and distribution should not be made. Such citation shall be personally served upon each person residing in the state entitled to a share of the estate whose address is known; and, if there be any such persons whose identities or addresses are not known, or who are not residents of this state, or are residents of but absent from this state, such citation shall be served by publication.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 375. Citation of Executor or Administrator

When application for partition and distribution is made by any person other than the executor or administrator, such representative shall also be cited to appear and answer the application and to file in court a verified exhibit and account of the condition of the estate, as in the case of final settlements.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 377. Facts to Be Ascertained Upon Hearing

At the hearing upon the application for partition and distribution, the court shall ascertain:

(a) The residue of the estate subject to partition and distribution, which shall be ascertained by deducting from the entire assets of such estate remaining on hand the amount of all debts and expenses of every kind which have been approved or established by judgment, but not paid, or which may yet be established by judgment, and also the probable future expenses of administration.

(b) The persons who are by law entitled to partition and distribution, and their respective shares.

(c) Whether advancements have been made to any of the persons so entitled and their nature and value. If advancements have been made, the court shall require the same to be placed in hotchpotch as required by the law governing intestate succession.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 378. Decree of the Court

If the court is of the opinion that the estate should be partitioned and distributed, it shall enter a decree which shall state:

(a) The name and address, if known, of each person entitled to a share of the estate, specifying those who are known to be minors, and the names of their guardians, or the guardians ad litem, and the name of the attorney appointed to represent those who are unknown or who are not residents of the state.

(b) The proportional part of the estate to which each is entitled.

(c) A full description of all the estate to be distributed.

(d) That the executor or administrator retain in his hands for the payment of all debts, taxes, and expenses of administration a sufficient amount of money or property for that purpose, specifying the amount of money or the property to be so retained.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 378A

Section 378A helps assure that marital deduction pecuniary gifts which authorize in-kind distribution of assets meet the “fairly representative” test and thus qualify for the deduction.

§ 378A. Satisfaction of Pecuniary Bequests

(a) Unless the governing instrument provides otherwise, if an executor, administrator, or trustee is authorized under the will or trust of a decedent to satisfy a pecuniary bequest, devise, or transfer in trust in kind with assets at their value for federal estate tax purposes, in satisfaction of a gift intended to qualify, or that otherwise would qualify, for a United States estate tax marital deduction, the executor, administrator, or trustee, in order to implement the bequest, devise, or transfer, shall distribute assets, including cash, fairly representative of appreciation or depreciation in the value of all property available for distribution in satisfaction of the pecuniary bequest, devise, or transfer.

(b) Unless the governing instrument provides otherwise, if a will or trust contains a pecuniary bequest, devise, or transfer that may be satisfied by distributing assets in kind and if the executor, administrator, or trustee determines to fund the bequest, devise, or transfer by distributing assets in kind, the property shall, for the purpose of funding the bequest, devise, or transfer, be valued at its value on the date or dates of distribution.

Added by Acts 1987, 70th Leg., ch. 1110, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 895, § 15, eff. Sept. 1, 1991. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 378B

Income from a gifted item that accrues after death but before distribution is given to the beneficiary, less the cost of taxes, repairs, insurance, management fees, etc.

A legacy (cash bequest) in a will earns interest at the legal rate as provided in Finance Code § 302.002. The Uniform Principal and Income Act

provides that interest is payable beginning on the first anniversary of the date of the decedent's death. See Property Code § 116.051(3)(A).

§ 378B. Allocation of Income and Expenses During Administration of Decedent's Estate

(a) Except as provided by Subsection (b) of this section and unless the will provides otherwise, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, penalties relating to estate taxes, and family allowances, shall be charged against the principal of the estate. Fees and expenses of an attorney, accountant, or other professional advisor, commissions and expenses of a personal representative, court costs, and all other similar fees or expenses relating to the administration of the estate and interest relating to estate taxes shall be allocated between the income and principal of the estate as the executor determines in its discretion to be just and equitable.

(b) Unless the will provides otherwise, income from the assets of a decedent's estate that accrues after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined according to the rules applicable to a trustee under the Texas Trust Code (Subtitle B, Title 9, Property Code)¹ and distributed as provided by Chapter 116, Property Code, and Subsections (c), and (d) of this section.

(c) The income from the property bequeathed or devised to a specific devisee shall be distributed to the devisee after reduction for property taxes, ordinary repairs, insurance premiums, interest accrued after the death of the testator, other expenses of management and operation of the property, and other taxes, including the taxes imposed on the income that accrues during the period of administration and that is payable to the devisee.

(d) The balance of the net income shall be distributed to all other devisees after reduction for the balance of property taxes, ordinary repairs, insurance premiums, interest accrued, other expenses of management and operation of all property from which the estate is entitled to income, and taxes imposed on income that accrues during the period of administration and that is payable or allocable to the devisees, in proportion to the devisees' respective interests in the undistributed assets of the estate.

(e) (Repealed)

(f) (Repealed)

(g) Income received by a trustee under this section shall be treated as income of the trust as provided by Section 116.101, Property Code.

(h) In this section, "undistributed assets" includes funds used to pay debts, administration expenses, and federal and state estate, inheritance, succession, and

generation-skipping transfer taxes until the date of payment of the debts, expenses, and taxes. Except as required by Sections 2055 and 2056 of the Internal Revenue Code of 1986 (26 U.S.C. § 2055 and 2056), and its subsequent amendments, the frequency and method of determining the beneficiaries' respective interests in the undistributed assets of the estate shall be in the executor's sole and absolute discretion. The executor may consider all relevant factors, including administrative convenience and expense and the interests of the various beneficiaries of the estate in order to reach a fair and equitable result among beneficiaries.

(i) Chapter 116, Property Code, prevails to the extent of any conflict between this section and Chapter 116, Property Code.

Added by Acts 1993, 73rd Leg., ch. 846, § 24, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 659, §§ 3 & 4, eff. Jan. 1, 2004; Acts 2003, 78th Leg., ch. 1060, § 15, eff. Sept. 1, 2003. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 379. Partition when Estate Consists of Money or Debts Only

If the estate to be distributed shall consist only of money or debts due the estate, or both, the court shall fix the amount to which each distributee is entitled, and shall order the payment and delivery thereof by the executor or administrator.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 380. Partition and Distribution when Property Is Capable of Division

(a) **Appointment of Commissioners.** If the estate does not consist entirely of money or debts due the estate, or both, the court shall appoint three or more discreet and disinterested persons as commissioners, to make a partition and distribution of the estate, unless the court has already determined that the estate is incapable of partition.

(b) **Writ of Partition and Service Thereof.** When commissioners are appointed, the clerk shall issue a writ of partition directed to the commissioners appointed, commanding them to proceed forthwith to make partition and distribution in accordance with the decree of the court, a copy of which decree shall accompany the writ, and also command them to make due return of said writ, with their proceedings under it, on a date named in the writ. Such writ shall be served by delivering the same and the accompanying copy of the decree of partition to any one of the commissioners appointed, and by notifying the other commissioners, verbally or otherwise, of their appointment, and such service may be made by any person.

(c) **Partition by Commissioners.** The commissioners shall make a fair, just, and impartial

¹ Property Code, §111.001 et seq.

partition and distribution of the estate in the following order:

(1) Of the land or other property, by allotting to each distributee a share in each parcel or shares in one or more parcels, or one or more parcels separately, either with or without the addition of a share or shares of other parcels, as shall be most for the interest of the distributees; provided, the real estate is capable of being divided without manifest injury to all or any of the distributees.

(2) If the real estate is not capable of a fair, just and equal division in kind, but may be made so by allotting to one or more of the distributees a proportion of the money or other personal property to supply the deficiency or deficiencies, the commissioners shall have power to make, as nearly as may be, an equal division of the real estate and supply the deficiency of any share or shares from the money or other property.

(3) The commissioners shall proceed to make a like division in kind, as nearly as may be, of the money and other personal property, and shall determine by lot, among equal shares, to whom each particular share shall belong.

(d) Report of Commissioners. The commissioners, having divided the whole or any part of the estate, shall make to the court a written sworn report containing a statement of the property divided by them, and also a particular description of the property allotted to each distributee, and its value. If it be real estate that has been divided, the report shall contain a general plat of said land with the division lines plainly set down and with the number of acres in each share. The report of a majority of the commissioners shall be sufficient.

(e) Action of the Court. Upon the return of such report, the court shall examine the same carefully and hear all exceptions and objections thereto, and evidence in favor of or against the same, and if it be informal, shall cause said informality to be corrected. If such division shall appear to have been fairly made according to law, and no valid exceptions are taken to it, the court shall approve it, and shall enter a decree vesting title in the distributees of their respective shares or portions of the property as set apart to them by the commissioners; otherwise, the court may set aside said report and division and order a new partition to be made.

(f) Delivery of Property. When the report of commissioners to make partition has been approved and ordered to be recorded, the court shall order the executor or administrator to deliver to the distributees their respective shares of the estate on demand, including all the title deeds and papers belonging to the same.

(g) Fees of Commissioners. Commissioners thus appointed who actually serve in partitioning and distributing an estate shall be entitled to receive Five Dollars each for every day that they are necessarily engaged in the performance of their duties as such

commissioners, to be taxed and paid as other costs in cases of partition.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 381. Partition and Distribution when Property of an Estate Is Incapable of Division

(a) Finding by the Court. When, in the opinion of the court, the whole or any portion of an estate is not capable of a fair and equal partition and distribution, the court shall make a special finding in writing, specifying therein the property incapable of division.

(b) Order of Sale. When the court has found that the whole or any portion of the estate is not capable of fair and equal division, it shall order a sale of all property which it has found not to be capable of such division. Such sale shall be made by the executor or administrator in the same manner as when sales of real estate are made for the purpose of satisfying debts of the estate, and the proceeds of such sale, when collected, shall be distributed by the court among those entitled thereto.

(c) Purchase by Distributee. At such sale, if any distributee shall buy any of the property, he shall be required to pay or secure only such amount of his bid as exceeds the amount of his share of such property.

(d) Applicability of Provisions Relating to Sales of Real Estate. The provisions of this Code relative to reports of sales of real estate, the giving of an increased general or additional bond upon sales of real estate, and to the vesting of title to the property sold by decree or by deed, shall also apply to sales made under this Section.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 382. Property Located in Another County

(a) Court May Order Sale. When any portion of the estate to be partitioned lies in another county and cannot be fairly partitioned without prejudice to the interests of the distributees, the commissioners may report such facts to the court in writing; whereupon, if satisfied that the said property cannot be fairly divided, or that its sale would be more advantageous to the distributees, the court may order a sale thereof, which sale shall be conducted in the same manner as is provided in this Code for the sale of property which is not capable of fair and equal division.

(b) Court May Appoint Additional Commissioners. If the court is not satisfied that such property cannot be fairly and advantageously divided, or that its sale would be more advantageous to the distributees, three or more commissioners may be appointed in each county where any portion of the estate so reported is situated, and the same proceedings shall be had thereon as are provided in this Code for commissioners to make partition.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 384. Damages for Neglect to Deliver Property

If any executor or administrator shall neglect to deliver to the person entitled thereto, when demanded, any portion of an estate ordered to be delivered, such person may file with the clerk of the court his written complaint alleging the fact of such neglect, the date of his demand, and other relevant facts, whereupon the clerk shall issue a citation to be served personally on such representative, apprising him of the complaint and citing him to appear before the court and answer, if he so desires, at the time designated in the citation. If at the hearing the court finds that the citation was duly served and returned and that the representative is guilty of such neglect, the court shall enter an order to that effect, and the representative shall be liable to such complainant in damages at the rate of ten per cent of the amount or appraised value of the share so withheld, per month, for each and every month or fraction thereof that the share is and/or has been so withheld after date of demand, which damages may be recovered in any court of competent jurisdiction.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 385. Partition of Community Property

(a) Application for Partition. When a husband or wife shall die leaving any community property, the survivor may, at any time after letters testamentary or of administration have been granted, and an inventory, appraisal, and list of the claims of the estate have been returned or an affidavit in lieu of the inventory, appraisal, and list of claims has been filed, make application in writing to the court which granted such letters for a partition of such community property.

(b) Bond and Action of the Court. The survivor shall execute and deliver to the judge of said court a bond with a corporate surety or two or more good and sufficient personal sureties, payable to and approved by said judge, for an amount equal to the value of the survivor's interest in such community property, conditioned for the payment of one-half of all debts existing against such community property, and the court shall proceed to make a partition of said community property into two equal moieties, one to be delivered to the survivor and the other to the executor or administrator of the deceased. The provisions of this Code respecting the partition and distribution of estates shall apply to such partition so far as the same are applicable.

(c) Lien Upon Property Delivered. Whenever such partition is made, a lien shall exist upon the property delivered to the survivor to secure the payment of the aforementioned bond; and any creditor of said community estate may sue in his own name on such

bond, and shall have judgment thereon for one-half of such debt as he shall establish, and for the other one-half he shall be entitled to be paid by the executor or administrator of the deceased.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.35, eff. Sept. 1, 2011.

§ 386. Partition of Property Jointly Owned

Any person having a joint interest with the estate of a decedent in any property, real or personal, may make application to the court from which letters testamentary or of administration have been granted thereon to have a partition thereof, whereupon the court shall make a partition of said property between the applicant and the estate of the deceased; and all the provisions of this Code in relation to the partition and distribution of estates shall govern partition hereunder, so far as the same are applicable.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 387. Expense of Partition

Expense of partition of the estate of a decedent shall be paid by the distributees pro rata. The portion of the estate allotted each distributee shall be liable for his portion of such expense, and, if not paid, the court may order execution therefor in the names of the persons entitled thereto.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Part 10A. Stocks, Bonds, and Other Personal Property

Statutes in Context

§ 398A

Section 398A permits corporate securities and other personal property to be held in the name of a nominee (e.g., a stock broker).

§ 398A. Holding of Stocks, Bonds, and Other Personal Property by Personal Representatives in Name of Nominee

Unless otherwise provided by will, a personal representative may cause stocks, bonds, and other personal property of an estate to be registered and held in the name of a nominee without mention of the fiduciary relationship in any instrument or record constituting or evidencing title thereto. The personal representative is liable for the acts of the nominee with respect to any property so registered. The records of the personal representative shall at all times show the ownership of the property. Any property so registered

shall be in the possession and control of the personal representative at all times and be kept separate from his individual property.

Added by Acts 1969, 61st Leg., p. 2106, ch. 719, § 1, eff. Sept. 1, 1969. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Part 11. Annual Accounts and Other Exhibits

Statutes in Context Part 11

Part 11 requires that the dependent personal representative prepare detailed accounts each year. The accounting must include all vouchers and receipts and it must be supported by a sworn affidavit.

§ 399. Annual Accounts Required

(a) Estates of Decedents Being Administered Under Order of Court. The personal representative of the estate of a decedent being administered under order of court shall, upon the expiration of twelve (12) months from the date of qualification and receipt of letters, return to the court an exhibit in writing under oath setting forth a list of all claims against the estate that were presented to him within the period covered by the account, specifying which have been allowed by him, which have been paid, which have been rejected and the date when rejected, which have been sued upon, and the condition of the suit, and show:

(1) All property that has come to his knowledge or into his possession not previously listed or inventoried as property of the estate.

(2) Any changes in the property of the estate which have not been previously reported.

(3) A complete account of receipts and disbursements for the period covered by the account, and the source and nature thereof, with receipts of principal and income to be shown separately.

(4) A complete, accurate and detailed description of the property being administered, the condition of the property and the use being made thereof, and, if rented, the terms upon and the price for which rented.

(5) The cash balance on hand and the name and location of the depository wherein such balance is kept; also, any other sums of cash in savings accounts or other form, deposited subject to court order, and the name and location of the depository thereof.

(6) A detailed description of personal property of the estate, which shall, with respect to bonds, notes, and other securities, include the names of obligor and obligee, or if payable to bearer, so state; the date of issue and maturity; the rate of interest;

serial or other identifying numbers; in what manner the property is secured; and other data necessary to identify the same fully, and how and where held for safekeeping.

(7) A statement that, during the period covered by the account, all tax returns due have been filed and that all taxes due and owing have been paid and a complete account of the amount of the taxes, the date the taxes were paid, and the governmental entity to which the taxes were paid.

(8) If any tax return due to be filed or any taxes due to be paid are delinquent on the filing of the account, a description of the delinquency and the reasons for the delinquency.

(9) A statement that the personal representative has paid all the required bond premiums for the accounting period.

(b) Annual Reports Continue Until Estate Closed. Each personal representative of the estate of a decedent shall continue to file annual accounts conforming to the essential requirements of those in Subsection (a) hereof as to changes in the assets of the estate after rendition of the former account so that the true condition of the estate, with respect to money, securities, and other property, can be ascertained by the court or by any interested person, by adding to the balances forward the receipts, and then subtracting the disbursements. The description of property sufficiently described in an inventory or previous account may be by reference thereto.

(c) Supporting Vouchers, etc., Attached to Accounts. Annexed to all annual accounts of representatives of estates shall be:

(1) Proper vouchers for each item of credit claimed in the account, or, in the absence of such voucher, the item must be supported by evidence satisfactory to the court. Original vouchers may, upon application, be returned to the representative after approval of his account.

(2) An official letter from the bank or other depository in which the money on hand of the estate is deposited, showing the amounts in general or special deposits.

(3) Proof of the existence and possession of securities owned by the estate, or shown by the accounting, as well as other assets held by a depository subject to orders of the court, the proof to be by one of the following means:

a. By an official letter from the bank or other depository wherein said securities or other assets are held for safekeeping; provided, that if such depository is the representative, the official letter shall be signed by a representative of such depository other than the one verifying the account; or

b. By a certificate of an authorized representative of the corporation which is surety on the representative's bonds; or

c. By a certificate of the clerk or a deputy clerk of a court of record in this State; or

d. By an affidavit of any other reputable person designated by the court upon request of the representative or other interested party.

Such certificate or affidavit shall be to the effect that the affiant has examined the assets exhibited to him by the representative as assets of the estate in which the accounting is made, and shall describe the assets by reference to the account or otherwise sufficiently to identify those so exhibited, and shall state the time when and the place where exhibited. In lieu of using a certificate or an affidavit, the representative may exhibit the securities to the judge of the court who shall endorse on the account, or include in his order with respect thereto, a statement that the securities shown therein as on hand were in fact exhibited to him, and that those so exhibited were the same as those shown in the account, or note any variance. If the securities are exhibited at any place other than where deposited for safekeeping, it shall be at the expense and risk of the representative. The court may require additional evidence as to the existence and custody of such securities and other personal property as in his discretion he shall deem proper; and may require the representative to exhibit them to the court, or any person designated by him, at any time at the place where held for safekeeping.

(d) Verification of Account. The representative filing the account shall attach thereto his affidavit that it contains a correct and complete statement of the matters to which it relates.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 11(a); Subsec. (a) amended by Acts 1993, 73rd Leg., ch. 712, § 4, eff. Sept. 1, 1993. Amended by Acts 1993, 73rd Leg., ch. 957, § 66, eff. Sept. 1, 1993; Subsec. (a) amended by Acts 1997, 75th Leg., ch. 1403, § 1, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 400. Penalty for Failure to File Annual Account

Should any personal representative of an estate fail to return any annual account required by preceding sections of this Code, any person interested in said estate may, upon written complaint, or the court upon its own motion may, cause the personal representative to be cited to return such account, and show cause for such failure. If he fails to return said account after being so cited, or fails to show good cause for his failure so to do, the court, upon hearing, may revoke the letters of such representative, and may fine him in a sum not to exceed Five Hundred Dollars (\$500). He and his sureties shall be liable for any fine imposed, and for all damages and costs sustained by reason of such failure, which may be recovered in any court of competent jurisdiction.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 11(b); Amended by Acts 1993, 73rd Leg., ch. 957, § 67, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 401. Action Upon Annual Accounts

These rules shall govern the handling of annual accounts:

(a) They shall be filed with the county clerk, and the filing thereof shall be noted forthwith upon the judge's docket.

(b) Before being considered by the judge, the account shall remain on file ten (10) days.

(c) At any time after the expiration of ten (10) days after the filing of an annual account, the judge shall consider same, and may continue the hearing thereon until fully advised as to all items of said account.

(d) No accounting shall be approved unless possession of cash, listed securities, or other assets held in safekeeping or on deposit under order of court has been proved as required by law.

(e) If the account be found incorrect, it shall be corrected. When corrected to the satisfaction of the court, it shall be approved by an order of court, and the court shall then act with respect to unpaid claims, as follows:

(1) Order for Payment of Claims in Full. If it shall appear from the exhibit, or from other evidence, that the estate is wholly solvent, and that the representative has in his hands sufficient funds for the payment of every character of claims against the estate, the court shall order immediate payment to be made of all claims allowed and approved or established by judgment.

(2) Order for Pro Rata Payment of Claims. If it shall appear from the account, or from other evidence, that the funds on hand are not sufficient for the payment of all the said claims, or if the estate is insolvent and the personal representative has any funds on hand, the court shall order such funds to be applied to the payment of all claims having a preference in the order of their priority if they, or any of them, be still unpaid, and then 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 within twelve (12) months after the granting of administration, and those which are in suit or on which suit may yet be instituted.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1957, 55th Leg., p. 53, ch. 31, § 11(c). Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 402. Additional Exhibits of Estates of Decedents

At any time after the expiration of fifteen months from the original grant of letters to an executor or administrator, any interested person may, by a complaint in writing filed in the court in which the estate is pending, cause the representative to be cited to appear and make an exhibit in writing under oath, setting forth fully, in connection with previous exhibits, the condition of the estate he represents; and, if it shall appear to the court by said exhibit, or by other evidence,

that said representative has any funds of the estate in his hands subject to distribution among the creditors of the estate, the court shall order the same to be paid out to them according to the provisions of this Code; or any representative may voluntarily present such exhibit to the court; and, if he has any of the funds of the estate in his hands subject to distribution among the creditors of the estate, a like order shall be made.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 403. Penalty for Failure to File Exhibits or Reports

Should any personal representative fail to file any exhibit or report required by this Code, any person interested in the estate may, upon written complaint filed with the clerk of the court, cause him to be cited to appear and show cause why he should not file such exhibit or report; and, upon hearing, the court may order him to file such exhibit or report, and, unless good cause be shown for such failure, the court may revoke the letters of such personal representative and may fine him in an amount not to exceed One Thousand Dollars.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Part 12. Final Settlement, Accounting, and Discharge

Statutes in Context Part 12

Part 12 explains how a dependent administration is closed.

§ 404. Closing Administration of Estates of Decedents

Administration of the estates of decedents shall be settled and closed when all the debts known to exist against the estate of a deceased person have been paid, or when they have been paid so far as the assets in the hands of an administrator or executor of such estate will permit, and when there is no further need for administration.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1975, 64th Leg., p. 104, ch. 45, § 2, eff. Sept. 1, 1975; Amended by Acts 1985, 69th Leg., ch. 881, § 2, eff. Aug. 26, 1985; Subsec. (c) amended by Acts 1989, 71st Leg., ch. 1035, § 15, eff. Sept. 1, 1989; Subsec. (a) amended by Acts 1993, 73rd Leg., ch. 712, § 5, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 826, § 1, eff. June 18, 1999. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 405. Account for Final Settlement of Estates of Decedents

When administration of the estate of a decedent is to be settled and closed, the personal representative of such estate shall present to the court his verified account for final settlement. In such account it shall be sufficient to refer to the inventory without describing each item of property in detail, and to refer to and adopt any and all proceedings had in the administration concerning sales, renting or hiring, leasing for mineral development, or any other transactions on behalf of the estate including exhibits, accounts, and vouchers previously filed and approved, without restating the particular items thereof. Each final account, however, shall be accompanied by proper vouchers in support of each item thereof not already accounted for and shall show, either by reference to any proceedings authorized above or by statement of the facts:

1. The property belonging to the estate which has come into the hands of the executor or administrator.
2. The disposition that has been made of such property.
3. The debts that have been paid.
4. The debts and expenses, if any, still owing by the estate.
5. The property of the estate, if any, still remaining on hand.
6. The persons entitled to receive such estate, their relationship to the decedent, and their residence, if known, and whether adults or minors, and, if minors, the names of their guardians, if any.
7. All advancements or payments that have been made, if any, by the executor or administrator from such estate to any such person.
8. The tax returns due that have been filed and the taxes due and owing that have been paid and a complete account of the amount of taxes, the date the taxes were paid, and the governmental entity to which the taxes were paid.
9. If any tax return due to be filed or any taxes due to be paid are delinquent on the filing of the account, a description of the delinquency and the reasons for the delinquency.

10. The personal representative has paid all required bond premiums.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1993, 73rd Leg., ch. 712, § 6, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 957, § 69, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1403, § 2, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 405A. Delivery of Property

The court may permit a resident executor or administrator who has any of the estate of a ward to deliver the estate to a duly qualified and acting guardian of the ward.

Added by Acts 1995, 74th Leg., ch. 1039, § 14, eff. Sept. 1, 1995. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 406. Procedure in Case of Neglect or Failure to File Final Account; Payments Due Meantime

(a) If a personal representative charged with the duty of filing a final account fails or neglects so to do at the proper time, the court shall, upon its own motion, or upon the written complaint of any one interested in the decedent's estate which has been administered, cause such representative to be cited to appear and present such account within the time specified in the citation.

(b) If the whereabouts of the personal representative and heirs of a decedent are unknown and a complaint has not been filed by anyone interested in the decedent's estate, the court may, on or after the fourth anniversary after the last date on which letters testamentary or of administration are issued by the court clerk, close the estate without a final accounting and without appointing a successor personal representative.

Amended by Acts 1993, 73rd Leg., ch. 898, § 1, eff. June 19, 1993; Acts 1993, 73rd Leg., ch. 957, § 70, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 827, § 1, eff. Sept. 1, 1999. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 407. Citation Upon Presentation of Account for Final Settlement

Upon the filing of an account for final settlement by temporary or permanent personal representatives of the estates of decedents, citation shall contain a statement that such final account has been filed, the time and place when it will be considered by the court, and a statement requiring the person or persons cited to appear and contest the same if they see proper. Such citation shall be issued by the county clerk to the persons and in the manner set out below.

1. In case of the estates of deceased persons, notice shall be given by the personal representative to each heir or beneficiary of the decedent by certified mail, return receipt requested, unless another type of notice is directed by the court by written order. The notice must include a copy of the account for final settlement.

2. If the court deems further additional notice necessary, it shall require the same by written order. In its discretion, the court may allow the waiver of notice of an account for final settlement in a proceeding concerning a decedent's estate.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1959, 56th Leg., p. 641, ch. 294, § 1, eff. May 30, 1959; Acts 1979, 66th Leg., p. 1755, ch. 713, § 30, eff. Aug. 27, 1979; Amended by Acts 1983, 68th Leg., p. 4558, ch. 756, § 1, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 957, § 71, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 408. Action of the Court

(a) **Action Upon Account.** Upon being satisfied that citation has been duly served upon all persons interested in the estate, the court shall examine the account for final settlement and the vouchers accompanying the same, and, after hearing all exceptions or objections thereto, and evidence in support of or against such account, shall audit and settle the same, and restate it if that be necessary.

(b) **Distribution of Remaining Property.** Upon final settlement of an estate, if there be any of such estate remaining in the hands of the personal representative, the court shall order that a partition and distribution be made among the persons entitled to receive such estate.

(c) **Discharge of Representative When No Property Remains.** If, upon such settlement, there be none of the estate remaining in the hands of the representative, he shall be discharged from his trust and the estate ordered closed.

(d) **Discharge When Estate Fully Administered.** Whenever the representative of an estate has fully administered the same in accordance with this Code and the orders of the court, and his final account has been approved, and he has delivered all of said estate remaining in his hands to the person or persons entitled to receive the same, it shall be the duty of the court to enter an order discharging such representative from his trust, and declaring the estate closed.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Amended by Acts 1979, 66th Leg., p. 1877, ch. 758, § 4, eff. Aug. 27, 1979; Subsec. (b) amended by Acts 1993, 73rd Leg., ch. 957, § 72, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 409. Money Becoming Due Pending Final Discharge

Until the order of final discharge of the personal representative is entered in the judge's probate docket, money or other thing of value falling due to the estate while the account for final settlement is pending may be paid, delivered, or tendered to the personal representative, who shall issue receipt therefor, and the obligor and/or payor shall be thereby discharged of the obligation for all purposes.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1993, 73rd Leg., ch. 957, § 73, eff. Sept. 1, 1993. Amended by Acts 2009, 81st Leg., ch. 602, § 10, eff. June 19, 2009. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 410. Inheritance Taxes Must be Paid

No final account of an executor or administrator shall be approved, and no estate of a decedent shall be closed, unless the final account shows, and the court finds, that all inheritance taxes due and owing to the State of Texas with respect to all interests and properties passing through the hands of the representative have been paid.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1989, 71st Leg., ch. 1035, § 16, eff. Sept. 1, 1989. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 412. Offsets, Credits, and Bad Debts

In the settlement of any of the accounts of the personal representative of an estate, all debts due the estate which the court is satisfied could not have been collected by due diligence, and which have not been collected, shall be excluded from the computation.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 414. Procedure if Representative Fails to Deliver Estate

If any personal representative of an estate, upon final settlement, shall neglect to deliver to the person entitled thereto when demanded any portion of an estate or any funds or money in his hands ordered to be delivered, such person may file with the clerk of the court his written complaint alleging the fact of such neglect, the date of his demand, and other relevant facts, whereupon the clerk shall issue a citation to be served personally upon such representative, apprising him of the complaint and citing him to appear before the court and answer, if he so desires, at the time designated in the citation. If at the hearing the court finds that the citation was duly served and returned and that the representative is guilty of the neglect charged, the court shall enter an order to that effect, and the representative shall be liable to such person in damages at the rate of ten per cent of the amount or appraised value of the money or estate so withheld, per month, for each and every month or fraction thereof that said estate or money or funds is and/or has been so withheld after date of demand, which damages may be recovered in any court of competent jurisdiction.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1993, 73rd Leg., ch. 957, § 74, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Chapter X. Payment of Estates into State Treasury

Statutes in Context Chapter X

Under certain circumstances, the personal representative may be ordered to pay unclaimed estate funds to the comptroller under Chapter X. However, the relationship of these provisions to the unclaimed property provisions of Chapters 74 and 75 of the Property Code is unclear.

§ 427. When Estates to be Paid Into State Treasury

If any person entitled to a portion of an estate, except a resident minor without a guardian, shall not demand his portion from the executor or administrator within six months after an order of court approving the report of commissioners of partition, or within six months after the settlement of the final account of an executor or administrator, as the case may be, the court by written order shall require the executor or administrator to pay so much of said portion as is in money to the comptroller; and such portion as is in other property he shall order the executor or administrator to sell on such terms as the court thinks best, and, when the proceeds of such sale are collected, the court shall order the same to be paid to the comptroller, in all such cases allowing the executor or administrator reasonable compensation for his services. A suit to recover proceeds of the sale is governed by Section 433 of this Code.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1991, 72nd Leg., ch. 153, § 27, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1423, § 15.01, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 428. Indispensability of Comptroller as Party

The comptroller is an indispensable party to any judicial or administrative proceeding concerning the disposition and handling of any portion of an estate that is or may be payable to the comptroller under Section 427 of this Code. Whenever an order shall be made by the court for an executor or administrator to pay any funds to the comptroller under Section 427 of this Code, the clerk of the court in which such order is made shall serve on the comptroller by personal service of citation a certified copy of such order within five days after the same has been made.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1991, 72nd Leg., ch. 153, § 27, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1423, § 15.02, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 429. Penalty for Neglect to Notify Comptroller

Any clerk who shall neglect to have served on the comptroller by personal citation a certified copy of any such order within the time prescribed by Section 428 of this Code shall be liable in a penalty of One Hundred Dollars, to be recovered in an action in the name of the state, after personal service of citation, on the information of any citizen, one-half of which penalty shall be paid to the informer and the other one-half to the state.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1991, 72nd Leg., ch. 153, § 27, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1423, § 15.03, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 430. Receipt of Comptroller

Whenever an executor or administrator pays the comptroller any funds of the estate he represents, under the preceding provisions of this Code, he shall take from the comptroller a receipt for such payment, with official seal attached, and shall file the same with the clerk of the court ordering such payment; and such receipt shall be recorded in the judge's probate docket.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1997, 75th Leg., ch. 1423, § 15.04, eff. Sept. 1, 1997. Amended by Acts 2009, 81st Leg., ch. 602, § 11, eff. June 19, 2009. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 431. Penalty for Failure to Make Payments to Comptroller

When an executor or administrator fails to pay to the comptroller any funds of an estate which he has been ordered by the court so to pay, within 30 days after such order has been made, such executor or administrator shall, after personal service of citation charging such failure and after proof thereof, be liable to pay out of his own estate to the comptroller damages thereon at the rate of five per cent per month for each month, or fraction thereof, that he fails to make such payment after 30 days from such order, which damages may be recovered in any court of competent jurisdiction.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1991, 72nd Leg., ch. 153, § 28, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1423, § 15.05, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 432. Comptroller May Enforce Payment and Collect Damages

The Comptroller shall have the right in the name of the state to apply to the court in which the order for payment was made to enforce the payment of funds which the executor or administrator has failed to pay to him pursuant to order of court, together with the payment of any damages that shall have accrued under the provisions of the preceding section of this code, and the court shall enforce such payment in like manner as other orders of payment are required to be enforced. The comptroller shall also have the right to institute suit in the name of the state against such executor or administrator, and the sureties on his bond, for the recovery of the funds so ordered to be paid and such damages as have accrued. The county attorney or criminal district attorney of the county, the district attorney of the district, or the attorney general, at the election of the comptroller and with the approval of the attorney general, shall represent the comptroller in all such proceedings, and shall also represent the interests of the state in all other matters arising under any provisions of this Code.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Amended by Acts 1991, 72nd Leg., ch. 153, § 28, eff.

Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1423, § 15.06, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 433. Suit for the Recovery of Funds Paid to the Comptroller

(a) Mode of Recovery. When funds of an estate have been paid to the comptroller, any heir, devisee, or legatee of the estate, or their assigns, or any of them, may recover the portion of such funds to which he, she, or they are entitled. The person claiming such funds shall institute suit on or before the fourth anniversary of the date of the order requiring payment to the comptroller, by petition filed in the district court of Travis County, against the comptroller, setting forth the plaintiff's right to such funds, and the amount claimed by him.

(b) Citation. Upon the filing of such petition, the clerk shall issue a citation for the comptroller, to be served by personal service, to appear and represent the interest of the state in such suit. As the comptroller elects and with the approval of the attorney general, the attorney general, the county attorney or criminal district attorney for the county, or the district attorney for the district shall represent the comptroller.

(c) Procedure. The proceedings in such suit shall be governed by the rules for other civil suits; and, should the plaintiff establish his right to the funds claimed, he shall have a judgment therefor, which shall specify the amount to which he is entitled; and a certified copy of such judgment shall be sufficient authority for the comptroller to pay the same.

(d) Costs. The costs of any such suit shall in all cases be adjudged against the plaintiff, and he may be required to secure the costs.

Acts 1955, 54th Leg., p. 88, ch. 55, eff. Jan. 1, 1956; Subsecs. (a), (b) amended by Acts 1991, 72nd Leg., ch. 153, § 29, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1423, § 15.07, eff. Sept. 1, 1997. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Chapter XI. Nontestamentary Transfers

Part 1. Multiple-Party Accounts

**Statutes in Context
Part 1**

Multiple-party accounts, such as checking accounts, savings accounts, and certificates of deposit, are contractual arrangements for the deposit of money with financial institutions such as state or national banks, savings and loan associations, and credit unions. The disposition of the funds remaining in these accounts upon the death of one of the depositors depends on the type of account, the account contract, and the applicable state law.

Multiple-party accounts are important non-probate transfer mechanisms because these accounts are widely used, easy to understand, and inexpensive to obtain. Chapter XI, Part 1, address the four commonly recognized types of multiple-party accounts: (1) the joint account, which may transfer ownership rights to the account's balance to the surviving party; (2) the agency or convenience account, which does not transfer the balance upon the death of one of the parties; (3) the payable on death account, which causes the balance to belong to the surviving pay-on-death payees upon the death of the depositors; and (4) the trust account, under which the beneficiaries receive the account balance upon outliving all trustees.

§ 436. Definitions

In this part:

(1) "Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other like arrangement.

(2) "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

(2-a) "Charitable organization" means any corporation, community chest, fund, or foundation that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) of that code.

(3) "Financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations, credit unions, and brokerage firms that deal in the sales and purchases of stocks, bonds, and other types of securities.

(4) "Joint account" means an account payable on request to one or more of two or more parties whether or not there is a right of survivorship.

(5) "Multiple-party account" means a joint account, a convenience account, a P.O.D. account, or a trust account. It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization, or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

(6) "Net contribution" of a party to a joint account as of any given time is the sum of all deposits made to that account by or for him, less all withdrawals made by or for him which have not been paid to or applied to the

use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

(7) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee, including a charitable organization, or beneficiary of a trust account is a party only after the account becomes payable to the P.O.D. payee or beneficiary by reason of the P.O.D. payee or beneficiary surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include a named beneficiary unless the beneficiary has a present right of withdrawal.

(8) "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any set-off, or reduction or other disposition of all or part of an account pursuant to a pledge.

(9) "Proof of death" includes a certified copy of a death certificate or the judgment or order of a court in a proceeding where the death of a person is proved by circumstantial evidence to the satisfaction of the court as provided by Section 72 of this code.

(10) "P.O.D. account" means an account payable on request to one person during lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees.

(11) "P.O.D. payee" means a person or charitable organization designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

(12) "Request" means a proper request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution, but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this part the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(13) "Sums on deposit" means the balance payable on a multiple-party account including interest, dividends, and in addition any deposit life insurance proceeds added to the account by reason of the death of a party.

(14) "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account. It is not

essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account, or a fiduciary account arising from a fiduciary relation such as attorney-client.

(15) "Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979; Subsecs. (3), (5) amended by Acts 1993, 73rd Leg., ch. 846, § 25, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.36, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

Statutes in Context
§ 437

The right to withdraw funds from a multiple-party account is a separate issue from the ownership of those funds. For example, a party to a joint account may have the right to withdraw funds but does not necessarily own those funds.

§ 437. Ownership as Between Parties and Others

The provisions of Sections 438 through 440 of this code that concern beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between these persons and their creditors and other successors, and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979; Amended by Acts 1981, 67th Leg., p. 895, ch. 319, § 2, eff. Sept. 1, 1981. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 438

Section 438 explains who owns the funds in a multiple-party account while the original parties are all still alive.

1. Joint Account. The funds in a joint account belong to the parties in proportion to their net contributions, that is, what the party deposited, minus what the party withdrew, plus a proportionate share of the interest. See § 436(6).

2. P.O.D. Account. The funds in a P.O.D. account belong to the original payees. The P.O.D. payees have no ownership rights.

3. Trust Account. The funds in a trust account belong to the trustee and the beneficiary has no rights unless there is a contrary intent shown by the account terms or deposit agreement or there is

clear and convincing evidence of an irrevocable trust.

§ 438. Ownership During Lifetime

(a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(b) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or payees. If two or more parties are named as original payees, during their lifetimes rights as between them are governed by Subsection (a) of this section.

(c) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime, and if two or more parties are named as trustee on the account, during their lifetimes beneficial rights as between them are governed by Subsection (a) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context
§ 438A

Section 438A governs convenience accounts which are used as a primitive type of agency relationship to, for example, allow someone to assist the depositor in writing checks when the depositor is unable to do so (e.g., disabled, stationed out of the country in the military, on vacation, etc.).

All funds in the account belong to the party, not the co-signer, although both the party and the co-signer have the right to withdraw the funds. When the party dies, the entire account passes into the party's estate. The co-signer has no survivorship rights.

§ 438A. Convenience Account

(a) If an account is established at a financial institution by one or more parties in the names of the parties and one or more convenience signers and the terms of the account provide that the sums on deposit are paid or delivered to the parties or to the convenience signers "for the convenience" of the parties, the account is a convenience account.

(b) The making of a deposit in a convenience account does not affect the title to the deposit.

(c) A party to a convenience account is not considered to have made a gift of the deposit or of any

additions or accruals to the deposit to a convenience signer.

(d) On the death of the last surviving party, a convenience signer shall have no right of survivorship in the account and ownership of the account remains in the estate of the last surviving party.

(e) If an addition is made to the account by anyone other than a party, the addition and accruals to the addition are considered to have been made by a party.

(f) All deposits to a convenience account and additions and accruals to the deposits may be paid to a party or to a convenience signer. The financial institution is completely released from liability for a payment made from the account before the financial institution receives notice in writing signed by the party not to make the payment in accordance with the terms of the account. After receipt of the notice from a party, the financial institution may require a party to approve any further payments from the account.

(g) If the financial institution makes a payment of the sums on deposit in a convenience account to a convenience signer after the death of the last surviving party and before the financial institution has received written notice of the last surviving party's death, the financial institution is completely released from liability for the payment. If a financial institution makes payment to the personal representative of the deceased last surviving party's estate after the death of the last surviving party and before service on the financial institution of a court order prohibiting payment, the financial institution is released to the extent of the payment from liability to any person claiming a right to the funds. The receipt by the representative to whom payment is made is a complete release and discharge of the financial institution.

Added by Acts 1993, 73rd Leg., ch. 795, § 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 846, § 27, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 658, § 1, eff. Sept. 1, 2003. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context § 438B

The 2009 Legislature enacted this provision to authorize convenience signers on accounts that are not expressly labeled as convenience accounts. A person who opens a single-party or multiple-party account that is not expressly deemed a convenience account under § 438A now has the option of indicating a convenience signer who has the ability to make withdrawals but does not have ownership or survivorship rights. The Uniform Single-Party or Multiple-Party Account Form was modified to provide for convenience signers on all types of accounts.

§ 438B. Convenience Signer on Other Accounts

(a) An account established by one or more parties at a financial institution that is not designated as a convenience account, but is instead designated as a single-party account or another type of multiple-party account, may provide that the sums on deposit may be paid or delivered to the parties or to one or more convenience signers "for the convenience of the parties."

(b) Except as provided by Subsection (c) of this section:

(1) the provisions of Section 438A of this chapter apply to an account described by Subsection (a) of this section, including provisions relating to the ownership of the account during the lifetimes and on the deaths of the parties and provisions relating to the powers and duties of the financial institution at which the account is established; and

(2) any other law relating to a convenience signer applies to a convenience signer designated as provided by this section to the extent the law applies to a convenience signer on a convenience account.

(c) On the death of the last surviving party to an account that has a convenience signer designated as provided by this section, the convenience signer does not have a right of survivorship in the account and the estate of the last surviving party owns the account unless the convenience signer is also designated as a P.O.D. payee or as a beneficiary.

Added by Acts 2009, 81st Leg., ch. 929, § 1, eff. June 19, 2009. Repealed by Acts 2011, 82nd Leg., ch. 91, § 8.006(c), eff. Jan. 1, 2014.

Statutes in Context § 439

Section 439 governs ownership of the funds in a multiple-party account when one or more of the parties dies.

1. Joint Account. The net contributions of the deceased party pass into the deceased party's estate unless there is an express survivorship agreement. Unlike many states, the presumption in Texas is that a joint account does not have the survivorship feature. (Note that this is consistent with § 46(a).) The survivorship feature exists only if there is (a) a written agreement, (b) signed by the deceased party (if community property is involved, both spouses must sign under § 451), (c) which expressly makes the deceased party's interest survive to the surviving party.

In 2009, the Texas Supreme Court issued a disturbing opinion in the case of *Holmes v. Beatty*, 290 S.W.3d 852 (Tex. 2009). A husband and his wife held investment accounts with the designation "JT TEN." The spouses signed the agreement but did not indicate whether the account had, or did

not have, the survivorship feature. The court determined that holding community property as joint tenants automatically includes the survivorship feature and that the designation "JT TEN" is an acceptable abbreviation. In so deciding, the court relied on the common law under which joint tenancies carried with them the survivorship feature. However, the court disregarded long-established Texas law which requires that the survivorship be expressly stated. The 2011 Legislature amended both § 439(a) and § 452 to make it clear that this type of designation is insufficient to create the survivorship feature.

Extrinsic evidence is not admissible to establish the survivorship feature in a suit to obtain account funds. However, such evidence may be used to show the depositor's intent in an action against the financial institution. *A.G. Edwards & Sons, Inc. v. Beyer*, 235 S.W.3d 704 (Tex. 2007).

The statute contains "safe harbor" language to create the survivorship feature, that is, "On the death of one party to a joint account, all sums in the account on the date of the death vest in and belong to the surviving party as his or her separate property and estate." Note that a mere authorization of payment of funds to the survivor does not create the survivorship feature. The right to withdraw is not equated with ownership rights. See *Stauffer v. Henderson*, 801 S.W.2d 858 (Tex. 1990).

2. P.O.D. Account. The funds in a P.O.D. account belong to the surviving P.O.D. payees only after all original P.O.D. payees are dead.

3. Trust Account. The funds in a trust account belong to the surviving beneficiaries only after all trustees are dead.

§ 439. Right of Survivorship

(a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties against the estate of the decedent if, by a written agreement signed by the party who dies, the interest of such deceased party is made to survive to the surviving party or parties. Notwithstanding any other law, an agreement is sufficient to confer an absolute right of survivorship on parties to a joint account under this subsection if the agreement states in substantially the following form: "On the death of one party to a joint account, all sums in the account on the date of the death vest in and belong to the surviving party as his or her separate property and estate." A survivorship agreement will not be inferred from the mere fact that the account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under Section 438 of this code

augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death, and the right of survivorship continues between the surviving parties if a written agreement signed by a party who dies so provides.

(b) If the account is a P.O.D. account and there is a written agreement signed by the original payee or payees, on the death of the original payee or on the death of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more P.O.D. payees die before the original payee. If two or more P.O.D. payees survive, there is no right of survivorship in event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(c) If the account is a trust account and there is a written agreement signed by the trustee or trustees, on death of the trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more beneficiaries die before the trustee dies. If two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(d) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979; Subsec. (a) amended by Acts 1987, 70th Leg., ch. 297, § 1, eff. Aug. 31, 1987; Subsecs. (b), (c) amended by Acts 1993, 73rd Leg., ch. 846, § 26, eff. Sept. 1, 1993. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.37, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

Statutes in Context § 439A

A financial institution may use the form provided in § 439A to achieve predicable results and to give the customer understandable information regarding the workings of multiple-party accounts. However, few banks actually use the suggested form.

§ 439A. Uniform Single-Party or Multiple-Party Account Form

(a) A contract of deposit that contains provisions substantially the same as in the form provided by Subsection (b) of this section establishes the type of account selected by a party. The provisions of this part

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of Chapter XI of this code govern an account selected under the form. A contract of deposit that does not contain provisions substantially the same as in the form provided by Subsection (b) of this section is governed by the provisions of this chapter applicable to the account that most nearly conforms to the depositor's intent.

(b) A financial institution may use the following form to establish the type of account selected by a party:

UNIFORM SINGLE-PARTY OR MULTIPLE-PARTY ACCOUNT SELECTION FORM NOTICE: The type of account you select may determine how property passes on your death. Your will may not control the disposition of funds held in some of the following accounts. You may choose to designate one or more convenience signers on an account, even if the account is not a convenience account. A designated convenience signer may make transactions on your behalf during your lifetime, but does not own the account during your lifetime. The designated convenience signer owns the account on your death only if the convenience signer is also designated as a P.O.D. payee or trust account beneficiary.

Select one of the following accounts by placing your initials next to the account selected:

____ (1) **SINGLE-PARTY ACCOUNT WITHOUT "P.O.D." (PAYABLE ON DEATH) DESIGNATION.** The party to the account owns the account. On the death of the party, ownership of the account passes as a part of the party's estate under the party's will or by intestacy.

Enter the name of the party: _____

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account: _____

____ (2) **SINGLE-PARTY ACCOUNT WITH "P.O.D." (PAYABLE ON DEATH) DESIGNATION.** The party to the account owns the account. On the death of the party, ownership of the account passes to the P.O.D. beneficiaries of the account. The account is not a part of the party's estate.

Enter the name of the party: _____

Enter the name or names of the P.O.D. beneficiaries: _____

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account: _____

____ (3) **MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP.** The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party's ownership of the account passes as a part of the party's estate under the party's will or by intestacy.

Enter the names of the parties: _____

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account: _____

____ (4) **MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP.** The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of a party, the party's ownership of the account passes to the surviving parties.

Enter the names of the parties: _____

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account: _____

____ (5) **MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND P.O.D. (PAYABLE ON DEATH) DESIGNATION.** The parties to the account own the account in proportion to the parties' net contributions to the account. The financial institution may pay any sum in the account to a party at any time. On the death of the last surviving party, the ownership of the account passes to the P.O.D. beneficiaries.

Enter the names of the parties: _____

Enter the name or names of the P.O.D. beneficiaries: _____

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account: _____

____ (6) **CONVENIENCE ACCOUNT.** The party to the account owns the account. The cosigner to the account may make account transactions for the party. The cosigner does not own the account. On the death of the party, ownership of the account passes as a part of the party's estate under the party's will or by intestacy. The financial institution may pay funds in the account to the cosigner before the financial institution receives notice of the death of the party. The payment to the cosigner does not affect the party's ownership of the account.

Enter the name of the party: _____

Enter the name(s) of the signer(s): _____

____ (7) **TRUST ACCOUNT.** The parties named as trustees to the account own the account in proportion to the parties' net contributions to the account. A trustee may withdraw funds from the account. A beneficiary may not withdraw funds from the account before all trustees are deceased. On the death of the last surviving trustee, the ownership of the account passes to the beneficiary. The trust account is not a part of a trustee's estate and does not pass under the trustee's will or by intestacy, unless the trustee survives all of the beneficiaries and all other trustees.

Enter the name or names of the trustees: _____

Enter the name or names of the beneficiaries: _____

Enter the name(s) of the convenience signer(s), if you want one or more convenience signers on this account:

(c) A financial institution shall be deemed to have adequately disclosed the information provided in this section if the financial institution uses the form set forth in Subsection (b) of this section. If a financial institution varies the format of the form set forth in Subsection (b) of this section, then such financial institution may make disclosures in the account agreement or in any other form which adequately discloses the information provided in this section.

(d) A financial institution may combine any of the provisions and vary the format of the selections form and notices described in Subsection (b) of this section provided that the customer receives adequate disclosure of the ownership rights and there is appropriate indication of the names of the parties. This may be accomplished in a universal account form with options listed for selection and additional disclosures provided in the account agreement, or in any other manner which adequately discloses the information provided in this section.

Added by Acts 1993, 73rd Leg., ch. 795, § 2, eff. Aug. 30, 1993. Amended by Acts 2003, 78th Leg., ch. 658, § 2, eff. Sept. 1, 2003. Subsecs. (a), (b) amended by Acts 2009, 81st Leg., ch. 929, § 2, eff. June 19, 2009. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 440. Effect of Written Notice to Financial Institution

The provisions of Section 439 of this code as to rights of survivorship are determined by the form of the account at the death of a party. Notwithstanding any other provision of the law, this form may be altered by written order given by a party to the financial institution to change the form of the account or to stop or vary payment under the terms of the account. The order or request must be signed by a party, received by the financial institution during the party's lifetime, and not countermanded by other written order of the same party during his lifetime.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 441. Accounts and Transfers Nontestamentary

Transfers resulting from the application of Section 439 of this code are effective by reason of the account contracts involved and this statute and are not to be considered as testamentary or subject to the testamentary provisions of this code.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context § 442

Section 442 provides that funds in a multiple-party account are available to pay the debts of a deceased depositor but only as a last resort after all other estate assets are exhausted. Thus, although multiple-party accounts are considered non-probate in nature, they may still be involved in the probate process if the funds are needed to pay debts or other claims against the estate.

§ 442. Rights of Creditors

No multiple-party account will be effective against an estate of a deceased party to transfer to a survivor sums needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse and minor children, if other assets of the estate are insufficient. No multiple-party account will be effective against the claim of a secured creditor who has a lien on the account. A party to a multiple-party account may pledge the account or otherwise create a security interest in the account without the joinder of, as appropriate, a P.O.D. payee, a beneficiary, a convenience signer, or any other party to a joint account, regardless of whether there is a right of survivorship. A convenience signer may not pledge or otherwise create a security interest in an account. Not later than the 30th day after the date on which a security interest on a multiple-party account is perfected, a secured creditor that is a financial institution the accounts of which are insured by the Federal Deposit Insurance Corporation shall provide written notice of the pledge of the account to any other party to the account who did not create the security interest. The notice must be sent by certified mail to any other party at the last address the party provided to the depository bank and is not required to be provided to a P.O.D. payee, a beneficiary, or a convenience signer. A party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party shall be liable to account to the deceased party's personal representative for amounts the decedent owned beneficially immediately before his death to the extent necessary to discharge the claims and charges mentioned above remaining unpaid after application of the decedent's estate, but is not liable in an amount greater than the amount that the party, P.O.D. payee, or beneficiary received from the multiple-party account. No proceeding to assert this liability shall be commenced unless the personal representative has received a written demand by a surviving spouse, a creditor, or one acting for a minor child of the decedent, and no proceeding shall be commenced later than two years following the death of the decedent. Sums recovered by the personal representative shall be administered as part of the decedent's estate. This section shall not affect the right of a financial institution to make payment on multiple-

party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless before payment the institution received written notice from the personal representative stating the sums needed to pay debts, taxes, claims, and expenses of administration.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979. Amended by Acts 2003, 78th Leg., ch. 564, § 1, eff. Sept. 1, 2003. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 443. Protection of Financial Institutions

Sections 444 through 449 of this code govern the liability of financial institutions that make payments as provided in this chapter and the set-off rights of the institutions.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 444. Payment on Signature of One Party

Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. A multiple-party account may be paid, on request, to any one or more of the parties. A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 445. Payment of Joint Account After Death or Disability

Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded, but payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under Section 439 of this code. A financial institution that pays a sum from a joint account to a surviving party to that account pursuant to a written agreement under Section 439(a) of this code is not liable to an heir, devisee, or beneficiary of the decedent's estate.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979; Amended by Acts 1987, 70th Leg., ch. 297, § 2, eff. Aug. 31, 1987. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 446. Payment of P.O.D. Account

A P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon

presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 447. Payment of Trust Account

A trust account may be paid, on request, to any trustee. Unless the financial institution has received written notice that the beneficiary has a vested interest not dependent upon his surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that his decedent was the survivor of all other persons named on the account either as trustee or beneficiary. Payment may be made, on request, to the beneficiary upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 448. Discharge from Claims

Payment made as provided by Section 444, 445, 446, or 447 of this code discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries, or their successors. The protection here given does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided here. The protection here provided shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 449. Set-Off to Financial Institution

Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to set-off against the account in which the party has or had immediately before his death a present right of withdrawal. The amount of the account subject to set-off is that proportion to which the debtor is, or was immediately before his death, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal.

Added by Acts 1979, 66th Leg., p. 1756, ch. 713, § 31, eff. Aug. 27, 1979. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Part 2. Provisions Relating to Effect of Death

**Statutes in Context
§ 450**

Section 450 authorizes a wide range of arrangements which provide for payment or transfer upon death. These designations are effective to transfer property outside of probate.

§ 450. Provisions for Payment or Transfer at Death

(a) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, employees' trust, retirement account, deferred compensation arrangement, custodial agreement, pension plan, trust agreement, conveyance of real or personal property, securities, accounts with financial institutions as defined in Part 1 of this chapter, mutual fund account, or any other written instrument effective as a contract, gift, conveyance, or trust is deemed to be nontestamentary, and this code does not invalidate the instrument or any provision:

(1) that money or other benefits theretofore due to, controlled, or owned by a decedent shall be paid after his death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently;

(2) that any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand; or

(3) that any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(b) Nothing in this section limits the rights of creditors under other laws of this state.

(c) In this section:

(1) "Employees' trust" means:

(A) a trust that forms a part of a stock-bonus, pension, or profit-sharing plan under Section 401, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 401 (1986));

(B) a pension trust under Chapter 111, Property Code; and

(C) an employer-sponsored benefit plan or program, or any other retirement savings arrangement, including a pension plan created under Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C.A. Sec. 1002 (1986)), regardless of whether the plan, program, or arrangement is funded through a trust.

(2) "Individual retirement account" means a trust, custodial arrangement, or annuity under Section 408(a) or (b), Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 408 (1986)).

(3) "Retirement account" means a retirement-annuity contract, an individual retirement account, a simplified employee pension, or any other retirement savings arrangement.

(4) "Retirement-annuity contract" means an annuity contract under Section 403, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 403 (1986)).

(5) "Simplified employee pension" means a trust, custodial arrangement, or annuity under Section 408, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 408 (1986)).

Subsec. (a) amended by Acts 1987, 70th Leg., ch. 94, § 1, eff. Aug. 31, 1987; Subsec. (c) added by Acts 1987, 70th Leg., ch. 94, § 2, eff. Aug. 31, 1987; Subsec. (a) amended by Acts 1997, 75th Leg., ch. 1302, § 14, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 284, § 1, eff. May 22, 2001. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Part 3. Community Property with Right of Survivorship

**Statutes in Context
§§ 451–462**

Community property could not be held in survivorship form until 1987 when Article XVI, § 15 of the Texas Constitution was amended to authorize community property survivorship agreements. Sections 451-462 provide guidance with respect to these agreements.

§ 451. Right of Survivorship

At any time, spouses may agree between themselves that all or part of their community property, then existing or to be acquired, becomes the property of the surviving spouse on the death of a spouse.

Added by Acts 1989, 71st Leg., ch. 655, § 2, eff. Aug. 28, 1989. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Statutes in Context

§ 452

A community property survivorship agreement must be (1) in writing, (2) signed by both spouses (not just the deceased spouse), and (3) contain express survivorship language.

In 2009, the Texas Supreme Court issued a disturbing opinion in the case of *Holmes v. Beatty*, 290 S.W.3d 852 (Tex. 2009). A husband and his wife held investment accounts with the designation “JT TEN.” The spouses signed the agreement but did not indicate whether the account had, or did not have, the survivorship feature. The court determined that holding community property as joint tenants automatically includes the survivorship feature and that the designation “JT TEN” is an acceptable abbreviation. In so deciding, the court relied on the common law under which joint tenancies carried with them the survivorship feature. However, the court disregarded long-established Texas law which requires that the survivorship be expressly stated. The 2011 Legislature amended both § 439(a) and § 452 to make it clear that this type of designation is insufficient to create the survivorship feature.

§ 452. Formalities

(a) An agreement between spouses creating a right of survivorship in community property must be in writing and signed by both spouses. If an agreement in writing is signed by both spouses, the agreement shall be sufficient to create a right of survivorship in the community property described in the agreement if it includes any of the following phrases:

- (1) “with right of survivorship”;
- (2) “will become the property of the survivor”;
- (3) “will vest in and belong to the surviving spouse”; or
- (4) “shall pass to the surviving spouse.”

(b) An agreement that otherwise meets the requirements of this part, however, shall be effective without including any of those phrases.

(c) A survivorship agreement will not be inferred from the mere fact that the account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.

Added by Acts 1989, 71st Leg., ch. 655, § 2, eff. Aug. 28, 1989. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.38, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 453. Ownership and Management During Marriage

Property subject to an agreement between spouses creating a right of survivorship in community property remains community property during the marriage of the spouses. Such an agreement does not affect the rights of the spouses concerning management, control, and disposition of the property subject to the agreement unless the agreement provides otherwise.

Added by Acts 1989, 71st Leg., ch. 655, § 2, eff. Aug. 28, 1989. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 454. Transfers Nontestamentary

Transfers at death resulting from agreements made in accordance with this part of this code are effective by reason of the agreement involved and are not testamentary transfers. Such transfers are not subject to the provisions of this code applicable to testamentary transfers except as expressly provided otherwise in this code.

Added by Acts 1989, 71st Leg., ch. 655, § 2, eff. Aug. 28, 1989. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 455. Revocation

An agreement between spouses made in accordance with this part of this code may be revoked in accordance with the terms of the agreement. If the agreement does not provide a method for revocation, the agreement may be revoked by a written instrument signed by both spouses or by a written instrument signed by one spouse and delivered to the other spouse. The agreement may be revoked with respect to specific property subject to the agreement by the disposition of such property by one or both of the spouses if such disposition is not inconsistent with specific terms of the agreement and applicable law.

Added by Acts 1989, 71st Leg., ch. 655, § 2, eff. Aug. 28, 1989. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 456. Proof of Agreement

(a) **Application for Adjudication.** An agreement between spouses creating a right of survivorship in community property that satisfies the requirements of this part is effective without an adjudication. After the death of a spouse, however, the surviving spouse or the personal representative of the surviving spouse may apply to the court for an order stating that the agreement satisfies the requirements of this code and is effective to create a right of survivorship in community property. The original agreement shall be filed with the application for an adjudication. An application for an adjudication under this section must include:

- (1) the name and domicile of the surviving spouse;
- (2) the name and former domicile of the decedent and the fact, time, and place of death;

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- (3) facts establishing venue in the court; and
- (4) the social security number of the decedent, if known.

(b) Proof Required. An applicant for an adjudication under this section must prove to the satisfaction of the court:

- (1) that the spouse whose community property interest is at issue is dead;
- (2) that the court has jurisdiction and venue;
- (3) that the agreement was executed with the formalities required by law;
- (4) that the agreement was not revoked; and
- (5) that citation has been served and returned in the manner and for the length of time required by this code.

(c) Method of Proof. The deceased spouse's signature to the agreement may be proved by the sworn testimony of one witness taken in open court, by the affidavit of one witness, or by the deposition of one witness, either written or oral, taken in the same manner and under the same rules as depositions in other civil actions. If the surviving spouse is competent to make an oath, the surviving spouse's signature to the agreement may be proved by the sworn testimony of the surviving spouse taken in open court, by the affidavit of the surviving spouse, or by the deposition of the surviving spouse either written or oral, taken in the same manner and under the same rules as depositions in other civil actions. If the surviving spouse is not competent to make an oath, the surviving spouse's signature to the agreement may be proved in the manner provided above for the proof of the deceased spouse's signature.

(d) Venue. An application for an adjudication under this section must be filed in the county of proper venue for administration of the deceased spouse's estate.

Added by Acts 1989, 71st Leg., ch. 655, § 2, eff. Aug. 28, 1989. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 457. Action of Court on Agreement

On completion of a hearing on an application under Section 456 of this code, if the court is satisfied that the requisite proof has been made, an order adjudging the agreement valid shall be entered. Certified copies of the agreement and order may be recorded in other counties and may be used in evidence, as the original might be, on the trial of the same matter in any other court, on appeal or otherwise.

Added by Acts 1989, 71st Leg., ch. 655, § 2, eff. Aug. 28, 1989. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 458. Effect of Order

An agreement between spouses creating a right of survivorship in community property that satisfies the requirements of this code is effective and enforceable without an adjudication. If an order adjudging such an agreement valid is obtained, however, the order shall constitute sufficient authority to all persons owing

money, having custody of any property, or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right, that is subject to the provisions of the agreement, and to persons purchasing from or otherwise dealing with the surviving spouse for payment or transfer to the surviving spouse, and the surviving spouse may enforce his or her right to such payment or transfer.

Added by Acts 1989, 71st Leg., ch. 655, § 2, eff. Aug. 28, 1989. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 459. Custody of Adjudicated Agreements

An original agreement creating a right of survivorship in community property that has been adjudicated together with the order adjudging it valid shall be deposited in the office of the county clerk of the county in which it was adjudicated and shall remain there, except during such time when it may be removed for inspection to another place on order of the court where adjudicated. If the court orders an original agreement to be removed to another place for inspection, the person removing the original agreement shall give a receipt therefor, and the clerk of the court shall make and retain a copy of the original agreement.

Added by Acts 1989, 71st Leg., ch. 655, § 2, eff. Aug. 28, 1989. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 460. Protection of Persons or Entities Acting Without Knowledge or Notice

(a) Personal Representatives. If the personal representative of a decedent's estate has no actual knowledge of the existence of an agreement creating a right of survivorship in community property in the decedent's surviving spouse, the personal representative shall not be liable to the surviving spouse or to any person claiming from the surviving spouse for selling, exchanging, distributing, or otherwise disposing of the property or an interest therein.

(b) Purchaser without Notice of Survivorship Agreement.

(1) If any person or entity purchases real or personal property from a person claiming from a decedent more than six months after the date of the decedent's death, for value, and without notice of the existence of an agreement creating a right of survivorship in the property in the decedent's surviving spouse, the purchaser shall have good title to the interest which the person claiming from the decedent would have had in the absence of the agreement, as against the claims of the surviving spouse or any person claiming from the surviving spouse.

(2) If any person or entity purchases real or personal property from the personal representative of a decedent's estate, for value, and without notice of the existence of an agreement creating a right of survivorship in the property in the decedent's

surviving spouse, the purchaser shall have good title to the interest which the personal representative would have had the power to convey in the absence of the agreement, as against the claims of the surviving spouse or any person claiming from the surviving spouse.

(c) Purchaser without Notice of Revocation of Survivorship Agreement. If any person or entity purchases real or personal property from a decedent's surviving spouse more than six months after the date of the decedent's death, for value, and:

(1) with respect to real or personal property, the purchaser has received an original or certified copy of an agreement purporting to create a right of survivorship in such property in the decedent's surviving spouse, purportedly signed by the decedent and the surviving spouse; or

(2) with respect to real property, an agreement purporting to create a right of survivorship in such property in the decedent's surviving spouse, purportedly signed by the decedent and the surviving spouse, is properly recorded in a county in which a part of the property is located; and the purchaser has no notice that the agreement was revoked, the purchaser shall have good title to the interest which the surviving spouse would have had in the absence of a revocation of the agreement, as against the claims of the personal representative of the decedent's estate and all persons claiming from the decedent or the personal representative of the decedent's estate.

(d) Debtors, Transfer Agents, and Other Persons Acting without Notice of Survivorship Agreement. If any person or entity owing money to a decedent or having custody of any property or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right which was owned by a decedent prior to death has no actual knowledge of an agreement creating a right of survivorship in such property in the decedent's surviving spouse, that person or entity may pay or transfer such property to the personal representative of the decedent's estate or to the heirs, legatees, or devisees of the decedent's estate if no administration is pending on the estate, and the person or entity shall be discharged from all claims for amounts or property so paid or transferred.

(e) Debtors, Transfer Agents, and Persons Acting without Notice of Revocation of Survivorship Agreement. If any person or entity owing money to a decedent or having custody of any property or acting as registrar or transfer agent of any evidence of interest, indebtedness, property, or right which was owned by a decedent prior to death is presented with the original or a certified copy of an agreement creating a right of survivorship in such property in the decedent's surviving spouse, purportedly signed by the decedent and the decedent's surviving spouse and if such person or entity has no actual knowledge that the agreement was revoked, that person or entity may pay or transfer such property to the decedent's surviving spouse and

shall be discharged from all claims for amounts or property so paid or transferred.

(f) Definitions. Under this section:

(1) a person or entity has "actual knowledge" of an agreement creating a right of survivorship in community property or of the revocation of such an agreement only if the person or entity has received written notice or has received the original or a certified copy of the agreement or revoking instrument;

(2) a person or entity has "notice" of an agreement creating a right of survivorship in community property or the revocation of such an agreement if the person or entity has actual knowledge of the agreement or revocation or, with respect to real property, if the agreement or revoking instrument is properly recorded in the county in which the real property is located; and

(3) a "certified copy" is a copy of an official record or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, certified as correct in accordance with the provisions of Rule 902 of the Texas Rules of Civil Evidence.

(g) Other Cases. Except as expressly provided in this section, the provisions of this section do not affect the rights of a surviving spouse or person claiming from the surviving spouse in disputes with persons claiming from a decedent or the successors of any of them concerning a beneficial interest in property or the proceeds therefrom, subject to a right of survivorship pursuant to an agreement that satisfies the requirements of this code.

Added by Acts 1989, 71st Leg., ch. 655, § 2, eff. Aug. 28, 1989. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 461. Rights of Creditors

The provisions of Part 1 of this chapter govern the rights of creditors in multiple-party accounts, as defined by Section 436 of Part 1. Except as expressly provided above in this section, the community property subject to the sole or joint management, control, and disposition of a spouse during marriage continues to be subject to the liabilities of that spouse upon death without regard to a right of survivorship in the decedent's surviving spouse under an agreement made in accordance with the provisions of this part. The surviving spouse shall be liable to account to the deceased spouse's personal representative for the property received by the surviving spouse pursuant to a right of survivorship to the extent necessary to discharge such liabilities. No proceeding to assert such a liability shall be commenced unless the personal representative has received a written demand by a creditor, and no proceeding shall be commenced later than two years following the death of the decedent. Property recovered by the personal representative shall be administered as part of the decedent's estate. This section does not affect the protection given to persons

and entities under Section 460 of this code unless, before payment or transfer to the surviving spouse, the person or entity received a written notice from the decedent's personal representative stating the amount needed to satisfy the decedent's liabilities.

Added by Acts 1989, 71st Leg., ch. 655, § 2, eff. Aug. 28, 1989. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

§ 462. Coordination with Part 1 of Chapter XI

The provisions of Part 1 of this chapter apply to multiple-party accounts held by spouses with a right of survivorship to the extent that such provisions are not inconsistent with the provisions of this part.

Added by Acts 1989, 71st Leg., ch. 655, § 2, eff. Aug. 28, 1989. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014.

Chapter XI-A. Provisions Applicable to Certain Nontestamentary Transfers

Statutes in Context

§§ 471–473

Sections § 471-473 were added to the Probate Code (not the Trust Code) in 2005 to address the situation of what happens if the settlor and beneficiary of a revocable trust are divorced and the settlor fails to amend the trust to address this change in circumstance.

The new provisions apply only if the divorce occurs on or after September 1, 2005. It does not matter when the settlor created the trust.

Only written revocable trusts are covered by the new provisions. The ex-spouse remains as the beneficiary of an irrevocable trust and of a revocable oral trust.

If the settlor of a written revocable trust divorces a beneficiary of that trust to whom the settlor was married before or at the time of trust creation, the following provisions of the trust in favor of the ex-spouse are automatically revoked:

- Beneficiary of a revocable disposition or appointment.
- Donee of a general or special power of appointment, and
- Designation as a fiduciary (e.g., trustee, personal representative, agent, or guardian).

Any property interest which is automatically revoked passes as if the ex-spouse executed a valid disclaimer of that interest under Texas law. If a fiduciary designation is automatically revoked, the trust instrument is read as if the ex-spouse died immediately before the dissolution of the marriage.

The automatic revocation of provisions in favor of the ex-spouse discussed above does *not* occur if one or more of the following instruments provides otherwise:

- A trust executed after the divorce,
- A court order,
- Express language in the trust, or
- Express language of a contract relating to the division of the marital estate entered into before, during, or after the marriage.

A bona fide purchaser from the ex-spouse of trust property or a person who receives a payment from the ex-spouse which is traceable to the trust, does not have to return the property or payment and is not liable for that property or payment.

If the ex-spouse receives property or a payment from a trust to which the ex-spouse is not entitled, the ex-spouse has a duty to return the property or payment and is personally liable to the person who is entitled to that property or payment.

The 2011 Legislature expanded these provisions to cover not only the ex-spouse but also any relative of the ex-spouse who is not a relative of the settlor.

§ 471. Definitions

In this chapter:

(1) "Disposition or appointment of property" includes a transfer of property or provision of any other benefit to a beneficiary under a trust instrument.

(2) "Divorced individual" means an individual whose marriage has been dissolved, whether by divorce, annulment, or a declaration that the marriage is void.

(2-a) "Relative" means an individual who is related to another individual by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, respectively.

(3) "Revocable," with respect to a disposition, appointment, provision, or nomination, means a disposition to, appointment of, provision in favor of, or nomination of an individual's spouse in a trust instrument executed by the individual before the dissolution of the individual's marriage to the spouse that the individual was solely empowered by law or by the trust instrument to revoke, regardless of whether the individual had the capacity to exercise the power at that time.

Added by Acts 2005, 79th Leg., ch. 551, § 8, eff. Sept. 1, 2005. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.39, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 472. Revocation of Certain Nontestamentary Transfers on Dissolution of Marriage

(a) Except as otherwise provided by a court order, the express terms of a trust instrument executed by a divorced individual before the individual's marriage

was dissolved, or an express provision of a contract relating to the division of the marital estate entered into between a divorced individual and the individual's former spouse before, during, or after the marriage, the dissolution of the marriage revokes the following:

(1) a revocable disposition or appointment of property made by a divorced individual to the individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual in a trust instrument executed before the dissolution of the marriage;

(2) a provision in a trust instrument executed by a divorced individual before the dissolution of the marriage that confers a general or special power of appointment on the individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; and

(3) a nomination in a trust instrument executed by a divorced individual before the dissolution of the marriage that nominates the individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve in a fiduciary or representative capacity, including as a personal representative, executor, trustee, conservator, agent, or guardian.

(b) After the dissolution of a marriage, an interest granted in a provision of a trust instrument that is revoked under Subsection (a)(1) or (2) of this section passes as if the former spouse of the divorced individual who executed the trust instrument and each relative of the former spouse who is not a relative of the divorced individual disclaimed the interest granted in the provision, and an interest granted in a provision of a trust instrument that is revoked under Subsection (a)(3) of this section passes as if the former spouse and each relative of the former spouse who is not a relative of the divorced individual died immediately before the dissolution of the marriage.

Added by Acts 2005, 79th Leg., ch. 551, § 8, eff. Sept. 1, 2005. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.40, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

§ 473. Liability for Certain Payments, Benefits, and Property

(a) A bona fide purchaser of property from a divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual or a person who receives from a divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual a payment, benefit, or property in partial or full satisfaction of an enforceable obligation:

(1) is not required by this chapter to return the payment, benefit, or property; and

(2) is not liable under this chapter for the amount of the payment or the value of the property or benefit.

(b) A divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual who, not for value, receives a payment, benefit, or property to which the former spouse or the relative of the former spouse who is not a relative of the divorced individual is not entitled as a result of Section 472(a) of this code:

(1) shall return the payment, benefit, or property to the person who is otherwise entitled to the payment, benefit, or property as provided by this chapter; or

(2) is personally liable to the person described by Subdivision (1) of this subsection for the amount of the payment or the value of the benefit or property received.

Added by Acts 2005, 79th Leg., ch. 551, § 8, eff. Sept. 1, 2005. Repealed by Acts 2009, 81st Leg., ch. 680, § 10(a), eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 1.40, eff. Sept. 1, 2011. Repealed by Acts 2011, 82nd Leg., ch. 1338, § 2.54, eff. Sept. 1, 2014.

Chapter XII. Durable Power of Attorney Act

Statutes in Context Chapter XII

A power of attorney is a formal method of creating an agency relationship under which one person has the ability to act in the place of another. The person granting authority is called the principal and the person who obtains the authority is the agent or attorney-in-fact. Note that in this context, the term "attorney" is not synonymous with "lawyer" and thus any competent person may serve as an agent even if the person has no legal training.

Under traditional agency law, an agent's authority terminates when the principal becomes incompetent because the principal is no longer able to monitor the agent's conduct. This rule prevented powers of attorney from being used as a disability planning technique. In 1954, Virginia became the first state to authorize a durable power of attorney which provides that the agent retains the authority to act even if the principal is incompetent. All states now have legislation sanctioning durable powers of attorney. The Texas provisions are found in Chapter XII.

§ 481. Short Title

This chapter may be cited as the Durable Power of Attorney Act.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Statutes in Context
§ 482

The requirements for a valid durable power of attorney are as follows: (1) the instrument must be in writing (oral statements are insufficient), (2) the principal must be an adult, (3) the principal must sign the instrument, (4) the instrument must name an agent, (5) the instrument must expressly provide that the agent's authority either (a) continues even after the principal becomes disabled or (b) begins when the agent becomes disabled (the springing power of attorney), and (6) the power of attorney must be acknowledged. Note that no witnesses are needed and the durable power of attorney does not need to be filed with the court.

§ 482. Definition

A “durable power of attorney” means a written instrument that:

- (1) designates another person as attorney in fact or agent;
- (2) is signed by an adult principal;
- (3) contains the words “This power of attorney is not affected by subsequent disability or incapacity of the principal,” or “This power of attorney becomes effective on the disability or incapacity of the principal,” or similar words showing the principal’s intent that the authority conferred on the attorney in fact or agent shall be exercised notwithstanding the principal’s subsequent disability or incapacity; and
- (4) is acknowledged by the principal before an officer authorized to take acknowledgments to deeds of conveyance and to administer oaths under the laws of this state or any other state.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Statutes in Context
§ 483

The durable power of attorney does not lapse merely because it is not used for a prolonged period of time. See § 483.

§ 483. Duration

A durable power of attorney does not lapse because of the passage of time unless the instrument creating the power of attorney specifically states a time limitation.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 484. Effect of Acts by Attorney in Fact or Agent During Incapacity of Principal

All acts done by an attorney in fact or agent pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal’s successors in interest as if the principal were not disabled or incapacitated.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Statutes in Context
§ 485

The appointment of a permanent guardian of the principal’s estate will terminate the agent’s authority under § 485(a).

§ 485. Relation of Attorney in Fact or Agent to Court-Appointed Guardian of Estate

(a) If, after execution of a durable power of attorney, a court of the principal’s domicile appoints a permanent guardian of the estate of the principal, the powers of the attorney in fact or agent terminate on the qualification of the guardian of the estate, and the attorney in fact or agent shall deliver to the guardian of the estate all assets of the estate of the ward in the attorney’s or agent’s possession and shall account to the guardian of the estate as the attorney or agent would to the principal had the principal terminated his powers.

(b) If, after execution of a durable power of attorney, a court of the principal’s domicile appoints a temporary guardian of the estate of the principal, the court may suspend the powers of the attorney in fact or agent on the qualification of the temporary guardian of the estate until the date on which the term of the temporary guardian expires.

(c) Subsection (b) of this section may not be construed to prohibit the application for or issuance of a temporary restraining order under applicable law.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 217, § 1, eff. Sept. 1, 2001. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Statutes in Context
§ 485A

Generally, the designation of a spouse as an agent is automatically revoked upon the principal’s divorce from the spouse under § 485A.

§ 485A. Effect of Principal's Divorce or Marriage Annulment if Former Spouse Is Attorney in Fact or Agent

If, after execution of a durable power of attorney, the principal is divorced from a person who has been appointed the principal's attorney in fact or agent or the principal's marriage to a person who has been appointed the principal's attorney in fact or agent is annulled, the powers of the attorney in fact or agent granted to the principal's former spouse shall terminate on the date on which the divorce or annulment of marriage is granted by a court, unless otherwise expressly provided by the durable power of attorney.

Added by Acts 1997, 75th Leg., ch. 455, § 1, eff. Sept. 1, 1997. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 486. Knowledge of Death, Guardian of Estate, Revocation, Divorce, or Marriage Annulment; Good-Faith Acts

(a) The revocation by, the death of, or the qualification of a guardian of the estate of a principal who has executed a durable power of attorney does not revoke or terminate the agency as to the attorney in fact, agent, or other person who, without actual knowledge of the termination of the power by revocation, by the principal's death, or by the qualification of a guardian of the estate of the principal, acts in good faith under or in reliance on the power.

(b) The divorce of a principal from a person who has been appointed the principal's attorney in fact or agent before the date on which the divorce is granted or the annulment of the marriage of a principal and a person who has been appointed the principal's attorney in fact or agent before the date the annulment is granted does not revoke or terminate the agency as to a person other than the principal's former spouse if the person acts in good faith under or in reliance on the power.

(c) Any action taken under this section, unless otherwise invalid or unenforceable, binds successors in interest of the principal.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 455, § 2, eff. Sept. 1, 1997. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 487. Affidavit of Lack of Knowledge or Termination of Power; Recording; Good-Faith Reliance

(a) As to acts undertaken in good-faith reliance on the durable power of attorney, an affidavit executed by the attorney in fact or agent under a durable power of attorney stating that the attorney in fact or agent did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation, by the principal's death, by the principal's

divorce or the annulment of the marriage of the principal if the attorney in fact or agent was the principal's spouse, or by the qualification of a guardian of the estate of the principal is conclusive proof as between the attorney in fact or agent and a person other than the principal or the principal's personal representative dealing with the attorney in fact or agent of the nonrevocation or nontermination of the power at that time.

(b) As to acts undertaken in good-faith reliance on the durable power of attorney, an affidavit executed by the attorney in fact or agent under a durable power of attorney stating that the principal is disabled or incapacitated, as defined by the power, is conclusive proof as between the attorney in fact or agent and a person other than the principal or the principal's personal representative dealing with the attorney in fact or agent of the disability or incapacity of the principal at that time.

(c) If the exercise of the power of attorney requires execution and delivery of any instrument that is to be recorded, an affidavit executed under Subsection (a) or (b) of this section, when authenticated for record, may also be recorded.

(d) This section does not affect any provision in a durable power of attorney for its termination by expiration of time or occurrence of an event other than express revocation.

(e) When a durable power of attorney is used, a third party who relies in good faith on the acts of an attorney in fact or agent within the scope of the power of attorney is not liable to the principal.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 455, § 3, eff. Sept. 1, 1997. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 487A. Effect of Bankruptcy Proceeding

After execution of a durable power of attorney, the filing of a voluntary or involuntary petition in bankruptcy in connection with the principal's debts does not revoke or terminate the agency as to the principal's attorney in fact or agent. Any act the attorney in fact or agent may undertake with respect to the principal's property is subject to the limitations and requirements of the United States Bankruptcy Code until a final determination is made in the bankruptcy proceeding.

Added by Acts 2001, 77th Leg., ch. 73, § 1, eff. Sept. 1, 2001. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 488. Revocation of Durable Power of Attorney

Unless otherwise provided by the durable power of attorney, a revocation of a durable power of attorney is not effective as to a third party relying on the power of

attorney until the third party receives actual notice of the revocation.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Statutes in Context
§ 489

The durable power of attorney will need to be recorded if the agent uses it with respect to a real property transaction. See § 489.

§ 489. Recording Durable Power of Attorney for Real Property Transactions

A durable power of attorney for a real property transaction requiring the execution and delivery of an instrument that is to be recorded, including a release, assignment, satisfaction, mortgage, security agreement, deed of trust, encumbrance, deed of conveyance, oil, gas, or other mineral lease, memorandum of a lease, lien, or other claim or right to real property, shall be recorded in the office of the county clerk of the county in which the property is located.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Statutes in Context
§ 489B

The agent's duty to inform the principal with respect to actions taken and to account for them is set forth in § 489B.

§ 489B. Duty to Inform and Account

(a) The attorney in fact or agent is a fiduciary and has a duty to inform and to account for actions taken pursuant to the power of attorney.

(b) The attorney in fact or agent shall timely inform the principal of all actions taken pursuant to the power of attorney. Failure of the attorney in fact or agent to inform timely, as to third parties, shall not invalidate any action of the attorney in fact or agent.

(c) The attorney in fact or agent shall maintain records of each action taken or decision made by the attorney in fact or agent.

(d) The principal may demand an accounting by the attorney in fact or agent. Unless otherwise directed by the principal, the accounting shall include:

(1) the property belonging to the principal that has come to the attorney in fact's or agent's knowledge or into the attorney in fact's or agent's possession;

(2) all actions taken or decisions made by the attorney in fact or agent;

(3) a complete account of receipts, disbursements, and other actions of the attorney in fact or agent, including their source and nature, with receipts of principal and income shown separately;

(4) a listing of all property over which the attorney in fact or agent has exercised control, with an adequate description of each asset and its current value if known to the attorney in fact or agent;

(5) the cash balance on hand and the name and location of the depository where the balance is kept;

(6) all known liabilities; and

(7) such other information and facts known to the attorney in fact or agent as may be necessary to a full and definite understanding of the exact condition of the property belonging to the principal.

(e) Unless directed otherwise by the principal, the attorney in fact or agent shall also provide to the principal all documentation regarding the principal's property.

(f) The attorney in fact or agent shall maintain all records until delivered to the principal, released by the principal, or discharged by a court.

(g) If the attorney in fact or agent fails or refuses to inform the principal, provide documentation, or deliver the accounting within 60 days (or such longer or shorter time that the principal demands or a court may order), the principal may file suit to compel the attorney in fact or agent to deliver the accounting, to deliver the assets, or to terminate the power of attorney.

(h) This section shall not limit the right of the principal to terminate the power of attorney or to make additional requirements of or to give additional instructions to the attorney in fact or agent.

(i) Wherever in this chapter a principal is given an authority to act, that shall include not only the principal but also any person designated by the principal, a guardian of the estate of the principal, or other personal representative of the principal.

(j) The rights set out in this section and chapter are cumulative of any other rights or remedies the principal may have at common law or other applicable statutes and not in derogation of those rights.

Added by Acts 2001, 77th Leg., ch. 1056, § 1, eff. Sept. 1, 2001. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Statutes in Context
§ 490

Section 490 contains a form which the principal may use to create a durable power of attorney. The form provides a list of powers which the agent is presumed to have unless the principal crosses out the power. Each of the listed powers is explained in great detail by a later statutory provision. It is important for the principal to read the statutory provisions so that the principal fully

understands the scope of the powers which the principal is granting to the agent.

The principal has a choice of making the power effective immediately (the default choice) or effective only upon incapacity (the springing power). Debate exists regarding which effective date is better. The principal often feels there is no need to grant any authority until the agent's actions are actually needed. However, third parties may be reluctant to accept a springing agent's authority for fear that the principal is not actually incapacitated. A compromise option is for the agent to make the power effective immediately but have the agent's attorney (or some other trusted person) keep the document and deliver it to the agent at the appropriate time.

§ 490. Statutory Durable Power of Attorney

(a) The following form is known as a "statutory durable power of attorney." A person may use a statutory durable power of attorney to grant an attorney in fact or agent powers with respect to a person's property and financial matters. A power of attorney in substantially the following form has the meaning and effect prescribed by this chapter. The validity of a power of attorney as meeting the requirements of a statutory durable power of attorney is not affected by the fact that one or more of the categories of optional powers listed in the form are struck or the form includes specific limitations on or additions to the attorney in fact's or agent's powers.

The following form is not exclusive, and other forms of power of attorney may be used.

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER XII, TEXAS PROBATE CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, _____ (insert your name and address), appoint _____ (insert the name and address of the person appointed) as my agent (attorney-in-fact) to act for me in any lawful way with respect to all of the following powers except for a power that I have crossed out below.

TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER WITHHELD.

Real property transactions;
Tangible personal property transactions;
Stock and bond transactions;
Commodity and option transactions;
Banking and other financial institution transactions;

Business operating transactions;
Insurance and annuity transactions;
Estate, trust, and other beneficiary transactions;
Claims and litigation;
Personal and family maintenance;
Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
Retirement plan transactions;
Tax matters.

IF NO POWER LISTED ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY AGENT (ATTORNEY IN FACT) SHALL HAVE THE POWER AND AUTHORITY TO PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I WERE PERSONALLY PRESENT.

SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

____ I grant my agent (attorney in fact) the power to apply my property to make gifts, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another

person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent: _____.

Signed this _____ day of _____, 19____

(your signature)

State of _____

County of _____

This document was acknowledged before me on _____ (date) by _____ (name of principal).

(signature of notarial officer)

(Seal, if any, of notary)

(printed name)

My commission expires: _____

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

(b) A statutory durable power of attorney is legally sufficient under this chapter if the wording of the form complies substantially with Subsection (a) of this section, the form is properly completed, and the signature of the principal is acknowledged.

(c) Repealed by Acts 1997, 75th Leg., ch. 455, § 7, eff. Sept. 1, 1997.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Subsec. (a) amended by Acts 1997, 75th Leg., ch. 455, § 4, eff. Sept. 1, 1997; Subsec. (c) repealed by Acts 1997, 75th Leg., ch. 455, § 7, eff. Sept. 1, 1997. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014 and amended to reference Estates Code rather than Probate Code by Acts 2009, 81st Leg., ch. 680, § 9, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 491. Construction of Powers Generally

The principal, by executing a statutory durable power of attorney that confers authority with respect to any class of transactions, empowers the attorney in fact or agent for that class of transactions to:

(1) demand, receive, and obtain by litigation, action, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled;

(2) conserve, invest, disburse, or use any money or other thing of value received on behalf of the principal for the purposes intended;

(3) contract in any manner with any person, on terms agreeable to the attorney in fact or agent, to accomplish a purpose of a transaction and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal;

(4) execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the agent considers desirable to accomplish a purpose of a transaction;

(5) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in an action or litigation relating to the claim;

(6) seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney;

(7) engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant;

(8) keep appropriate records of each transaction, including an accounting of receipts and disbursements;

(9) prepare, execute, and file a record, report, or other document the attorney in fact or agent considers necessary or desirable to safeguard or promote the principal's interest under a statute or governmental regulation;

(10) reimburse the attorney in fact or agent for expenditures made in exercising the powers granted by the durable power of attorney; and

(11) in general, do any other lawful act that the principal may do with respect to a transaction.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 492. Construction of Power Relating to Real Property Transactions

In a statutory durable power of attorney, the language conferring authority with respect to real property transactions empowers the attorney in fact or agent without further reference to a specific description of the real property to:

Statutes in Context §§ 491–505

Sections 491-505 provide detailed explanations of the powers granted in the statutory form.

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(1) accept as a gift or as security for a loan or reject, demand, buy, lease, receive, or otherwise acquire an interest in real property or a right incident to real property;

(2) sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition, consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease or sublet, or otherwise dispose of an estate or interest in real property or a right incident to real property;

(3) release, assign, satisfy, and enforce by litigation, action, or otherwise a mortgage, deed of trust, encumbrance, lien, or other claim to real property that exists or is claimed to exist;

(4) do any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned or claimed to be owned by the principal, including power to:

(A) insure against a casualty, liability, or loss;

(B) obtain or regain possession or protect the interest or right by litigation, action, or otherwise;

(C) pay, compromise, or contest taxes or assessments or apply for and receive refunds in connection with them;

(D) purchase supplies, hire assistance or labor, or make repairs or alterations in the real property; and

(E) manage and supervise an interest in real property, including the mineral estate, by, for example, entering into a lease for oil, gas, and mineral purposes, making contracts for development of the mineral estate, or making pooling and unitization agreements;

(5) use, develop, alter, replace, remove, erect, or install structures or other improvements on real property in which the principal has or claims to have an estate, interest, or right;

(6) participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property, receive and hold shares of stock or obligations received in a plan or reorganization, and act with respect to the shares or obligations, including:

(A) selling or otherwise disposing of the shares or obligations;

(B) exercising or selling an option, conversion, or similar right with respect to the shares or obligations; and

(C) voting the shares or obligations in person or by proxy;

(7) change the form of title of an interest in or right incident to real property; and

(8) dedicate easements or other real property in which the principal has or claims to have an interest to public use, with or without consideration.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 455, § 5, eff. Sept. 1, 1997. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 493. Construction of Power Relating to Tangible Personal Property Transactions

In a statutory durable power of attorney, the language conferring general authority with respect to tangible personal property transactions empowers the attorney in fact or agent to:

(1) accept as a gift or as security for a loan, reject, demand, buy, receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property;

(2) sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease or sublet to others, or otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) release, assign, satisfy, or enforce by litigation, action, or otherwise a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property; and

(4) do an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(A) insuring against casualty, liability, or loss;

(B) obtaining or regaining possession or protecting the property or interest by litigation, action, or otherwise;

(C) paying, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(D) moving from place to place;

(E) storing for hire or on a gratuitous bailment; and

(F) using, altering, and making repairs or alterations.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 494. Construction of Power Relating to Stock and Bond Transactions

In a statutory durable power of attorney, the language conferring authority with respect to stock and bond transactions empowers the attorney in fact or agent to buy, sell, and exchange stocks, bonds, mutual funds, and all other types of securities and financial

instruments other than commodity futures contracts and call and put options on stocks and stock indexes, receive certificates and other evidences of ownership with respect to securities, exercise voting rights with respect to securities in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 495. Construction of Power Relating to Commodity and Option Transactions

In a statutory durable power of attorney, the language conferring authority with respect to commodity and option transactions empowers the attorney in fact or agent to buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated options exchange and establish, continue, modify, or terminate option accounts with a broker.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 496. Construction of Power Relating to Banking and Other Financial Institution Transactions

In a statutory durable power of attorney, the language conferring authority with respect to banking and other financial institution transactions empowers the attorney in fact or agent to:

- (1) continue, modify, or terminate an account or other banking arrangement made by or on behalf of the principal;
- (2) establish, modify, or terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the attorney in fact or agent;
- (3) hire a safe deposit box or space in a vault;
- (4) contract to procure other services available from a financial institution as the attorney in fact or agent considers desirable;
- (5) withdraw by check, order, or otherwise money or property of the principal deposited with or left in the custody of a financial institution;
- (6) receive bank statements, vouchers, notices, or similar documents from a financial institution and act with respect to them;
- (7) enter a safe deposit box or vault and withdraw or add to the contents;
- (8) borrow money at an interest rate agreeable to the attorney in fact or agent and pledge as security real or personal property of the principal necessary to borrow, pay, renew, or extend the time of payment of a debt of the principal;

(9) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, bills of exchange, checks, drafts, or other negotiable or nonnegotiable paper of the principal, or payable to the principal or the principal's order, to receive the cash or other proceeds of those transactions, to accept a draft drawn by a person on the principal, and to pay the principal when due;

(10) receive for the principal and act on a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument;

(11) apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

(12) consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 497. Construction of Power Relating to Business Operation Transactions

In a statutory durable power of attorney, the language conferring authority with respect to business operating transactions empowers the attorney in fact or agent to:

- (1) operate, buy, sell, enlarge, reduce, or terminate a business interest;
- (2) to the extent that an agent is permitted by law to act for a principal and subject to the terms of the partnership agreement:
 - (A) perform a duty or discharge a liability or exercise a right, power, privilege, or option that the principal has, may have, or claims to have under a partnership agreement, whether or not the principal is a general or limited partner;
 - (B) enforce the terms of a partnership agreement by litigation, action, or otherwise; and
 - (C) defend, submit to arbitration, settle, or compromise litigation or an action to which the principal is a party because of membership in the partnership;
- (3) exercise in person or by proxy or enforce by litigation, action, or otherwise a right, power, privilege, or option the principal has or claims to have as the holder of a bond, share, or other instrument of similar character and defend, submit to arbitration, settle, or compromise a legal proceeding to which the principal is a party because of a bond, share, or similar instrument;
- (4) with respect to a business owned solely by the principal:
 - (A) continue, modify, renegotiate, extend, and terminate a contract made with an individual or a legal entity, firm, association, or

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corporation by or on behalf of the principal with respect to the business before execution of the power of attorney;

(B) determine:

(i) the location of its operation;
(ii) the nature and extent of its business;
(iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;

(iv) the amount and types of insurance carried; and

(v) the mode of engaging, compensating, and dealing with its accountants, attorneys, and other agents and employees;

(C) change the name or form of organization under which the business is operated and enter into a partnership agreement with other persons or organize a corporation to take over all or part of the operation of the business; and

(D) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business and control and disburse the money in the operation of the business;

(5) put additional capital into a business in which the principal has an interest;

(6) join in a plan of reorganization, consolidation, or merger of the business;

(7) sell or liquidate a business or part of it at the time and on the terms that the attorney in fact or agent considers desirable;

(8) establish the value of a business under a buy-out agreement to which the principal is a party;

(9) prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business that are required by a governmental agency, department, or instrumentality or that the attorney in fact or agent considers desirable and make related payments; and

(10) pay, compromise, or contest taxes or assessments and do any other act that the attorney in fact or agent considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 498. Construction of Power Relating to Insurance Transactions

In a statutory durable power of attorney, the language conferring authority with respect to insurance

and annuity transactions empowers the attorney in fact or agent to:

(1) continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) procure new, different, or additional contracts of insurance and annuities for the principal or the principal's spouse, children, and other dependents and select the amount, type of insurance or annuity, and mode of payment;

(3) pay the premium or assessment on or modify, rescind, release, or terminate a contract of insurance or annuity procured by the attorney in fact or agent;

(4) designate the beneficiary of the contract, except that an attorney in fact or agent may be named a beneficiary of the contract or an extension, renewal, or substitute for the contract only to the extent the attorney in fact or agent was named as a beneficiary under a contract procured by the principal before executing the power of attorney;

(5) apply for and receive a loan on the security of the contract of insurance or annuity;

(6) surrender and receive the cash surrender value;

(7) exercise an election;

(8) change the manner of paying premiums;

(9) change or convert the type of insurance contract or annuity with respect to which the principal has or claims to have a power described in this section;

(10) change the beneficiary of a contract of insurance or annuity, except that the attorney in fact or agent may be designated a beneficiary only to the extent authorized by Subdivision (4) of this section;

(11) apply for and procure government aid to guarantee or pay premiums of a contract of insurance on the life of the principal;

(12) collect, sell, assign, hypothecate, borrow on, or pledge the interest of the principal in a contract of insurance or annuity; and

(13) pay from proceeds or otherwise, compromise or contest, or apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing because of the tax or assessment.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 499. Construction of Power Relating to Estate, Trust, and Other Beneficiary Transactions

In a statutory durable power of attorney, the language conferring authority with respect to estate,

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trust, and other beneficiary transactions empowers the attorney in fact or agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including to:

(1) accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund;

(2) demand or obtain by litigation, action, or otherwise money or any other thing of value to which the principal is, may become, or claims to be entitled because of the fund;

(3) initiate, participate in, or oppose a legal or judicial proceeding to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

(4) initiate, participate in, or oppose a legal or judicial proceeding to remove, substitute, or surcharge a fiduciary;

(5) conserve, invest, disburse, or use anything received for an authorized purpose; and

(6) transfer all or part of an interest of the principal in real property, stocks, bonds, accounts with financial institutions, insurance, and other property to the trustee of a revocable trust created by the principal as settlor.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 500. Construction of Power Relating to Claims and Litigation

In a statutory durable power of attorney, the language conferring general authority with respect to claims and litigation empowers the attorney in fact or agent to:

(1) assert and prosecute before a court or administrative agency a claim, a claim for relief, a counterclaim, or an offset or defend against an individual, a legal entity, or a government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief;

(2) bring an action to determine adverse claims, intervene in an action or litigation, and act as amicus curiae;

(3) in connection with an action or litigation, procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

(4) in connection with an action or litigation, perform any lawful act the principal could perform, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding of the principal in litigation;

(5) submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation;

(6) waive the issuance and service of process on the principal, accept service of process, appear for the principal, designate persons on whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, or receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

(7) act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning the principal or some other person, with respect to a reorganization proceeding or a receivership or application for the appointment of a receiver or trustee that affects an interest of the principal in real or personal property or other thing of value; and

(8) pay a judgment against the principal or a settlement made in connection with a claim or litigation and receive and conserve money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 501. Construction of Power Relating to Personal and Family Maintenance

In a statutory durable power of attorney, the language conferring authority with respect to personal and family maintenance empowers the attorney in fact or agent to:

(1) perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse and children, and other individuals customarily or legally entitled to be supported by the principal, including providing living quarters by purchase, lease, or other contract, or paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals;

(2) provide for the individuals described by Subdivision (1) of this section normal domestic

help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, and other current living costs;

(3) pay necessary medical, dental, and surgical care, hospitalization, and custodial care for the individuals described by Subdivision (1) of this section;

(4) continue any provision made by the principal, for the individuals described by Subdivision (1) of this section, for automobiles or other means of transportation, including registering, licensing, insuring, and replacing the automobiles or other means of transportation;

(5) maintain or open charge accounts for the convenience of the individuals described by Subdivision (1) of this section and open new accounts the attorney in fact or agent considers desirable to accomplish a lawful purpose; and

(6) continue payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization or to continue contributions to those organizations.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 502. Construction of Power Relating to Benefits From Certain Governmental Programs or Civil or Military Service

In a statutory durable power of attorney, the language conferring authority with respect to benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service empowers the attorney in fact or agent to:

(1) execute vouchers in the name of the principal for allowances and reimbursements payable by the United States, a foreign government, or a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described by Section 501(1) of this code, and for shipment of their household effects;

(2) take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(3) prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled under a statute or governmental regulation;

(4) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive; and

(5) receive the financial proceeds of a claim of the type described in this section and conserve, invest, disburse, or use anything received for a lawful purpose.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 503. Construction of Power Relating to Retirement Plan Transactions

(a) In a statutory durable power of attorney, the language conferring authority with respect to retirement plan transactions empowers the attorney in fact or agent to do any lawful act the principal may do with respect to a transaction relating to a retirement plan, including to:

(1) apply for service or disability retirement benefits;

(2) select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;

(3) designate or change the designation of a beneficiary or benefits payable by a retirement plan, except that an attorney in fact or agent may be named a beneficiary only to the extent the attorney in fact or agent was a named beneficiary under the retirement plan before the durable power of attorney was executed;

(4) make voluntary contributions to retirement plans if authorized by the plan;

(5) exercise the investment powers available under any self-directed retirement plan;

(6) make “rollovers” of plan benefits into other retirement plans;

(7) borrow from, sell assets to, and purchase assets from retirement plans if authorized by the plan;

(8) waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed;

(9) receive, endorse, and cash payments from a retirement plan;

(10) waive the right of the principal to receive all or a portion of benefits payable by a retirement plan; and

(11) request and receive information relating to the principal from retirement plan records.

(b) In this section, “retirement plan” means:

(1) an employee pension benefit plan as defined by Section 1002, Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1002), without regard to the provisions of Section (2)(B) of that section;

(2) a plan that does not meet the definition of an employee benefit plan under ERISA because the plan does not cover common law employees;

(3) a plan that is similar to an employee benefit plan under ERISA, regardless of whether it is covered by Title I of ERISA, including a plan that

provides death benefits to the beneficiary of employees; and

(4) an individual retirement account or annuity or a self-employed pension plan or similar plan or account.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 455, § 6, eff. Sept. 1, 1997. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 504. Construction of Power Relating to Tax Matters

In a statutory durable power of attorney, the language conferring authority with respect to tax matters empowers the attorney in fact or agent to:

(1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. § 2032A), closing agreements, and any power of attorney form required by the Internal Revenue Service or other taxing authority with respect to a tax year on which the statute of limitations has not run and 25 tax years following that tax year;

(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) act for the principal in all tax matters for all periods before the Internal Revenue Service and any other taxing authority.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 505. Existing Interest; Foreign Interests

The powers described in Sections 492 through 504 of this code may be exercised equally with respect to an interest the principal has at the time the durable power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the powers are exercised or the durable power of attorney is executed in this state.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 506. Uniformity of Application and Construction

This chapter shall be applied and construed to effect its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Added by Acts 1993, 73rd Leg., ch. 49, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2009, 81st Leg., ch. 680, § 4, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Chapter XIII. Guardianship

Statutes in Context Chapter XIII

Guardians may be needed for minors and adult incapacitated individuals. There are two main types of guardians: a guardian of the person who is in charge of the ward's physical needs (§ 767) and a guardian of the estate of who is in charge of the ward's property and financial affairs (§ 768).

The guardianship provisions of the Probate Code were originally integrated with the decedents' estates provisions. In 1993, they were split. In many respects, the guardianship provisions still closely mirror the decedents' estates provisions.

Part 1. General Provisions

Subpart A. Definitions; Purpose; Applicability; Proceedings In Rem

§ 601. Definitions

In this chapter:

(1) "Attorney ad litem" means an attorney who is appointed by a court to represent and advocate on behalf of a proposed ward, an incapacitated person, or an unborn person in a guardianship proceeding.

(2) "Authorized corporate surety" means a domestic or foreign corporation authorized to do business in this state to issue surety, guaranty, or indemnity bonds guaranteeing the fidelity of guardians.

(3) "Child" includes a biological or adopted child, whether adopted by a parent under a statutory procedure or by acts of estoppel.

(4) "Claims" includes a liability against the estate of a minor or an incapacitated person and debts due to the estate of a minor or an incapacitated person.

(5) "Community administrator" means a spouse who is authorized to manage, control, and dispose of the entire community estate on the judicial declaration of incapacity of the other spouse, including the part of the community estate that the

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other spouse legally has the power to manage in the absence of the incapacity.

(6) “Corporate fiduciary” means a financial institution as defined by Section 201.101, Finance Code, having trust powers, existing or doing business under the laws of this state, another state, or the United States, that is authorized by law to act under the order or appointment of any court of record, without giving bond, as a guardian, receiver, trustee, executor, or administrator, or, although without general depository powers, as a depository for any money paid into court, or to become sole guarantor or surety in or on any bond required to be given under the laws of this state.

(7) “Court investigator” means a person appointed by a statutory probate court under Section 25.0025, Government Code.

(8) “Court” or “probate court” means a county court in the exercise of its probate jurisdiction, a court created by statute and authorized to exercise original probate jurisdiction, or a district court exercising original probate jurisdiction in contested matters.

(9) “Estate” or “guardianship estate” means the real and personal property of a ward or deceased ward, both as the property originally existed and as has from time to time changed in form by sale, reinvestment, or otherwise, and as augmented by any accretions and additions to (including any property to be distributed to the representative of the deceased ward by the trustee of a trust that terminates on the ward’s death) or substitutions for the property, and as diminished by any decreases to or distributions from the property.

(10) “Exempt property” refers to that property of a deceased ward’s estate that is exempt from execution or forced sale by the constitution or laws of this state, and to the allowance in lieu of the property.

(11) “Guardian” means a person who is appointed guardian under Section 693 of this code, or a temporary or successor guardian. Except as expressly provided otherwise, “guardian” includes the guardian of the estate and the guardian of the person of an incapacitated person.

(12-a) “Guardianship Certification Board” means the Guardianship Certification Board established under Chapter 111, Government Code.

(13) “Guardianship program” has the meaning assigned by Section 111.001, Government Code.

(14) “Incapacitated person” means:

(A) a minor;

(B) an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual’s own physical health, or to manage the individual’s own financial affairs; or

(C) a person who must have a guardian appointed to receive funds due the person from any governmental source.

(15) “Interested persons” or “persons interested” means an heir, devisee, spouse, creditor, or any other person having a property right in, or claim against, the estate being administered or a person interested in the welfare of an incapacitated person, including a minor.

(16) “Minor” means a person who is younger than 18 years of age and who has never been married or who has not had the person’s disabilities of minority removed for general purposes.

(17) *repealed*

(18) “Mortgage” or “lien” includes a deed of trust; vendor’s lien; chattel mortgage; mechanic’s, materialman’s, or laborer’s lien; judgment, attachment, or garnishment lien; pledge by hypothecation; and a federal or state tax lien.

(19) “Next of kin” includes an adopted child, the descendants of an adopted child, and the adoptive parent of an adopted child.

(20) “Parent” means the mother of a child, a man presumed to be the biological father of a child, a man who has been adjudicated to be the biological father of a child by a court of competent jurisdiction, or an adoptive mother or father of a child, but does not include a parent as to whom the parent-child relationship has been terminated.

(21) “Person” includes natural persons, corporations, and guardianship programs.

(22) “Personal property” includes an interest in goods, money, choses in action, evidence of debts, and chattels real.

(23) “Personal representative” or “representative” includes a guardian, and a successor guardian.

(24) “Private professional guardian” has the meaning assigned by Section 111.001, Government Code.

(25) The term “guardianship proceeding” means a matter or proceeding related to a guardianship or any other matter covered by this chapter, including:

(A) the appointment of a guardian of a minor or other incapacitated person, including an incapacitated adult for whom another court obtained continuing, exclusive jurisdiction in a suit affecting the parent-child relationship when the person was a child;

(B) an application, petition, or motion regarding guardianship or an alternative to guardianship under this chapter;

(C) a mental health action; and

(D) an application, petition, or motion regarding a trust created under Section 867 of this code.

(26) “Property” includes both real and personal property.

(27) “Proposed ward” means a person alleged to be incapacitated in a guardianship proceeding.

(28) “Real property” includes estates and interests in lands, corporeal or incorporeal, legal or equitable, other than chattels real.

(29) “Statutory probate court” means a statutory court designated as a statutory probate court under Chapter 25, Government Code. A county court at law exercising probate jurisdiction is not a statutory probate court under this chapter unless the court is designated a statutory probate court under Chapter 25, Government Code.

(30) “Surety” includes a personal and a corporate surety.

(31) “Ward” is a person for whom a guardian has been appointed.

(32) The singular number includes the plural; the plural number includes the singular.

(33) The masculine gender includes the feminine and neuter.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 15, eff. Sept. 1, 1995; Subsec. (17) amended by Acts 1997, 75th Leg., ch. 1376, § 1, eff. Sept. 1, 1997; Subsec. (29) amended by Acts 1997, 75th Leg., ch. 52, § 2, eff. Sept. 1, 1997; Subsec. (5) amended by Acts 1999, 76th Leg., ch. 344, § 6.005, eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 379, § 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 217, § 2, eff. Sept. 1, 2001. Subsec. (17) repealed by Acts 2009, 81st Leg., ch. 602, § 19(2), eff. June 19, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 1, eff. Sept. 1, 2011.

§ 602. Policy; Purpose of Guardianship

A court may appoint a guardian with full authority over an incapacitated person or may grant a guardian limited authority over an incapacitated person as indicated by the incapacitated person’s actual mental or physical limitations and only as necessary to promote and protect the well-being of the person. If the person is not a minor, the court may not use age as the sole factor in determining whether to appoint a guardian for the person. In creating a guardianship that gives a guardian limited power or authority over an incapacitated person, the court shall design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (12a) added by Acts 2005, 79th Leg., ch. 268, § 3.05, eff. Sept. 1, 2005. Subsecs. (13), (24) amended by Acts 2005, 79th Leg., ch. 268, § 3.05, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 603. Laws Applicable to Guardianships

(a) To the extent applicable and not inconsistent with other provisions of this code, the laws and rules governing estates of decedents apply to and govern guardianships.

(b) A reference in other sections of this code or in other law to a person who is mentally, physically, or legally incompetent, a person who is judicially declared incompetent, an incompetent or an incompetent person, a person of unsound mind, or a habitual drunkard means an incapacitated person.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 604. Proceeding In Rem

From the filing of the application for the appointment of a guardian of the estate or person, or both, until the guardianship is settled and closed under this chapter, the administration of the estate of a minor or other incapacitated person is one proceeding for purposes of jurisdiction and is a proceeding in rem.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2011, 82nd Leg., ch. 823, § 3.01, eff. Jan. 1, 2014 and by Acts 2013, 83rd Leg., ch. 982, § 2(a), eff. Jan. 1, 2014.

Part 2. Guardianship Proceedings and Matters

Subpart A. Jurisdiction

§ 605. General Probate Court Jurisdiction in Guardianship Proceedings; Appeals

(a) All guardianship proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the guardianship proceeding as specified in Section 606A of this code for that type of court.

(b) A probate court may exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.

(c) A final order issued by a probate court is appealable to the court of appeals.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2011, 82nd Leg., ch. 823, § 3.01, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 2, eff. Sept. 1, 2011.

§ 606A. Matters Related to Guardianship Proceeding

(a) For purposes of this code, in a county in which there is no statutory probate court, a matter related to a guardianship proceeding includes:

- (1) the granting of letters of guardianship;
- (2) the settling of an account of a guardian and all other matters relating to the settlement, partition, or distribution of a ward’s estate;
- (3) a claim brought by or against a guardianship estate;

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(4) an action for trial of title to real property that is guardianship estate property, including the enforcement of a lien against the property;

(5) an action for trial of the right of property that is guardianship estate property;

(6) after a guardianship of the estate of a ward is required to be settled as provided by Section 745 of this code:

(A) an action brought by or on behalf of the former ward against a former guardian of the ward for alleged misconduct arising from the performance of the person's duties as guardian;

(B) an action calling on the surety of a guardian or former guardian to perform in place of the guardian or former guardian, which may include the award of a judgment against the guardian or former guardian in favor of the surety;

(C) an action against a former guardian of the former ward that is brought by a surety that is called on to perform in place of the former guardian;

(D) a claim for the payment of compensation, expenses, and court costs, and any other matter authorized under Subpart H, Part 2, of this chapter; and

(E) a matter related to an authorization made or duty performed by a guardian under Subpart C, Part 4, of this chapter; and

(7) the appointment of a trustee for a trust created under Section 867 of this code, the settling of an account of the trustee, and all other matters relating to the trust.

(b) For purposes of this code, in a county in which there is a statutory probate court, a matter related to a guardianship proceeding includes:

(1) all matters and actions described in Subsection (a) of this section;

(2) a suit, action, or application filed against or on behalf of a guardianship or a trustee of a trust created under Section 867 of this code; and

(3) a cause of action in which a guardian in a guardianship pending in the statutory probate court is a party.

Added by Acts 2011, 82nd Leg., ch. 1085, § 3, eff. Sept. 1, 2011.

§ 607A. Original Jurisdiction for Guardianship Proceedings

(a) In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, the county court has original jurisdiction of guardianship proceedings.

(b) In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, the county court at law exercising original probate jurisdiction and the county court have concurrent original jurisdiction of guardianship proceedings, unless otherwise provided by

law. The judge of a county court may hear guardianship proceedings while sitting for the judge of any other county court.

(c) In a county in which there is a statutory probate court, the statutory probate court has original jurisdiction of guardianship proceedings.

Added by Acts 2011, 82nd Leg., ch. 1085, § 3, eff. Sept. 1, 2011.

§ 607B. Jurisdiction of Contested Guardianship Proceeding in County with No Statutory Probate Court or County Court at Law

(a) In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, when a matter in a guardianship proceeding is contested, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, according to the motion:

(1) request the assignment of a statutory probate court judge to hear the contested matter, as provided by Section 25.0022, Government Code; or

(2) transfer the contested matter to the district court, which may then hear the contested matter as if originally filed in the district court.

(b) If a party to a guardianship proceeding files a motion for the assignment of a statutory probate court judge to hear a contested matter in the proceeding before the judge of the county court transfers the contested matter to a district court under this section, the county judge shall grant the motion for the assignment of a statutory probate court judge and may not transfer the matter to the district court unless the party withdraws the motion.

(c) If a judge of a county court requests the assignment of a statutory probate court judge to hear a contested matter in a guardianship proceeding on the judge's own motion or on the motion of a party to the proceeding as provided by this section, the judge may request that the statutory probate court judge be assigned to the entire proceeding on the judge's own motion or on the motion of a party.

(d) A party to a guardianship proceeding may file a motion for the assignment of a statutory probate court judge under this section before a matter in the proceeding becomes contested, and the motion is given effect as a motion for assignment of a statutory probate court judge under Subsection (a) of this section if the matter later becomes contested.

(e) Notwithstanding any other law, a transfer of a contested matter in a guardianship proceeding to a district court under any authority other than the authority provided by this section:

(1) is disregarded for purposes of this section; and

(2) does not defeat the right of a party to the proceeding to have the matter assigned to a statutory probate court judge in accordance with this section.

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(f) A statutory probate court judge assigned to a contested matter in a guardianship proceeding or to the entire proceeding under this section has the jurisdiction and authority granted to a statutory probate court by this code. A statutory probate court judge assigned to hear only the contested matter in a guardianship proceeding shall, on resolution of the matter, including any appeal of the matter, return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable. A statutory probate court judge assigned to the entire guardianship proceeding as provided by Subsection (c) of this section shall, on resolution of the contested matter in the proceeding, including any appeal of the matter, return the entire proceeding to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable.

(g) A district court to which a contested matter in a guardianship proceeding is transferred under this section has the jurisdiction and authority granted to a statutory probate court by this code. On resolution of a contested matter transferred to the district court under this section, including any appeal of the matter, the district court shall return the matter to the county court for further proceedings not inconsistent with the orders of the district court or court of appeals, as applicable.

(h) If only the contested matter in a guardianship proceeding is assigned to a statutory probate court judge under this section, or if the contested matter in a guardianship proceeding is transferred to a district court under this section, the county court shall continue to exercise jurisdiction over the management of the guardianship, other than a contested matter, until final disposition of the contested matter is made in accordance with this section. Any matter related to a guardianship proceeding in which a contested matter is transferred to a district court may be brought in the district court. The district court in which a matter related to the proceeding is filed may, on the court's own motion or on the motion of any party, find that the matter is not a contested matter and transfer the matter to the county court with jurisdiction of the management of the guardianship.

(i) If a contested matter in a guardianship proceeding is transferred to a district court under this section, the district court has jurisdiction of any contested matter in the proceeding that is subsequently filed, and the county court shall transfer those contested matters to the district court. If a statutory probate court judge is assigned under this section to hear a contested matter in a guardianship proceeding, the statutory probate court judge shall be assigned to hear any contested matter in the proceeding that is subsequently filed.

(j) The clerk of a district court to which a contested matter in a guardianship proceeding is transferred under this section may perform in relation to the transferred matter any function a county clerk may perform with respect to that type of matter.

Added by Acts 2011, 82nd Leg., ch. 1085, § 3, eff. Sept. 1, 2011.

§ 607C. Jurisdiction of Contested Guardianship Proceeding in County with No Statutory Probate Court

(a) In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, when a matter in a guardianship proceeding is contested, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, transfer the contested matter to the county court at law. In addition, the judge of the county court, on the judge's own motion or on the motion of a party to the proceeding, may transfer the entire proceeding to the county court at law.

(b) A county court at law to which a proceeding is transferred under this section may hear the proceeding as if originally filed in that court. If only a contested matter in the proceeding is transferred, on the resolution of the matter, the matter shall be returned to the county court for further proceedings not inconsistent with the orders of the county court at law.

Added by Acts 2011, 82nd Leg., ch. 1085, § 3, eff. Sept. 1, 2011.

§ 607D. Exclusive Jurisdiction of Guardianship Proceeding in County with Statutory Probate Court

(a) In a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all guardianship proceedings, regardless of whether contested or uncontested.

(b) A cause of action related to a guardianship proceeding of which the statutory probate court has exclusive jurisdiction as provided by Subsection (a) of this section must be brought in the statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by Section 607E of this code or with the jurisdiction of any other court.

Added by Acts 2011, 82nd Leg., ch. 1085, § 3, eff. Sept. 1, 2011.

§ 607E. Concurrent Jurisdiction with District Court

A statutory probate court has concurrent jurisdiction with the district court in:

(1) a personal injury, survival, or wrongful death action by or against a person in the person's capacity as a guardian; and

(2) an action involving a guardian in which each other party aligned with the guardian is not an interested person in the guardianship.

Added by Acts 2011, 82nd Leg., ch. 1085, § 3, eff. Sept. 1, 2011.

§ 608. Transfer of Proceeding by Statutory Probate Court

(a) A judge of a statutory probate court, on the motion of a party to the action or of a person interested in the guardianship, may:

(1) transfer to the judge's court from a district, county, or statutory court a cause of action that is a matter related to a guardianship proceeding pending in the statutory probate court, including a cause of action that is a matter related to a guardianship proceeding pending in the statutory probate court and in which the guardian, ward, or proposed ward in the pending guardianship proceeding is a party; and

(2) consolidate the transferred cause of action with the guardianship proceeding to which it relates and any other proceedings in the statutory probate court that are related to the guardianship proceeding.

(b) Notwithstanding any other provision of this chapter, the proper venue for an action by or against a guardian, ward, or proposed ward for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1431, § 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 549, § 7, eff. Sept. 1, 2003. Transferred to Estates Code by Acts 2011, 82nd Leg., ch. 823, § 3.01, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 4, eff. Sept. 1, 2011.

§ 609. Transfer of Contested Guardianship of the Person of a Minor

(a) If an interested person contests an application for the appointment of a guardian of the person of a minor or an interested person seeks the removal of a guardian of the person of a minor, the judge, on the judge's own motion, may transfer all matters related to the guardianship proceeding to a court of competent jurisdiction in which a suit affecting the parent-child relationship under the Family Code is pending.

(b) The probate court that transfers a proceeding under this section to a court with proper jurisdiction over suits affecting the parent-child relationship shall send to the court to which the transfer is made the complete files in all matters affecting the guardianship of the person of the minor and certified copies of all entries in the judge's guardianship docket. The transferring court shall keep a copy of the transferred files. If the transferring court retains jurisdiction of the guardianship of the estate of the minor or of another minor who was the subject of the suit, the court shall send a copy of the complete files to the court to which the transfer is made and shall keep the original files.

(c) The court to which a transfer is made under this section shall apply the procedural and substantive provisions of the Family Code, including Sections 155.005 and 155.205, in regard to enforcing an order

rendered by the court from which the proceeding was transferred.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (c) amended by Acts 1997, 75th Leg., ch. 77, § 1, eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 165, § 7.55, eff. Sept. 1, 1997. Subsec. (b) amended by Acts 2009, 81st Leg., ch. 602, § 12, eff. June 19, 2009. Amended by Acts 2011, 82nd Leg., ch. 1085, §§ 5-6, eff. Sept. 1, 2011. Transferred to Estates Code by Acts 2011, 82nd Leg., ch. 823, § 3.01, eff. Jan. 1, 2014 and Acts 2013, 83rd Leg., ch. 161, § 6.015(b), eff. Jan. 1, 2014.

Subpart B. Venue

§ 610. Venue for Appointment of Guardian

(a) Except as otherwise authorized by this section, a proceeding for the appointment of a guardian for the person or estate, or both, of an incapacitated person shall be brought in the county in which the proposed ward resides or is located on the date the application is filed or in the county in which the principal estate of the proposed ward is located.

(b) A proceeding for the appointment of a guardian for the person or estate, or both, of a minor may be brought:

(1) in the county in which both the minor's parents reside;

(2) if the parents do not reside in the same county, in the county in which the parent who is the sole managing conservator of the minor resides, or in the county in which the parent who is the joint managing conservator with the greater period of physical possession of and access to the minor resides;

(3) if only one parent is living and the parent has custody of the minor, in the county in which that parent resides;

(4) if both parents are dead but the minor was in the custody of a deceased parent, in the county in which the last surviving parent having custody resided; or

(5) if both parents of a minor child have died in a common disaster and there is no evidence that the parents died other than simultaneously, in the county in which both deceased parents resided at the time of their simultaneous deaths if they resided in the same county.

(c) A proceeding for the appointment of a guardian who was appointed by will may be brought in the county in which the will was admitted to probate or in the county of the appointee's residence if the appointee resides in this state.

(d) Repealed by Acts 1999, 76th Leg., ch. 379, § 10, eff. Sept. 1, 1999.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (d) repealed by Acts 1999, 76th Leg., ch. 379, § 10, eff. Sept. 1, 1999. Transferred to Estates Code by Acts 2011, 82nd Leg., ch. 823, § 3.01, eff. Jan.

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1, 2014 and Acts 2013, 83rd Leg., ch. 161, § 6.015(c), eff. Jan. 1, 2014.

§ 611. Concurrent Venue and Transfer for Want of Venue

(a) If two or more courts have concurrent venue of a guardianship proceeding, the court in which an application for a guardianship proceeding is initially filed has and retains jurisdiction of the proceeding. A proceeding is considered commenced by the filing of an application alleging facts sufficient to confer venue, and the proceeding initially legally commenced extends to all of the property of the guardianship estate.

(b) If a guardianship proceeding is commenced in more than one county, it shall be stayed except in the county in which it was initially commenced until final determination of proper venue is made by the court in the county in which it was initially commenced.

(c) If it appears to the court at any time before the guardianship is closed that the proceeding was commenced in a court that did not have venue over the proceeding, the court shall, on the application of any interested person, transfer the proceeding to the proper county.

(d) When a proceeding is transferred to another county under a provision of this chapter, all orders entered in connection with the proceeding shall be valid and shall be recognized in the court to which the guardianship was ordered transferred, if the orders were made and entered in conformance with the procedures prescribed by this code.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2011, 82nd Leg., ch. 823, § 3.01, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 7, eff. Sept. 1, 2011. Transferred to Estates Code by Acts 2013, 83rd Leg., ch. 161, § 6.015(d), eff. Jan. 1, 2014.

§ 612. Application for Transfer of Guardianship to Another County

When a guardian or any other person desires to transfer the transaction of the business of the guardianship from one county to another, the person shall file a written application in the court in which the guardianship is pending stating the reason for the transfer.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2011, 82nd Leg., ch. 823, § 3.01, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., 1st C.S., ch. 4, § 66.01, eff. Sept. 28, 2011.

§ 613. Notice

(a) On filing an application to transfer a guardianship to another county, the sureties on the bond of the guardian shall be cited by personal service to appear and show cause why the application should not be granted.

(b) If an application is filed by a person other than the guardian, the guardian shall be cited by personal service to appear and show cause why the application should not be granted.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2011, 82nd Leg., ch. 823, § 3.01, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., 1st C.S., ch. 4, § 66.02, eff. Sept. 28, 2011. Transferred to Estates Code by Acts 2013, 83rd Leg., ch. 161, § 6.015(e), eff. Jan. 1, 2014.

§ 614. Court Action

(a) On hearing an application under Section 612 of this code, if good cause is not shown to deny the application and it appears that transfer of the guardianship is in the best interests of the ward, the court shall enter an order authorizing the transfer on payment on behalf of the estate of all accrued costs.

(b) In an order entered under Subsection (a) of this section, the court shall require the guardian, not later than the 20th day after the date the order is entered, to:

(1) give a new bond payable to the judge of the court to which the guardianship is transferred; or

(2) file a rider to an existing bond noting the court to which the guardianship is transferred.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2011, 82nd Leg., ch. 823, § 3.01, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., 1st C.S., ch. 4, § 66.03, eff. Sept. 28, 2011.

§ 615. Transcript of Record

When an order of transfer is made under Section 614 of this code, the clerk shall record any unrecorded papers of the guardianship required to be recorded. On payment of the clerk's fee, the clerk shall transmit to the county clerk of the county to which the guardianship was ordered transferred:

(1) the case file of the guardianship proceedings; and

(2) a certified copy of the index of the guardianship records.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2005, 79th Leg., ch. 200, § 1, eff. Sept. 1, 2005. Transferred to Estates Code by Acts 2011, 82nd Leg., ch. 823, § 3.01, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., 1st C.S., ch. 4, § 66.03, eff. Sept. 28, 2011.

§ 616. Transfer Effective

The order transferring a guardianship does not take effect until:

(1) the case file and a certified copy of the index required by Section 615 of this code are filed in the office of the county clerk of the county to which the guardianship was ordered transferred; and

(2) a certificate under the clerk's official seal and reporting the filing of the case file and a certified copy of the index is filed in the court ordering the transfer by

the county clerk of the county to which the guardianship was ordered transferred.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2005, 79th Leg., ch. 200, § 2, eff. Sept. 1, 2005. Transferred to Estates Code by Acts 2011, 82nd Leg., ch. 823, § 3.01, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., 1st C.S., ch. 4, § 66.03, eff. Sept. 28, 2011.

§ 617. Continuation of Guardianship

When a guardianship is transferred from one county to another in accordance with this subpart, the guardianship proceeds in the court to which it was transferred as if it had been originally commenced in that court. It is not necessary to record in the receiving court any of the papers in the case that were recorded in the court from which the case was transferred.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2011, 82nd Leg., ch. 823, § 3.01, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., 1st C.S., ch. 4, § 66.03, eff. Sept. 28, 2011.

§ 618. New Guardian Appointed on Transfer

If it appears to the court that transfer of the guardianship is in the best interests of the ward, but that because of the transfer it is not in the best interests of the ward for the guardian of the estate to continue to serve in that capacity, the court may in its order of transfer revoke the letters of guardianship and appoint a new guardian, and the former guardian shall account for and deliver the estate as provided by this chapter in a case in which a guardian resigns.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Transferred to Estates Code by Acts 2011, 82nd Leg., ch. 823, § 3.01, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., 1st C.S., ch. 4, § 66.03, eff. Sept. 28, 2011.

§ 619 Review of Transferred Guardianship

Not later than the 90th day after the date the transfer of the guardianship takes effect under Section 616 of this code, the court to which the guardianship was transferred shall hold a hearing to consider modifying the rights, duties, and powers of the guardian or any other provisions of the transferred guardianship.

Added by Acts 2011, 82nd Leg., 1st C.S., ch. 4, § 66.04, eff. Sept. 28, 2011.

Subpart C. Duties and Records of Clerk

§ 621. Application and Other Papers to be Filed with Clerk

(a) An application for a guardianship proceeding or a complaint, petition, or other paper permitted or required by law to be filed in the court in a guardianship proceeding shall be filed with the county clerk of the proper county.

(b) The county clerk shall file the paper received under this section and endorse on each paper the date filed, the docket number, and the clerk's official signature.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 8, eff. Sept. 1, 2011.

§ 622. Costs and Security

(a) The laws regulating costs in ordinary civil cases apply to a guardianship proceeding unless otherwise expressly provided by this chapter.

(b) When a person other than the guardian, attorney ad litem, or guardian ad litem files an application, complaint, or opposition in relation to a guardianship proceeding, the clerk may require the person to give security for the probable costs of the proceeding before filing. A person interested in the guardianship or in the welfare of the ward, or an officer of the court, at any time before the trial of an application, complaint, or opposition in relation to a guardianship proceeding, may obtain from the court, on written motion, an order requiring the person who filed the application, complaint, or opposition to give security for the probable costs of the proceeding. The rules governing civil suits in the county court relating to this subject control in these cases.

(c) No security for costs shall be required of a guardian, attorney ad litem, or guardian ad litem appointed under this chapter by a court of this state in any suit brought by the guardian, attorney ad litem, or guardian ad litem in their respective fiduciary capacities.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 9, eff. Sept. 1, 2011.

§ 623. Judge's Guardianship Docket

(a) The county clerk shall keep a record book to be styled "Judge's Guardianship Docket" and shall enter in the record book:

- (1) the name of each person on whose person or estate a proceeding is had or is sought to be had;
- (2) the name of the guardian of the estate or person or of the applicant for letters;
- (3) the date the original application for a guardianship proceeding was filed;
- (4) a notation, including the date, of each order, judgment, decree, and proceeding in each estate; and

(5) a number of each guardianship on the docket in the order in which a proceeding is commenced.

(b) Each paper filed in a guardianship proceeding shall be given the corresponding docket number of the estate.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (a) amended by Acts 2009, 81st Leg.,

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ch. 602, § 13, eff. June 19, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 624. Claim Docket

The county clerk shall keep a record book to be styled "Claim Docket" and shall enter in the claim docket all claims presented against a guardianship for court approval. The claim docket shall be ruled in 16 columns at proper intervals from top to bottom, with a short note of the contents at the top of each column. One or more pages shall be assigned to each guardianship. The following information shall be entered in the respective columns beginning with the first or marginal column: The names of claimants in the order in which their claims are filed; the amount of the claim; its date; the date of filing; when due; the date from which it bears interest; the rate of interest; when allowed by the guardian; the amount allowed; the date of rejection; when approved; the amount approved; when disapproved; the class to which the claim belongs; when established by judgment of a court; the amount of the judgment.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 625. Case Files

The county clerk shall maintain a case file for each person's filed guardianship proceedings. The case file must contain all orders, judgments, and proceedings of the court and any other guardianship filing with the court, including all:

- (1) applications for the granting of guardianship;
- (2) citations and notices, whether published or posted, with the returns on the citations and notices;
- (3) bonds and official oaths;
- (4) inventories, appraisements, and lists of claims;
- (5) exhibits and accounts;
- (6) reports of hiring, renting, or sale;
- (7) applications for sale or partition of real estate and reports of sale and of commissioners of partition;
- (8) applications for authority to execute leases for mineral development, or for pooling or unitization of lands, royalty, or other interest in minerals, or to lend or invest money;
- (9) reports of lending or investing money; and
- (10) reports of guardians of the persons.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 67, § 2, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 626. Guardianship Fee Book

The county clerk shall keep a record book styled "Guardianship Fee Book" and shall enter in the guardianship fee book each item of costs that accrue to

the officers of the court, with witness fees, if any, showing the:

- (1) party to whom the costs or fees are due;
- (2) date of the accrual of the costs or fees;
- (3) guardianship or party liable for the costs or fees; and
- (4) date on which the costs or fees are paid.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 627. Maintaining Records in Lieu of Record Books

In lieu of keeping the record books described by Sections 623, 624, and 626 of this code, the county clerk may maintain the information relating to a person's guardianship proceeding maintained in those record books on a computer file, on microfilm, in the form of a digitized optical image, or in another similar form of data compilation.

Added by Acts 1999, 76th Leg., ch. 67, § 2, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 627A. Index

The county clerk shall properly index the records and keep the index open for public inspection but may not release the index from the clerk's custody.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Renumbered from § 627 and amended by Acts 1999, 76th Leg., ch. 67, § 2, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 628. Use of Records as Evidence

The record books or individual case files, including records on a computer file, on microfilm, in the form of a digitized optical image, or in another similar form of data compilation described in other sections of this chapter, or certified copies or reproductions of the records, shall be evidence in any court of this state.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 67, § 2, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 629. Call of the Dockets

The judge of the court in which a guardianship proceeding is pending, as the judge determines, shall call guardianship proceedings in their regular order on both the guardianship and claim dockets and shall make necessary orders.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 10, eff. Sept. 1, 2011.

§ 630. Clerk May Set Hearings

If the judge is absent from the county seat or is on vacation, disqualified, ill, or deceased and is unable to designate the time and place for hearing a guardianship proceeding pending in the judge's court, the county clerk of the county in which the proceeding is pending may designate the time and place for hearing, entering the setting on the judge's docket and certifying on the docket the reason that the judge is not acting to set the hearing. If a qualified judge is not present for the hearing, after service of the notices and citations required by law with reference to the time and place of hearing has been perfected, the hearing is automatically continued from day to day until a qualified judge is present to hear and make a determination in the proceeding.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 11, eff. Sept. 1, 2011.

§ 631. Clerk's Duties

~~(a) If the proper venue is finally determined to be in another county, the clerk, after making and retaining a true copy of the entire file in the case, shall transmit the original file to the proper county, and a proceeding shall be held in the proper county in the same manner as if the proceeding had originally been instituted in the proper county.~~

~~(b) By transmitting to the proper court in the proper county for venue purposes the original file in the case, with certified copies of all entries in the judge's guardianship docket made in the file, an administration of the guardianship in the proper county for venue purposes shall be completed in the same manner as if the proceeding had originally been instituted in that county.~~

~~(c) The clerk of the court from which the proceeding is transferred shall transmit to the court to which the proceeding is transferred the original file in the proceeding and a certified copy of the entries in the judge's guardianship docket that relate to the proceeding.~~

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (b), (c) amended by Acts 2009, 81st Leg., ch. 602, § 14, eff. June 19, 2009. Transferred to Estates Code by Acts 2011, 82nd Leg., ch. 823, § 3.01, eff. Jan. 1, 2014. Repealed by Acts 2013, 83rd Leg., ch. 351, § 35(b), eff. Jan. 1, 2014.

Subpart D. Service and Notice

§ 632. Issuance, Contents, Service, and Return of Citation, Notices, and Writs in Guardianship Proceedings

(a) A person does not need to be cited or otherwise given notice in a guardianship proceeding except in situations in which this chapter expressly provides for

citation or the giving of notice. If this chapter does not expressly provide for citation or the issuance or return of notice in a guardianship proceeding, the court may require that notice be given. If the court requires that notice be given, the court shall prescribe the form and manner of service and return of service.

(b) Unless a court order is required by a provision of this chapter, the county clerk shall issue without a court order necessary citations, writs, and process in guardianship proceedings and all notices not required to be issued by guardians.

(c) A citation and notice issued by the clerk shall be signed and sealed by the clerk and shall be styled "The State of Texas." A notice required to be given by a guardian shall be in writing and signed by the guardian in the guardian's official capacity. A citation or notice shall be dated and directed to the person that is being cited or notified and must state the style and number of the proceeding and the court in which the proceeding is pending and must describe generally the nature of the proceeding or matter to which the citation or notice relates. A precept directed to an officer is not necessary. A citation or notice must direct the person cited or notified to appear by filing a written contest or answer or perform other required acts. A citation or notice must state when and where an appearance or performance by a person cited or notified is required. A citation or notice is not defective because it contains a precept directed to an officer authorized to serve it. A writ or other process other than a citation or notice shall be directed "To any sheriff or constable within the State of Texas" and may not be held defective because it is directed to the sheriff or any constable of a specific county if the writ or other process is properly served within the named county by an officer authorized to serve it.

(d) In all situations in which this chapter requires that notice be given or that a person be cited, and in which a specific method of giving the notice or citing the person, or a specific method of service and return of the citation or notice is not given, or an insufficient or inadequate provision appears with respect to any matter relating to citation or notice, or on request of an interested person, notice or citation shall be issued, served, and returned in the manner the court, by written order, directs in accordance with this chapter and the Texas Rules of Civil Procedure and has the same force and effect as if the manner of service and return had been specified in this chapter.

(e) Except in instances in which this chapter expressly provides for another method of service, a notice or citation required to be served on a guardian or receiver shall be served by the clerk that issues the citation or notice. The clerk shall serve the citation or notice by sending the original citation or notice by registered or certified mail to the attorney of record for the guardian or receiver or to the guardian or receiver, if the guardian or receiver does not have an attorney of record.

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(f)(1) In cases in which it is provided that personal service shall be had with respect to a citation or notice, the citation or notice must be served on the attorney of record for the person who is being cited or notified. Notwithstanding the requirement of personal service, service may be made on the attorney by any method specified under this chapter for service on an attorney. If there is no attorney of record in the proceeding for the person who is being cited or notified, or if an attempt to make service on the attorney was unsuccessful, a citation or notice directed to a person within this state must be served in person by the sheriff or constable on the person who is being cited or notified by delivering to the person a true copy of the citation or notice at least 10 days before the return day on the citation or notice, exclusive of the date of service. If the person who is being cited or notified is absent from the state or is a nonresident, the citation or notice may be served by a disinterested person competent to make oath of the fact. The citation or notice served by a disinterested person shall be returnable at least 10 days after the date of service, exclusive of the date of service. The return of the person serving the citation or notice shall be endorsed on or attached to the citation or notice. The return must show the time and place of service, certify that a true copy of the citation or notice was delivered to the person directed to be served, be subscribed and sworn to before an officer authorized by the laws of this state to take affidavits, under the hand and official seal of the officer, and returned to the county clerk who issued the citation or notice. If the citation or notice is returned with the notation that the person sought to be served, whether or not within this state, cannot be found, the clerk shall issue a new citation or notice directed to the person sought to be served and service shall be by publication.

(2) When citation or notice is required to be posted, the sheriff or constable shall post the citation or notice at the courthouse door of the county in which the proceeding is pending, or at the place in or near the courthouse where public notices customarily are posted, for at least 10 days before the return day of the citation or notice, exclusive of the date of posting. The clerk shall deliver the original and a copy of the citation or notice to the sheriff or a constable of the proper county, who shall post the copy as prescribed by this section and return the original to the clerk, stating in a written return of the copy the time when and the place where the sheriff or constable posted the copy. The date of posting is the date of service. When posting of notice by a guardian is authorized or required, the method prescribed by this section shall be followed. The notice is to be issued in the name of the guardian, addressed and delivered to, posted and returned by, the proper officer, and filed with the clerk.

(3) When a person is to be cited or notified by publication, the citation or notice shall be published once in a newspaper of general circulation in the

county in which the proceeding is pending, and the publication shall be not less than 10 days before the return date of the citation or notice, exclusive of the date of publication. The date of publication of the newspaper in which the citation or notice is published appears is the date of service. If there is no newspaper of general circulation published or printed in the county in which citation or notice is to be had, service of the citation or notice shall be by posting.

(4)(A) When a citation or notice is required or permitted to be served by registered or certified mail, other than a notice required to be given by a guardian, the clerk shall issue the citation or notice and shall serve the citation or notice by sending the original citation or notice by registered or certified mail. A guardian shall issue notice required to be given by the guardian by registered or certified mail, and the guardian shall serve the notice by sending the original notice by registered or certified mail. The citation or notice shall be mailed return receipt requested with instructions to deliver to the addressee only. The envelope containing the citation or notice shall be addressed to the attorney of record in the proceeding for the person who is being cited or notified, but if there is no attorney of record, or if the citation or notice is returned undelivered, the envelope containing the citation or notice shall be addressed to the person who is being cited or notified. A copy of the citation or notice and the certificate of the clerk or guardian showing the fact and date of mailing shall be filed and recorded. If a receipt is returned, it shall be attached to the certificate.

(B) When a citation or notice is required or permitted to be served by ordinary mail, the clerk or the guardian when required by statute or court order, shall serve the citation or notice by mailing the original to the person being cited or notified. A copy of the citation or notice and a certificate of the person serving the citation or notice that shows the fact and time of mailing shall be filed and recorded.

(C) When service is made by mail, the date of mailing is the date of service. Service by mail must be made not less than 20 days before the return day of the citation or notice, exclusive of the date of service.

(D) If a citation or notice served by mail is returned undelivered, a new citation or notice shall be issued, and the new citation or notice shall be served by posting.

(g) A citation or notice issued by the clerk and served by personal service, by mail, by posting, or by publication shall be returned to the court from which the citation or notice was issued on the first Monday after the service is perfected.

(h) In a guardianship proceeding in which citation or notice is required to be served by posting and issued in conformity with the applicable provision of this code,

the citation or notice and the service of and return of the citation or notice is sufficient and valid if a sheriff or constable posts a copy of the citation or notice at the place or places prescribed by this chapter on a day that is sufficiently before the return day contained in the citation or notice for the period of time for which the citation or notice is required to be posted to elapse before the return day of the citation or notice. The sufficiency or validity of the citation or notice or the service of or return of the service of the citation or notice is not affected by the fact that the sheriff or constable makes the return on the citation or notice and returns the citation or notice to the court before the period elapses for which the citation or notice is required to be posted, even though the return is made, and the citation or notice is returned to the court, on the same day it is issued.

(i) Proof of service by publication, posting, mailing, or otherwise in all cases requiring notice or citation shall be filed before a hearing. Proof of service made by a sheriff or constable shall be made by the return of service. Service made by a private person shall be proved by the person's affidavit. Proof of service by publication shall be made by an affidavit of the publisher or of an employee of the publisher that shows the issue date of the newspaper that carried the notice or citation and that has attached to or embodied in the affidavit a copy of the notice or citation. Proof of service by mail shall be made by the certificate of the clerk, or the affidavit of the guardian or other person that makes the service that states the fact and time of mailing. The return receipt must be attached to the certificate, if a receipt has been returned if service is made by registered or certified mail.

(j) At any time after an application is filed for the purpose of commencing a guardianship proceeding, a person interested in the estate or welfare of a ward or an incapacitated person may file with the clerk a written request that the person be notified of any or all specifically designated motions, applications, or pleadings filed by any person, or by a person specifically designated in the request. The person who makes the request is responsible for the fees and costs associated with the documents specified in the request. The clerk may require a deposit to cover the estimated costs of furnishing the person with the requested notice. The clerk by ordinary mail shall send to the requesting person a copy of any document specified in the request. A proceeding is not invalid if the clerk fails to comply with the request under this subsection.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, §§ 12-13, eff. Sept. 1, 2011.

§ 633. Notice and Citation

(a) On the filing of an application for guardianship, notice shall be issued and served as provided by this section.

(b) The court clerk shall issue a citation stating that the application for guardianship was filed, the name of the proposed ward, the name of the applicant, and the name of the person to be appointed guardian as provided in the application, if that person is not the applicant. The citation must cite all persons interested in the welfare of the proposed ward to appear at the time and place stated in the notice if they wish to contest the application and must contain a clear and conspicuous statement informing those interested persons of the right provided under Section 632(j) of this code to be notified of any or all motions, applications, or pleadings relating to the application for the guardianship or any subsequent guardianship proceeding involving the ward after the guardianship is created, if any. The citation shall be posted.

(c) The sheriff or other officer shall personally serve citation to appear and answer the application for guardianship on:

(1) a proposed ward who is 12 years of age or older;

(2) the parents of a proposed ward if the whereabouts of the parents are known or can be reasonably ascertained;

(3) any court-appointed conservator or person having control of the care and welfare of the proposed ward;

(4) a proposed ward's spouse if the whereabouts of the spouse are known or can be reasonably ascertained; and

(5) the person named in the application to be appointed guardian, if that person is not the applicant.

(c-1) The citation served as provided by Subsection (c) of this section must contain the statement regarding the right provided under Section 632(j) of this code that is required in the citation issued under Subsection (b) of this section.

(d) The applicant shall mail a copy of the application for guardianship and a notice containing the information required in the citation issued under Subsection (b) of this section by registered or certified mail, return receipt requested, or by any other form of mail that provides proof of delivery, to the following persons, if their whereabouts are known or can be reasonably ascertained:

(1) all adult children of a proposed ward;

(2) all adult siblings of a proposed ward;

(3) the administrator of a nursing home facility or similar facility in which the proposed ward resides;

(4) the operator of a residential facility in which the proposed ward resides;

(5) a person whom the applicant knows to hold a power of attorney signed by the proposed ward;

(6) a person designated to serve as guardian of the proposed ward by a written declaration under Section 679 of this code, if the applicant knows of the existence of the declaration;

(7) a person designated to serve as guardian of the proposed ward in the probated will of the last surviving parent of the ward; and

(8) a person designated to serve as guardian of the proposed ward by a written declaration of the proposed ward's last surviving parent, if the declarant is deceased and the applicant knows of the existence of the declaration.

(9) each person named as another relative within the third degree by consanguinity in the application for guardianship as required by Section 682(10) or (12) of this code if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child.

(d-1) The applicant shall file with the court:

(1) a copy of any notice required by Subsection (d) of this section and the proofs of delivery of the notice; and

(2) an affidavit sworn to by the applicant or the applicant's attorney stating:

(A) that the notice was mailed as required by Subsection (d) of this section; and

(B) the name of each person to whom the notice was mailed, if the person's name is not shown on the proof of delivery.

(e) A person other than the proposed ward who is entitled to receive notice or personal service of citation under Subsections (c) and (d) of this section may choose, in person or by attorney ad litem, by writing filed with the clerk, to waive the receipt of notice or the issuance and personal service of citation.

(f) The court may not act on an application for the creation of a guardianship until the Monday following the expiration of the 10-day period beginning the date service of notice and citation has been made as provided by Subsections (b), (c), and (d)(1) of this section and the applicant has complied with Subsection (d-1) of this section. The validity of a guardianship created under this chapter is not affected by the failure of the applicant to comply with the requirements of Subsections (d)(2)-(9) of this section.

(g) It is not necessary for a person who files an application for the creation of a guardianship under this chapter to be served with citation or waive the issuance and personal service of citation under this section.

Added by Acts 1995, 74th Leg., ch. 1039, § 18, eff. Sept. 1, 1995. Subsecs. (d), (1) amended by Acts 1997, 75th Leg., ch. 77, § 2, eff. Sept. 1, 1997; Subsec. (b) amended by Acts 1999, 76th Leg., ch. 997, § 1, eff. Sept. 1, 1999; Subsec. (c) amended by Acts 1999, 76th Leg., ch. 379, § 3, eff. Sept. 1, 1999; Subsec. (c) amended by Acts 1999, 76th Leg., ch. 997, § 1, eff. Sept. 1, 1999; Subsec. (c) amended by Acts 2001, 77th Leg., ch. 940, § 1, eff. Sept. 1, 2001; Subsec. (c) amended by Acts 2001, 77th Leg., ch. 1174, § 2, eff. Sept. 1, 2001; Subsec. (d) amended by Acts 2001, 77th Leg., ch. 940, § 1, eff. Sept. 1, 2001; Subsec. (d) amended by Acts 2001, 77th Leg.,

ch. 1174, § 2, eff. Sept. 1, 2001; Subsec. (f) amended by Acts 2001, 77th Leg., ch. 940, § 1, eff. Sept. 1, 2001; Subsec. (f) amended by Acts 2001, 77th Leg., ch. 1174, § 2, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 549, § 8, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 599, § 6, eff. Sept. 1, 2011.

§ 634. Service on Attorney

(a) If an attorney has entered an appearance on record for a party in a guardianship proceeding, a citation or notice required to be served on the party shall be served on the attorney. Service on the attorney of record is in lieu of service on the party for whom the attorney appears. Except as provided by Section 633(e) of this code, an attorney ad litem may not waive personal service of citation.

(b) A notice served on an attorney under this section may be served by registered or certified mail, return receipt requested, by any other form of mail requiring proof of delivery, or by delivery to the attorney in person. A party to the proceeding or the party's attorney of record, an appropriate sheriff or constable, or another person who is competent to testify may serve notice or citation to an attorney under this section.

(c) A written statement by an attorney of record, the return of the officer, or the affidavit of a person that shows service is prima facie evidence of the fact of service.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 549, § 9, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 635. Waiver of Notice

A competent person who is interested in a hearing in a guardianship proceeding, in person or by attorney, may waive in writing notice of the hearing. A consul or other representative of a foreign government, whose appearance has been entered as provided by law on behalf of a person residing in a foreign country, may waive notice on behalf of the person. A person who submits to the jurisdiction of the court in a hearing is deemed to have waived notice of the hearing.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 636. Notices to Department of Veterans Affairs by Guardians

When an annual or other account of funds, or an application for the expenditure of or investment of funds is filed by a guardian whose ward is a beneficiary of the Department of Veterans Affairs, or when a claim against the estate of a ward who is a beneficiary of the Department of Veterans Affairs is filed, the court shall set a date for the hearing of the account, application, petition, or claim to be held not less than 20 days from the date of the filing of the account, application,

petition, or claim. The person who files the account, application, petition, or claim shall give notice of the date of the filing to the office of the Department of Veterans Affairs in whose territory the court is located by mailing to the office a certified copy of the account, application, petition, or claim not later than five days after the date of the filing. An office of the Department of Veterans Affairs, through its attorney, may waive the service of notice and the time within which a hearing may be had in those cases.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 19, eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart E. Trial and Hearing Matters

§ 641. Defects in Pleading

A court may not invalidate a pleading in a guardianship proceeding or an order based on the pleading based on a defect of form or substance in the pleading, unless the defect has been timely objected to and called to the attention of the court in which the proceeding was or is pending.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 14, eff. Sept. 1, 2011.

§ 642. Standing to Commence or Contest Proceeding

(a) Except as provided by Subsection (b) of this section, any person has the right to commence any guardianship proceeding, including a proceeding for complete restoration of a ward's capacity or modification of a ward's guardianship, or to appear and contest any guardianship proceeding or the appointment of a particular person as guardian.

(b) A person who has an interest that is adverse to a proposed ward or incapacitated person may not:

- (1) file an application to create a guardianship for the proposed ward or incapacitated person;
- (2) contest the creation of a guardianship for the proposed ward or incapacitated person;
- (3) contest the appointment of a person as a guardian of the person or estate, or both, of the proposed ward or incapacitated person; or
- (4) contest an application for complete restoration of a ward's capacity or modification of a ward's guardianship.

(c) The court shall determine by motion in limine the standing of a person who has an interest that is adverse to a proposed ward or incapacitated person.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (c) added by Acts 1995, 74th Leg., ch. 1039, § 20, eff. Sept. 1, 1995; Subsecs. (a), (b) amended by Acts 1999, 76th Leg., ch. 829, § 2, eff. Sept. 1, 1999.

Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 643. Trial by Jury

A party in a contested guardianship proceeding is entitled, on request, to a jury trial.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 644. Hearing by Submission

(a) A court may consider by submission a motion or application filed under this chapter unless the proceeding is:

- (1) contested; or
- (2) an application for the appointment of a guardian.

(b) The burden of proof at a hearing on a motion or application that is being considered by the court on submission is on the party who is seeking relief under the motion or application.

(c) The court may consider a person's failure to file a response to a motion or application that may be considered on submission as a representation that the person does not oppose the motion or application.

(d) A person's request for oral argument is not a response to a motion or application under this section.

(e) The court, on its own motion, may order oral argument on a motion or application that may be considered by submission.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 21, eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 645. Guardians Ad Litem

(a) The judge may appoint a guardian ad litem to represent the interests of an incapacitated person in a guardianship proceeding.

(b) A guardian ad litem is entitled to reasonable compensation for services in the amount set by the court to be taxed as costs in the proceeding.

(c) A guardian ad litem is an officer of the court. The guardian ad litem shall protect the incapacitated person in a manner that will enable the court to determine what action will be in the best interests of the incapacitated person.

(d) If a guardian ad litem is appointed under Section 681(4) of this code, the fees and expenses of the guardian ad litem are costs of the litigation proceeding that made the appointment necessary.

(e) In the interest of judicial economy, the court may appoint as guardian ad litem under Section 681(4) of this code the person who has been appointed attorney ad litem under Section 646 of this code or the person who is serving as an ad litem for the benefit of the ward in any other proceeding.

(f) The term of appointment of a guardian ad litem made in a proceeding for the appointment of a guardian

expires, without a court order, on the date the court either appoints a guardian or denies the application for appointment of a guardian, unless the court determines that the continued appointment of the guardian ad litem is in the ward's best interest.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (f) added by Acts 2007, 80th Leg., ch. 614, § 1, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 645A. Immunity

(a) A guardian ad litem appointed under Section 645, 683, or 694A of this code to represent the interests of an incapacitated person in a guardianship proceeding involving the creation, modification, or termination of a guardianship is not liable for civil damages arising from a recommendation made or an opinion given in the capacity of guardian ad litem.

(b) Subsection (a) of this section does not apply to a recommendation or opinion that is:

- (1) wilfully wrongful;
- (2) given with conscious indifference or reckless disregard to the safety of another;
- (3) given in bad faith or with malice; or
- (4) grossly negligent.

Added by Acts 2003, 78th Leg., ch. 622, § 1, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 646. Appointment of Attorney ad Litem and Interpreter

(a) In a proceeding under this chapter for the appointment of a guardian, the court shall appoint an attorney ad litem to represent the interests of the proposed ward. The attorney shall be supplied with copies of all of the current records in the case and may have access to all of the proposed ward's relevant medical, psychological, and intellectual testing records.

(b) To be eligible for appointment as an attorney ad litem, a person must have the certification required by Section 647A of this code.

(c) A person whose certificate has expired must obtain a new certificate to be eligible for appointment as an attorney ad litem.

(d) At the time of the appointment of the attorney ad litem, the court shall also appoint a language interpreter or a sign interpreter if necessary to ensure effective communication between the proposed ward and the attorney.

(e) The term of appointment of an attorney ad litem appointed under this section expires, without a court order, on the date the court appoints a guardian in accordance with Section 693 of this code, appoints a successor guardian, or denies the application for appointment of a guardian, unless the court determines that the continued appointment of the attorney ad litem is in the ward's best interest.

(f) The term of appointment of an attorney ad litem appointed under this section continues after the court

appoints a temporary guardian under Section 875 of this code unless a court order provides for the termination or expiration of the attorney ad litem's appointment.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsecs. (b) to (d) amended by Acts 1995, 74th Leg., ch. 1039, § 22, eff. Sept. 1, 1995; Subsec. (e) repealed by Acts 1995, 74th Leg., ch. 1039, § 74, eff. Sept. 1, 1995; Subsec. (a) amended by Acts 1999, 76th Leg., ch. 379, § 4, eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 716, § 1, eff. Sept. 1, 1999. Subsec. (e) added by Acts 2007, 80th Leg., ch. 614, § 2, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 15, eff. Sept. 1, 2011.

§ 646A. Representation of Ward or Proposed Ward by Attorney

(a) The following persons may at any time retain an attorney who holds a certificate required by Section 647A of this code to represent the person's interests in a guardianship matter instead of having those interests represented by an attorney ad litem appointed under Section 646 of this code or another provision of this chapter:

(1) a ward who retains the power to enter into a contract under the terms of the guardianship, subject to Section 694K of this code; and

(2) a proposed ward for purposes of a proceeding for the appointment of a guardian as long as the proposed ward has capacity to contract.

(b) If the court finds that the ward or the proposed ward has capacity to contract, the court may remove an attorney ad litem appointed under Section 646 of this code or any other provision of this chapter that requires the court to appoint an attorney ad litem to represent the interests of a ward or proposed ward and appoint a ward or a proposed ward's retained counsel.

Added by Acts 2011, 82nd Leg., ch. 599, § 7, eff. Sept. 1, 2011.

§ 647. Duties of Attorney Ad Litem

(a) An attorney ad litem appointed under Section 646 of this code to represent a proposed ward shall, within a reasonable time before the hearing, interview the proposed ward. To the greatest extent possible, the attorney shall discuss with the proposed ward the law and facts of the case, the proposed ward's legal options regarding disposition of the case, and the grounds on which guardianship is sought.

(b) Before the hearing, the attorney shall review the application for guardianship, certificates of current physical, medical, and intellectual examinations, and all of the proposed ward's relevant medical, psychological, and intellectual testing records.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 647A. Certification Requirement for Certain Court-Appointed Attorneys

(a) A court-appointed attorney in any guardianship proceeding must be certified by the State Bar of Texas or a person or other entity designated by the state bar as having successfully completed a course of study in guardianship law and procedure sponsored by the state bar or its designee.

(b) For certification under this section, the state bar shall require three hours of credit.

(c) Except as provided by Subsection (e) of this section, a certificate issued under this section expires on the second anniversary of the date the certificate is issued.

(d) To be eligible to be appointed by a court to represent a person at a guardianship proceeding, an attorney whose certificate has expired must obtain a new certificate.

(e) A new certificate obtained by a person who previously has been issued a certificate under this section expires on the fourth anniversary of the date the new certificate is issued if the person has been certified each of the four years immediately preceding the date the new certificate is issued.

Added by Acts 1999, 76th Leg., ch. 716, § 2, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 648. Court Visitor Program

(a) Each statutory probate court shall operate a court visitor program to assess the conditions of wards and proposed wards. Another court that has jurisdiction over a guardianship proceeding may operate a court visitor program in accordance with the population needs and financial abilities of the jurisdiction. A court that operates a court visitor program shall use persons willing to serve without compensation to the greatest extent possible.

(b) On request by any interested person, including a ward or proposed ward, or on its own motion, and at any time before the appointment of a guardian or during the pendency of a guardianship of the person or estate, a court may appoint a court visitor to evaluate the ward or proposed ward and provide a written report that substantially complies with Subsection (c) of this section.

(c) A court visitor's report must include:

(1) a description of the nature and degree of capacity and incapacity of the ward or proposed ward, including the medical history of the ward or proposed ward, if reasonably available and not waived by the court;

(2) a medical prognosis and a list of the treating physicians of the ward or proposed ward, when appropriate;

(3) a description of the living conditions and circumstances of the ward or proposed ward;

(4) a description of the social, intellectual, physical, and educational condition of the ward or proposed ward;

(5) a statement that the court visitor has personally visited or observed the ward or proposed ward;

(6) a statement of the date of the most recent visit by the guardian, if one has been appointed;

(7) a recommendation as to any modifications needed in the guardianship or proposed guardianship, including removal or denial of the guardianship; and

(8) any other information required by the court.

(d) The court visitor shall file the report not later than the 14th day after the date of the evaluation conducted by the court visitor, and the court visitor making the report must swear, under penalty of perjury, to its accuracy to the best of the court visitor's knowledge and belief.

(e) A court visitor who has not expressed a willingness to serve without compensation is entitled to reasonable compensation for services in an amount set by the court and to be taxed as costs in the proceeding.

(f) This section does not apply to a guardianship that is created only because it is necessary for a person to have a guardian appointed to receive funds from a governmental source.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (f) added by Acts 1995, 74th Leg., ch. 1039, § 23, eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 648A. Duties of Court Investigator

(a) On the filing of an application for guardianship under Section 682 of this code, a court investigator shall investigate the circumstances alleged in the application to determine whether a less restrictive alternative than guardianship is appropriate.

(b) A court investigator shall:

(1) supervise the court visitor program established under Section 648 of this code and in that capacity serve as the chief court visitor;

(2) investigate a complaint received from any person about a guardianship and report to the judge, if necessary; and

(3) perform other duties as assigned by the judge or required by this code.

(c) After making an investigation under Subsection (a) or (b) of this section, a court investigator shall file with the court a report of the court investigator's findings and conclusions. Disclosure to a jury of the contents of a court investigator's report is subject to the Texas Rules of Civil Evidence. In a contested case, the court investigator shall provide copies of the report to the attorneys for the parties before the earlier of:

(1) the seventh day after the day the report is completed; or

(2) the 10th day before the day the trial is scheduled to begin.

(d) Nothing in this section supersedes any duty or obligation of another to report or investigate abuse or neglect under any statute of this state.

Added by Acts 1995, 74th Leg., ch. 1039, § 24, eff. Sept. 1, 1995. Subsec. (b) amended by Acts 1999, 76th Leg., ch. 829, § 3, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 649. Evidence

In a guardianship proceeding, the rules relating to witnesses and evidence that govern in the district court apply as far as practicable. If there is no opposing party or attorney of record on whom to serve notice and copies of interrogatories, service may be had by posting notice of the intention to take depositions for a period of 10 days as provided by this chapter in the provisions governing a posting of notice. When notice by posting under this section is filed with the clerk, a copy of the interrogatories shall also be filed. At the expiration of the 10-day period, commission may issue for taking the depositions and the judge may file cross-interrogatories if no person appears.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 650. Decrees

A decision, order, decree, or judgment of the court in a guardianship proceeding must be rendered in open court, except in a case in which it is otherwise expressly provided.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2009, 81st Leg., ch. 602, § 15, eff. June 19, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 16, eff. Sept. 1, 2011.

§ 651. Enforcement of Orders

The judge may enforce obedience to an order entered against a guardian by attachment and imprisonment. An imprisonment of a guardian may not exceed three days for any one offense, unless expressly provided otherwise in this chapter.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 652. Location of Hearing

(a) Except as provided by Subsection (b) of this section, the judge may hold a hearing on a guardianship matter involving an adult ward or adult proposed ward at any suitable location in the county in which the guardianship matter is pending. The hearing should be held in a physical setting that is not likely to have a harmful effect on the ward or proposed ward.

(b) On the request of the adult proposed ward, the adult ward, or the attorney of the proposed ward or ward, the hearing may not be held under the authority of this section at a place other than the courthouse.

Added by Acts 2011, 82nd Leg., ch. 1085, § 17, eff. Sept. 1, 2011.

Subpart F. Post-Trial Matters

§ 653. Execution

An execution in a guardianship proceeding shall be directed "To any sheriff or any constable within the State of Texas," made returnable in 60 days, and attested and signed by the clerk officially under the seal of the court. A proceeding under an execution in a guardianship proceeding is governed so far as applicable by the laws regulating a proceeding under an execution issued from the district court. An execution directed to the sheriff or a constable of a specific county in this state may not be held defective if the execution was properly executed within the county by the officer to whom the direction for execution was given.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 81, eff. Sept. 1, 2011.

§ 654. Attachment for Property

When a complaint in writing and under oath that the guardian is about to remove the estate or any part of the estate beyond the limits of the state is made to the judge by a person interested in the estate of a minor or other incapacitated person, the judge may order a writ to issue, directed "To any sheriff or any constable within the State of Texas," commanding the sheriff or constable to seize the estate or any part of the estate and to hold the estate subject to further court order. The judge may not issue a writ unless the complainant gives a bond, in the sum the judge requires, payable to the guardian of the estate and conditioned on payment of all damages and costs that shall be recovered for a wrongful suit out of the writ. A writ of attachment directed to the sheriff or a constable of a specific county in this state is not defective if the writ was properly executed within the county by the officer to whom the direction to seize the estate was given.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 655. Guardian to Serve Pending Appeal of Appointment

Pending an appeal from an order or judgment appointing a guardian, an appointee shall continue to act as guardian and shall continue the prosecution of a pending suit in favor of the guardianship.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 656. Appeal Bond of Guardian

When a guardian appeals, a bond is not required, unless the appeal personally concerns the guardian, in which case the guardian must give the bond.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 657. Bill of Review

A person interested, including a ward, by bill of review filed in the court in which a guardianship proceeding took place, may have a decision, order, or judgment rendered by the court, revised and corrected if an error is shown on the decision, order, or judgment. A process or action under the decision, order, or judgment is not stayed except by writ of injunction. A bill of review may not be filed after two years have elapsed from the date of the decision, order, or judgment. A person with a disability has two years after the removal of the person's respective disability to apply for a bill of review.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart G. Letters of Guardianship

§ 659. Issuance of Letters of Guardianship

(a) When a person who is appointed guardian has qualified under Section 699 of this code, the clerk shall issue to the guardian a certificate under seal, stating the fact of the appointment, of the qualification, the date of the appointment and qualification, and the date the letters of guardianship expire. The certificate issued by the clerk constitutes letters of guardianship.

(b) All letters of guardianship expire one year and four months after the date of issuance unless renewed.

(c) The clerk may not renew letters of guardianship relating to the appointment of a guardian of the estate until the court receives and approves the guardian's annual accounting. The clerk may not renew letters of guardianship relating to the appointment of a guardian of the person until the court receives and approves the annual report. If the guardian's annual accounting or annual report is disapproved or not timely filed, the clerk may not issue further letters of guardianship to the delinquent guardian unless ordered by the court.

(d) Regardless of the date the court approves an annual accounting or annual report for purposes of this section, a renewal relates back to the date the original letters of guardianship are issued, unless the accounting period has been changed as provided by this chapter, in which case a renewal relates back to the first day of the accounting period.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 25, eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 660. Letters or Order Made Evidence

(a) Letters of guardianship or a certificate under seal of the clerk of the court that granted the letters issued under Section 659 of this code is sufficient evidence of the appointment and qualification of the guardian and of the date of qualification.

(b) The court order that appoints the guardian is evidence of the authority granted to the guardian and of the scope of the powers and duties that the guardian may exercise only after the date letters of guardianship or a certificate has been issued under Section 659 of this code.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 26, eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 661. Issuance of New Letters

When letters of guardianship have been destroyed or lost, the clerk shall issue new letters that have the same force and effect as the original letters. The clerk shall also issue any number of letters on request of the person who holds the letters.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 662. Rights of Third Persons Dealing with Guardian

When a guardian who has qualified performs any act as guardian that is in conformity with the guardian's authority and the law, the guardian's act continues to be valid for all intents and purposes in regard to the rights of an innocent purchaser of the property of the guardianship estate who purchased the property from the guardian for a valuable consideration, in good faith, and without notice of any illegality in the title to the property, even if the guardian's act or the authority under which the act was performed may later be set aside, annulled, or declared invalid.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 663. Validation of Certain Letters of Guardianship

All presently existing letters of guardianship issued to a nonresident guardian, with or without the procedure provided in this subpart, in whole or in part, and with or without a notice or citation required of resident guardians, are validated as of each letter's date, insofar as the absence of the procedure, notice, or citations is concerned. An otherwise valid conveyance, mineral lease, or other act of a nonresident guardian qualified and acting in connection with the letters of guardianship under supporting orders of a county or probate court of this state are validated. This section does not apply to any letters, conveyance, lease, or other act of a nonresident guardian under this section if the absence of

the procedure, notice, or citation involving the letters, conveyance, lease, or other act of the nonresident guardian is an issue in a lawsuit pending in this state on September 1, 1993.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart H. Compensation, Expenses, and Court Costs

§ 665. Compensation of Guardians and Temporary Guardians

(a) The court may authorize compensation for a guardian or a temporary guardian serving as a guardian of the person alone from available funds of the ward's estate or other funds available for that purpose. The court may set the compensation in an amount not exceeding five percent of the ward's gross income.

(a-1) In determining whether to authorize compensation for a guardian under this section, the court shall consider the ward's monthly income from all sources and whether the ward receives medical assistance under the state Medicaid program.

(b) The guardian or temporary guardian of an estate is entitled to reasonable compensation on application to the court at the time the court approves any annual accounting or final accounting filed by the guardian or temporary guardian under this chapter. A fee of five percent of the gross income of the ward's estate and five percent of all money paid out of the estate, subject to the award of an additional amount under Subsection (c) of this section following a review under Subsection (c)(1) of this section, is considered reasonable under this subsection if the court finds that the guardian or temporary guardian has taken care of and managed the estate in compliance with the standards of this chapter.

(c) On application of an interested person or on its own motion, the court may:

(1) review and modify the amount of compensation authorized under Subsection (a) or (b) of this section if the court finds that the amount is unreasonably low when considering the services rendered as guardian or temporary guardian; and

(2) authorize compensation for the guardian or temporary guardian in an estimated amount the court finds reasonable that is to be paid on a quarterly basis before the guardian or temporary guardian files an annual or final accounting if the court finds that delaying the payment of compensation until the guardian or temporary guardian files an accounting would create a hardship for the guardian or temporary guardian.

(d) A finding of unreasonably low compensation may not be established under Subsection (c) of this section solely because the amount of compensation is less than the usual and customary charges of the person or entity serving as guardian or temporary guardian. A

court that authorizes payment of estimated quarterly compensation under Subsection (c) of this section may later reduce or eliminate the guardian's or temporary guardian's compensation if, on review of an annual or final accounting or otherwise, the court finds that the guardian or temporary guardian:

(1) received compensation in excess of the amount permitted under this section;

(2) has not adequately performed the duties required of a guardian or temporary guardian under this chapter; or

(3) has been removed for cause.

(d-1) If a court reduces or eliminates a guardian's or temporary guardian's compensation as provided by Subsection (d) of this section, the guardian or temporary guardian and the surety on the guardian's or temporary guardian's bond are liable to the guardianship estate for any excess compensation received.

(e) The court, on application of an interested person or on its own motion, may deny a fee authorized under this section in whole, or in part, if:

(1) the court finds that the guardian or temporary guardian has not adequately performed the duties required of a guardian or temporary guardian under this chapter; or

(2) the guardian or temporary guardian has been removed for cause.

(f) Except as provided by Subsection (c) of this section for a fee that is determined by the court to be unreasonably low, the aggregate fee of the guardian of the person and guardian of the estate may not exceed an amount equal to five percent of the gross income of the ward's estate plus five percent of all money paid out of the estate.

(g) If the estate of a ward is insufficient to pay for the services of a private professional guardian or a licensed attorney serving as guardian of the ward's person, the court may authorize compensation for that guardian if funds in the county treasury are budgeted for that purpose.

(h) In this section:

(1) "Gross income" does not include Department of Veterans Affairs or Social Security benefits received by a ward.

(2) "Money paid out" does not include any money loaned, invested, or paid over on the settlement of the guardianship or a tax-motivated gift made by the ward.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 27, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 905, § 1, eff. Sept. 1, 1999; Subsec. (a) amended by Acts 2001, 77th Leg., ch. 217, § 3, eff. Sept. 1, 2001. Amended by Acts 2001, 77th Leg., ch. 953, § 1, eff. Sept. 1, 2001. . Amended by Acts 2009, 81st Leg., ch. 930, § 1, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 665A. Payment for Professional Services

The court shall order the payment of a fee set by the court as compensation to the attorneys, mental health professionals, and interpreters appointed under this chapter, as applicable, to be taxed as costs in the case. If after examining the proposed ward's assets the court determines the proposed ward is unable to pay for services provided by an attorney, a mental health professional, or an interpreter appointed under this chapter, as applicable, the county is responsible for the cost of those services.

Added by Acts 1995, 74th Leg., ch. 1039, § 28, eff. Sept. 1, 1995. Amended by Acts 2007, 80th Leg., ch. 614, § 3, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 665B. Payment of Attorney's Fees To Attorney Representing Applicant

(a) A court that creates a guardianship or creates a management trust under Section 867 of this code for a ward under this chapter, on request of a person who filed an application to be appointed guardian of the proposed ward, an application for the appointment of another suitable person as guardian of the proposed ward, or an application for the creation of the management trust, may authorize the payment of reasonable and necessary attorney's fees, as determined by the court, to an attorney who represents the person who filed the application at the application hearing, regardless of whether the person is appointed the ward's guardian or whether a management trust is created, from:

(1) available funds of the ward's estate or management trust, if created; or

(2) subject to Subsection (c) of this section, the county treasury if:

(A) the ward's estate or, if created, management trust, is insufficient to pay for the services provided by the attorney; and

(B) funds in the county treasury are budgeted for that purpose.

(b) The court may not authorize attorney's fees under this section unless the court finds that the applicant acted in good faith and for just cause in the filing and prosecution of the application.

(c) The court may authorize the payment of attorney's fees from the county treasury under Subsection (a) of this section only if the court is satisfied that the attorney to whom the fees will be paid has not received, and is not seeking, payment for the services described by that subsection from any other source.

Added by Acts 1995, 74th Leg., ch. 1039, § 28, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 905, § 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 549, § 10, eff. Sept. 1, 2003; Acts 2009, 81st Leg., ch. 314, § 1, eff. Sept. 1, 2009. Redesignated from Probate Code, § 665B by Acts 2009, 81st Leg., ch. 680, § 5, eff. Jan. 1, 2014. Amended by Acts 2009, 81st Leg., ch. 930, § 2,

3, eff. Sept. 1, 2009. Transferred to Estates Code by Acts 2011, 82nd Leg., ch. 823, § 3.01, eff. Jan. 1, 2014.

§ 665C. Compensation for Collection of Claims and Recovery of Property

(a) Except as provided by Subsection (b) of this section, a guardian of an estate may enter into a contract to convey, or may convey, a contingent interest in any property sought to be recovered, not exceeding one-third thereof for services of attorneys, subject only to the approval of the court in which the estate is being administered.

(b) A guardian of an estate may convey or contract to convey for services of attorneys a contingent interest that exceeds one-third of the property sought to be recovered under this section only on the approval of the court in which the estate is being administered. The court must approve a contract entered into or conveyance made under this section before an attorney performs any legal services. A contract entered into or conveyance made in violation of this section is void, unless the court ratifies or reforms the contract or documents relating to the conveyance to the extent necessary to cause the contract or conveyance to meet the requirements of this section.

(c) In approving a contract or conveyance under Subsection (a) or (b) of this section for services of an attorney, the court shall consider:

(1) the time and labor that will be required, the novelty and difficulty of the questions to be involved, and the skill that will be required to perform the legal services properly;

(2) the fee customarily charged in the locality for similar legal services;

(3) the value of property recovered or sought to be recovered by the personal representative under this section;

(4) the benefits to the estate that the attorney will be responsible for securing; and

(5) the experience and ability of the attorney who will be performing the services.

(d) On satisfactory proof to the court, a guardian of an estate is entitled to all necessary and reasonable expenses incurred by the guardian in collecting or attempting to collect a claim or debt owed to the estate or in recovering or attempting to recover property to which the estate has a title or claim.

Added by Acts 1995, 74th Leg., ch. 1039, § 28, eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 665D. Compensation and Payment of Attorney's Fees of Attorney Serving as Guardian

(a) Notwithstanding any other provision of this subpart, an attorney who serves as guardian and who also provides legal services in connection with the guardianship is not entitled to compensation for the guardianship services or payment of attorney's fees for the legal services from the ward's estate or other funds

available for that purpose unless the attorney files with the court a detailed description of the services performed that identifies which of the services provided were guardianship services and which were legal services.

(b) An attorney described by Subsection (a) of this section is not entitled to payment of attorney's fees for guardianship services that are not legal services.

(c) The court shall set the compensation of an attorney described by Subsection (a) of this section for the performance of guardianship services in accordance with Section 665 of this code. The court shall set attorney's fees for an attorney described by Subsection (a) of this section for legal services provided in accordance with Sections 665A, 665B, and 666 of this code.

Added by Acts 2009, 81st Leg., ch. 930, § 4, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 666. Expenses Allowed

A guardian is entitled to be reimbursed from the guardianship estate for all necessary and reasonable expenses incurred in performing any duty as a guardian, including reimbursement for the payment of reasonable attorney's fees necessarily incurred by the guardian in connection with the management of the estate or any other matter in the guardianship.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 953, § 2, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 19, eff. Sept. 1, 2011.

§ 667. Expense Account

All expense charges shall be:

- (1) in writing, showing specifically each item of expense and the date of the expense;
- (2) verified by affidavit of the guardian;
- (3) filed with the clerk; and
- (4) paid only if the payment is authorized by court order.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 953, § 3, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 668. Costs Adjudged Against Guardian

When costs are incurred because a guardian neglects to perform a required duty or if a guardian is removed for cause, the guardian and the sureties on the guardian's bond are liable for:

- (1) costs of removal and other additional costs incurred that are not authorized expenditures under this chapter; and
- (2) reasonable attorney's fees incurred in removing the guardian or in obtaining compliance regarding any statutory duty the guardian has neglected.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 669. Costs Against Guardianship

(a) Except as provided by Subsection (b) of this section, in a guardianship proceeding, the cost of the proceeding, including the cost of the guardian ad litem or court visitor, shall be paid out of the guardianship estate, or, if the estate is insufficient to pay for the cost of the proceeding, the cost of the proceeding shall be paid out of the county treasury, and the judgment of the court shall be issued accordingly.

(b) If a court denies an application for the appointment of a guardian under this chapter based on the recommendation of a court investigator, the applicant shall pay the cost of the proceeding.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, s 29, eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 20, eff. Sept. 1, 2011.

§ 670. Compensation of Certain Guardians; Certain Other Guardianship Costs

(a) In this section:

(1) "Applied income" means the portion of the earned and unearned income of a recipient of medical assistance or, if applicable, the recipient and the recipient's spouse, that is paid under the medical assistance program to an institution or long-term care facility in which the recipient resides.

(2) "Medical assistance" has the meaning assigned by Section 32.003, Human Resources Code.

(b) Notwithstanding any other provision of this chapter and to the extent permitted by federal law, a court that appoints a guardian for a recipient of medical assistance who has applied income may order the following to be deducted as an additional personal needs allowance in the computation of the recipient's applied income in accordance with Section 32.02451, Human Resources Code:

(1) compensation to the guardian in an amount not to exceed \$175 per month;

(2) costs directly related to establishing or terminating the guardianship, not to exceed \$1,000 except as provided by Subsection (c) of this section; and

(3) other administrative costs related to the guardianship, not to exceed \$1,000 during any three-year period.

(c) Costs ordered to be deducted under Subsection (b)(2) of this section may include compensation and expenses for an attorney ad litem or guardian ad litem and reasonable attorney's fees for an attorney representing the guardian. The costs ordered to be paid may exceed \$1,000 if the costs in excess of that amount

are supported by documentation acceptable to the court and the costs are approved by the court.

(d) A court may not order:

(1) that the deduction for compensation and costs under Subsection (b) of this section take effect before the later of:

(A) the month in which the court order issued under that subsection is signed; or

(B) the first month of medical assistance eligibility for which the recipient is subject to a copayment; or

(2) a deduction for services provided before the effective date of the deduction as provided by Subdivision (1) of this subsection.

Added by Acts 2009, 81st Leg., ch. 859, § 2, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by and subsec. (d) added by Acts 2011, 82nd Leg., ch. 599, § 8, eff. Sept. 1, 2011.

Subpart I. Duty and Responsibility of Court

§ 671. Judge's Duty

(a) The court shall use reasonable diligence to determine whether a guardian is performing all of the duties required of the guardian that pertain to the guardian's ward.

(b) The judge, at least annually, shall examine the well-being of each ward of the court and the solvency of the bonds of the guardians of the estates.

(c) If after examining the solvency of a guardian's bond under this section a judge determines that the guardian's bond is not sufficient to protect the ward or the ward's estate, the judge shall require the guardian to execute a new bond.

(d) The judge shall notify the guardian and the sureties on the bond as provided by law. If damage or loss results to a guardianship or ward because of gross neglect of the judge to use reasonable diligence in the performance of the judge's duty under this section, the judge shall be liable on the judge's bond to those damaged by the judge's neglect.

(e) The court may request an applicant or court-appointed fiduciary to produce other information identifying an applicant, ward, or guardian, including social security numbers, in addition to identifying information the applicant or fiduciary is required to produce under this code. The court shall maintain the information required under this subsection, and the information may not be filed with the clerk.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (e) added by Acts 1997, 75th Leg., ch. 77, § 3, eff. Sept. 1, 1997. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 672. Annual Determination Whether Guardianship Should Be Continued, Modified, or Terminated

(a) A court in which a guardianship proceeding is pending shall review annually each guardianship in which the application to create the guardianship was filed after September 1, 1993, and may review annually any other guardianship to determine whether the guardianship should be continued, modified, or terminated.

(b) In reviewing a guardianship as provided by Subsection (a) of this section, a statutory probate court may:

(1) review any report prepared by a court investigator under Section 648A or 694A(c) of this code;

(2) review any report prepared by a guardian ad litem under Section 694A(c) of this code;

(3) review any report prepared by a court visitor under Section 648 of this code;

(4) conduct a hearing; or

(5) review an annual account prepared under Section 741 of this code or a report prepared under Section 743 of this code.

(c) In reviewing a guardianship as provided by Subsection (a) of this section, a court that is not a statutory probate court may use any appropriate method determined by the court according to the court's caseload and the resources available to the court.

(d) A determination under this section must be in writing and filed with the clerk.

(e) This section does not apply to a guardianship that is created only because it is necessary for a person to have a guardian appointed to receive funds from a governmental source.

Added by Acts 1995, 74th Leg., ch. 1039, § 30, eff. Sept. 1, 1995. Subsec. (b) amended by Acts 2005, 79th Leg., ch. 200, § 3, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart J. Liability of Guardian

§ 673. Liability of Guardian for Conduct of Ward

A person is not liable to a third person solely because the person has been appointed guardian of a ward under this chapter.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2005, 79th Leg., ch. 268, § 3.07, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Part 3. Appointment and Qualification of Guardians

Subpart A. Appointment

§ 674. Immunity of Guardianship Program

A guardianship program is not liable for civil damages arising from an action taken or omission made by a person while providing guardianship services to a ward on behalf of the guardianship program, unless the action or omission:

- (1) was wilfully wrongful;
- (2) was taken or made with conscious indifference or reckless disregard to the safety of the incapacitated person or another;
- (3) was taken or made in bad faith or with malice; or
- (4) was grossly negligent.

Added by Acts 2005, 79th Leg., ch. 268, § 3.08, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 675. Rights and Powers Retained by Ward

An incapacitated person for whom a guardian is appointed retains all legal and civil rights and powers except those designated by court order as legal disabilities by virtue of having been specifically granted to the guardian.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Statutes in Context § 676

Section 676 explains how a guardian of a minor is selected. Upon the surviving parent's death or incapacity, the court will give great deference to a designation of a guardian in the parent's will or other written document (see § 677A).

§ 676. Guardians of Minors

(a) Except as provided by Section 680 of this code, the selection of a guardian for a minor is governed by this section.

(b) If the parents live together, both parents are the natural guardians of the person of the minor children by the marriage, and one of the parents is entitled to be appointed guardian of the children's estates. If the parents disagree as to which parent should be appointed, the court shall make the appointment on the basis of which parent is better qualified to serve in that capacity. If one parent is dead, the survivor is the natural guardian of the person of the minor children and is entitled to be appointed guardian of their estates. The rights of parents who do not live together are equal, and the guardianship of their minor children shall be assigned to one or the other, considering only the best interests of the children.

(c) In appointing a guardian for a minor orphan:

- (1) if the last surviving parent did not appoint a guardian, the nearest ascendant in the direct line of

the minor is entitled to guardianship of both the person and the estate of the minor;

(2) if more than one ascendant exists in the same degree in the direct line, one ascendant shall be appointed, according to circumstances and considering the best interests of the minor;

(3) if the minor has no ascendant in the direct line, the nearest of kin shall be appointed, and if there are two or more persons in the same degree of kinship, one shall be appointed, according to circumstances and considering the best interests of the minor; and

(4) if no relative of the minor is eligible to be guardian, or if no eligible person applies to be guardian, the court shall appoint a qualified person as guardian.

(d) Notwithstanding Subsection (b) of this section and Section 690 of this code, the surviving parent of a minor may by will or written declaration appoint any eligible person to be guardian of the person of the parent's minor children after the death of the parent or in the event of the parent's incapacity.

(e) After the death of the surviving parent of a minor or if the court finds the surviving parent is an incapacitated person, as appropriate, the court shall appoint the person designated in the will or declaration to serve as guardian of the person of the parent's minor children in preference to those otherwise entitled to serve as guardian under this chapter unless the court finds that the designated guardian is disqualified, is dead, refuses to serve, or would not serve the best interests of the minor children.

(f) On compliance with this chapter, an eligible person is also entitled to be appointed guardian of the children's estates after the death of the parent or in the event of the parent's incapacity.

(g) The powers of a person appointed to serve as the designated guardian of the person or estate, or both, of a minor child solely because of the incapacity of the minor's surviving parent and in accordance with this section and Section 677A of this code terminate when a probate court enters an order finding that the surviving parent is no longer an incapacitated person.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (d) amended by Acts 1995, 74th Leg., ch. 304, § 1, eff. Sept. 1, 1995; Subsec. (d) amended by and (e) to (g) added by Acts 2001, 77th Leg., ch. 217, § 4, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Statutes in Context § 677

Section 677 explains how a guardian of a non-minor is selected. Upon the surviving parent's death or incapacity, the court will give great deference to a designation of a guardian in the parent's will or other written document (see § 677A).

§ 677. Guardians of Persons Other than Minors

(a) The court shall appoint a guardian for a person other than a minor according to the circumstances and considering the best interests of the ward. If the court finds that two or more eligible persons are equally entitled to be appointed guardian:

(1) the ward's spouse is entitled to the guardianship in preference to any other person if the spouse is one of the eligible persons;

(2) the eligible person nearest of kin to the ward is entitled to the guardianship if the ward's spouse is not one of the eligible persons; or

(3) the court shall appoint the eligible person who is best qualified to serve as guardian if:

(A) the persons entitled to serve under Subdivisions (1) and (2) of this section refuse to serve;

(B) two or more persons entitled to serve under Subdivision (2) of this section are related in the same degree of kinship to the ward; or

(C) neither the ward's spouse or any person related to the ward is an eligible person.

(b) The surviving parent of an adult individual who is an incapacitated person may by will or written declaration appoint an eligible person to be guardian of the person of the adult individual after the parent's death or in the event of the parent's incapacity if the parent is the guardian of the person of the adult individual.

(c) After the death of the surviving parent of an adult individual who is an incapacitated person or if the court finds the surviving parent becomes an incapacitated person after being appointed the individual's guardian, as appropriate, the court shall appoint the person designated in the will or declaration to serve as guardian in preference to those otherwise entitled to serve as guardian under this chapter unless the court finds that the designated guardian is disqualified, is dead, refuses to serve, or would not serve the best interests of the adult individual.

(d) On compliance with this chapter, the eligible person appointed under Subsection (c) of this section is also entitled to be appointed guardian of the adult individual's estate after the death of the individual's parent or in the event of the parent's incapacity if the individual's parent is the guardian of the individual's estate.

(e) The powers of a person appointed to serve as the designated guardian of the person or estate, or both, of an adult individual solely because of the incapacity of the individual's surviving parent and in accordance with this section and Section 677A of this code terminate when a probate court enters an order finding that the surviving parent is no longer an incapacitated person and reappointing the surviving parent as the individual's guardian.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 304, § 2, eff. Sept. 1, 1995; Subsec. (b) amended by and (c) to (e)

added by Acts 2001, 77th Leg., ch. 217, § 5, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Statutes in Context

§ 677A

Section 677A sets forth the requirements for non-testamentary guardian declarations by a parent of a minor or adult who is in need of a guardian. Separate rules exist for holographic and attested declarations. A suggested form is also provided.

The 2009 Legislature authorized a one-step execution procedure for both a declaration of guardian by a parent for their children (Prob. Code § 677A) and a self-designation of guardian before the need arises (Prob. Code § 679). Instead of the using the traditional self-proving affidavit which requires a "double" set of signatures, statutory language that combines the execution, attestation, and affidavit under one set of signatures may now be used. This optional execution method permits a streamlined execution procedure so that the declarant and the witnesses need to sign only once.

§ 677A. Written Declarations by Certain Parents to Appoint Guardians for Their Children

(a) A written declaration appointing an eligible person to be guardian of the person of the parent's child under Section 676(d) or 677(b) of this code must be signed by the declarant and be:

(1) written wholly in the handwriting of the declarant; or

(2) attested to in the presence of the declarant by at least two credible witnesses 14 years of age or older who are not named as guardian or alternate guardian in the declaration.

(b) A declaration that is not written wholly in the handwriting of the declarant may be signed by another person for the declarant under the direction of and in the presence of the declarant.

(c) A declaration described by Subsection (a)(2) of this section may have attached a self-proving affidavit signed by the declarant and the witnesses attesting to the competence of the declarant and the execution of the declaration.

(d) The declaration and any self-proving affidavit may be filed with the court at any time after the application for appointment of a guardian is filed and before a guardian is appointed.

(e) If the designated guardian does not qualify, is dead, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable to serve as guardian, the court shall appoint the next eligible designated alternate guardian named in the declaration. If the guardian and all alternate guardians do not qualify, are dead, refuse to serve, or later die or resign,

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the court shall appoint another person to serve as otherwise provided by this code.

(f) The declarant may revoke a declaration in any manner provided for the revocation of a will under Section 63 of this code, including the subsequent reexecution of the declaration in the manner required for the original declaration.

(g) A declaration and affidavit may be in any form adequate to clearly indicate the declarant's intention to designate a guardian for the declarant's child. The following form may, but need not, be used:

DECLARATION OF APPOINTMENT OF
GUARDIAN FOR MY CHILDREN IN THE EVENT
OF MY DEATH OR INCAPACITY

I, _____, make this Declaration to appoint as guardian for my child or children, listed as follows, in the event of my death or incapacity:

(add blanks as appropriate)

I designate _____ to serve as guardian of the person of my (child or children), _____ as first alternate guardian of the person of my (child or children), _____ as second alternate guardian of the person of my (child or children), and _____ as third alternate guardian of the person of my (child or children).

I direct that the guardian of the person of my (child or children) serve (with or without) bond.

(If applicable) I designate _____ to serve as guardian of the estate of my (child or children), _____ as first alternate guardian of the estate of my (child or children), _____ as second alternate guardian of the estate of my (child or children), and _____ as third alternate guardian of the estate of my (child or children).

If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes guardian of my (child or children).

Signed this day of _____ 20__.

Declarant

Witness

Witness

SELF-PROVING AFFIDAVIT

Before me, the undersigned authority, on this date personally appeared _____, the declarant, and _____ and _____ as witnesses, and all being duly sworn, the declarant said that the above instrument was his or her Declaration of Appointment of Guardian for the Declarant's Children in the Event of Declarant's Death or Incapacity and that the declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the

declaration as witnesses, and that the declarant appeared to them to be of sound mind.

Declarant

Affiant

Affiant

Subscribed and sworn to before me by _____, the above named declarant, and _____ (names of affiants) affiants, on this _____ day of _____ 20__.

Notary Public in and for the State of Texas

My Commission expires: _____

(h) In this section, "self-proving affidavit" means an affidavit the form and content of which substantially complies with the requirements of Subsection (g) of this section.

(i) As an alternative to the self-proving affidavit authorized by Subsection (g) of this section, a declaration of appointment of a guardian for the declarant's children in the event of the declarant's death or incapacity may be simultaneously executed, attested, and made self-proved by including the following in substantially the same form and with substantially the same contents:

I, _____, as declarant, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my Declaration of Appointment of Guardian for My Children in the Event of My Death or Incapacity, and that I have made and executed it for the purposes expressed in the declaration. I now sign this declaration in the presence of the attesting witnesses and the undersigned authority on this _____ day of _____, 20__.

Declarant

The undersigned, _____ and _____, each being 14 years of age or older, after being duly sworn, declare to the declarant and to the undersigned authority that the declarant declared to us that this instrument is the declarant's Declaration of Appointment of Guardian for the Declarant's Children in the Event of Declarant's Death or Incapacity and that the declarant executed it for the purposes expressed in the declaration. The declarant then signed this declaration and we believe the declarant to be of sound mind. We now sign our names as attesting witnesses on this _____ day of _____, 20__.

Witness

Witness

Subscribed and sworn to before me by the above named declarant, and affiants, this _____ day of _____, 20__.

Notary Public in and for the State of Texas

My Commission Expires: _____

(j) A declaration that is executed as provided by Subsection (i) of this section is considered self-proved to the same extent a declaration executed with a self-

proving affidavit under Subsection (g) of this section is considered self-proved.

Added by Acts 1995, 74th Leg., ch. 304, § 3, eff. Sept. 1, 1995. Subsec. (a) amended by Acts 1997, 75th Leg., ch. 77, § 4, eff. Sept. 1, 1997; Subsec. (e) amended by Acts 1999, 76th Leg., ch. 1078, § 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 217, § 6, eff. Sept. 1, 2001. Subsec. (g) amended and subsecs. (i), (j) added by Acts 2009, 81st Leg., ch. 930, § 5, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 677B. Proof of Written Declaration of Certain Parents to Designate Children's Guardian

(a) In this section:

(1) "Declaration" means a written declaration of a person that:

(A) appoints a guardian for the person's child under Section 676(d) or 677(b) of this code; and

(B) satisfies the requirements of Section 677A of this code.

(2) "Self-proving affidavit" means an affidavit the form and content of which substantially complies with the requirements of Section 677A(g) of this code.

(3) "Self-proving declaration" includes a self-proving affidavit that is attached or annexed to a declaration.

(b) If a declaration is self-proved, the court may admit the declaration into evidence without the testimony of witnesses attesting to the competency of the declarant and the execution of the declaration. Additional proof of the execution of the declaration with the formalities and solemnities and under the circumstances required to make it a valid declaration is not necessary.

(c) At any time during the declarant's lifetime, a written declaration described by Section 677A(a)(1) of this code may be made self-proved in the same form and manner a will written wholly in the handwriting of a testator is made self-proved under Section 60 of this code.

(d) A properly executed and witnessed self-proving declaration and affidavit, including a declaration and affidavit described by Section 677A(c) of this code, are prima facie evidence that the declarant was competent at the time the declarant executed the declaration and that the guardian named in the declaration would serve the best interests of the ward.

(e) A written declaration described by Section 677A(a)(1) of this code that is not self-proved may be proved in the same manner a will written wholly in the handwriting of the testator is proved under Section 84 of this code.

(f) A written declaration described by Section 677A(a)(2) of this code that is not self-proved may be proved in the same manner an attested written will

produced in court is proved under Section 84 of this code.

Added by Acts 2001, 77th Leg., ch. 217, § 7, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 678. Presumption Concerning Best Interest

It is presumed not to be in the best interests of a ward to appoint a person as guardian of the ward if the person has been finally convicted of any sexual offense, sexual assault, aggravated assault, aggravated sexual assault, injury to a child, to an elderly individual, or to a disabled individual, abandoning or endangering a child, or incest.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 612, § 1, eff. Aug. 28, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Statutes in Context
§ 679

Historically, most courts held that they were not required to give weight to an incompetent person's preference for a guardian. An incompetent's opinion was inherently suspect because a person lacking the capacity to handle property may lack the capacity to select a proper guardian and may be more susceptible to undue influence. The modern trend adopted by Texas in § 679 is to permit a competent individual to designate the individual the person would like the court to appoint as the person's guardian before the onset of incompetency. Thus, should the need for a guardian arise, the court may follow the person's intent which was expressed at a time when the person was competent to do so.

A self-designation of guardian may be holographic or attested. Section 679 sets forth the requirements along with a suggested form.

The 2009 Legislature authorized a one-step execution procedure for both a declaration of guardian by a parent for their children (Prob. Code § 677A) and a self-designation of guardian before the need arises (Prob. Code § 679). Instead of the using the traditional self-proving affidavit which requires a "double" set of signatures, statutory language that combines the execution, attestation, and affidavit under one set of signatures may now be used. This optional execution method permits a streamlined execution procedure so that the declarant and the witnesses need to sign only once.

A declarant may also disqualify a person from serving as a guardian even though the person would otherwise have priority under § 677. This allows the declarant to, for example, designate the "good" child and disqualify the "bad" child.

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Debate exists over whether the same individuals should be named in the self-designation of guardian as in the durable power of attorney (§ 490) and the medical power of attorney (Health & Safety Code § 166.164). One school of thought is that by naming the same persons, there will be consistency if an "evil" person attempts to take over from the agents by being named as a guardian. On the other hand, if different people are named, it is easier for the agents to be held accountable in case their conduct is less than honorable.

§ 679. Designation of Guardian Before Need Arises

(a) A person other than an incapacitated person may designate by a written declaration persons to serve as guardian of the person of the declarant or the estate of the declarant if the declarant becomes incapacitated. The declaration must be signed by the declarant and be:

(1) written wholly in the handwriting of the declarant; or

(2) attested to in the presence of the declarant by at least two credible witnesses 14 years of age or older who are not named as guardian or alternate guardian in the declaration.

(b) A declarant may, in the declaration, disqualify named persons from serving as guardian of the declarant's person or estate, and the persons named may not be appointed guardian under any circumstances.

(c) A declaration that is not written wholly in the handwriting of a declarant may be signed by another person for the declarant under the direction of and in the presence of the declarant.

(d) A declaration described by Subsection (a)(2) of this section may have attached a self proving affidavit signed by the declarant and the witnesses attesting to the competence of the declarant and the execution of the declaration.

(e) The declaration and any self-proving affidavit may be filed with the court at any time after the application for appointment of a guardian is filed and before a guardian is appointed.

(f) Unless the court finds that the person designated in the declaration to serve as guardian is disqualified or would not serve the best interests of the ward, the court shall appoint the person as guardian in preference to those otherwise entitled to serve as guardian under this code. If the designated guardian does not qualify, is dead, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable to serve as guardian, the court shall appoint the next eligible designated alternate guardian named in the declaration. If the guardian and all alternate guardians do not qualify, are dead, refuse to serve, or later die or resign, the court shall appoint another person to serve as otherwise provided by this code.

(g) The declarant may revoke a declaration in any manner provided for the revocation of a will under Section 63 of this code, including the subsequent

reexecution of the declaration in the manner required for the original declaration.

(h) If a declarant designates the declarant's spouse to serve as guardian under this section, and the declarant is subsequently divorced from that spouse before a guardian is appointed, the provision of the declaration designating the spouse has no effect.

(i) A declaration and affidavit may be in any form adequate to clearly indicate the declarant's intention to designate a guardian. The following form may, but need not, be used:

DECLARATION OF GUARDIAN IN THE EVENT OF LATER INCAPACITY OR NEED OF GUARDIAN

1. I designate _____ to serve as guardian of my person, _____ as first alternate guardian of my person, _____ as second alternate guardian of my person, and _____ as third alternate guardian of my person.

2. I _____ designate to serve as guardian of my estate, _____ as first alternate guardian of my estate, _____ as second alternate guardian of my estate, and _____ as third alternate guardian of my estate.

3. If any guardian or alternate guardian dies, does not qualify, or resigns, the next named alternate guardian becomes my guardian.

4. I expressly disqualify the following persons from serving as guardian of my person: _____, _____, and _____.

5. I expressly disqualify the following persons from serving as guardian of my estate: _____, _____, and _____.

Signed this _____ day of _____, 20____.

Declarant _____

Witness _____

Witness _____

SELF-PROVING AFFIDAVIT

Before me, the undersigned authority, on this date personally appeared _____, the declarant, and _____ and _____ as witnesses, and all being duly sworn, the declarant said that the above instrument was his or her Declaration of Guardian and that the declarant had made and executed it for the purposes expressed in the declaration. The witnesses declared to me that they are each 14 years of age or older, that they saw the declarant sign the declaration, that they signed the declaration as witnesses, and that the declarant appeared to them to be of sound mind.

Declarant _____

Witness _____

Witness _____

Subscribed and sworn to before me by the above named declarant and affiants on this _____ day of _____, 20____.

Notary Public in and for the State of Texas

My Commission expires: _____

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(j) In this section, “self-proving affidavit” means an affidavit the form and content of which substantially complies with the requirements of Subsection (i) of this section.

(k) As an alternative to the self-proving affidavit authorized by Subsection (i) of this section, a Declaration of Guardian in the Event of Later Incapacity or Need of Guardian may be simultaneously executed, attested, and made self-proved by including the following in substantially the same form and with substantially the same contents:

I, _____, as declarant, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my Declaration of Guardian in the Event of Later Incapacity or Need of Guardian, and that I have made and executed it for the purposes expressed in the declaration. I now sign this declaration in the presence of the attesting witnesses and the undersigned authority on this ____ day of _____, 20__.

Declarant _____

The undersigned, _____ and _____, each being 14 years of age or older, after being duly sworn, declare to the declarant and to the undersigned authority that the declarant declared to us that this instrument is the declarant’s Declaration of Guardian in the Event of Later Incapacity or Need of Guardian and that the declarant executed it for the purposes expressed in the declaration. The declarant then signed this declaration and we believe the declarant to be of sound mind. We now sign our names as attesting witnesses on this ____ day of _____, 20__.

Witness _____

Witness _____

Subscribed and sworn to before me by the above named declarant, and affiants, this ____ day of _____, 20__.

Notary Public in and for the State of Texas

My Commission Expires: _____

(l) A declaration that is executed as provided by Subsection (k) of this section is considered self-proved to the same extent a declaration executed with a self-proving affidavit under Subsection (i) of this section is considered self-proved.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 217, § 8, eff. Sept. 1, 2001. Subsec. (i) amended and subsecs. (k), (l) added by Acts 2009, 81st Leg., ch. 930, § 6, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 679A. Proof of Written Declaration to Designate Guardian Before Need Arises

(a) In this section:

(1) “Declaration” means a written declaration of a person that:

(A) designates another person to serve as a guardian of the person or estate of the declarant; and

(B) satisfies the requirements of Section 679 of this code.

(2) “Self-proving affidavit” means an affidavit the form and content of which substantially complies with the requirements of Section 679(i) of this code.

(3) “Self-proving declaration” includes a self-proving affidavit that is attached or annexed to a declaration.

(b) If a declaration is self-proved, the court may admit the declaration into evidence without the testimony of witnesses attesting to the competency of the declarant and the execution of the declaration. Additional proof of the execution of the declaration with the formalities and solemnities and under the circumstances required to make it a valid declaration is not necessary.

(c) At any time during the declarant’s lifetime, a written declaration described by Section 679(a)(1) of this code may be made self-proved in the same form and manner a will written wholly in the handwriting of a testator is made self-proved under Section 60 of this code.

(d) A properly executed and witnessed self-proving declaration and affidavit, including a declaration and affidavit described by Section 679(d) of this code, are prima facie evidence that the declarant was competent at the time the declarant executed the declaration and that the guardian named in the declaration would serve the best interests of the ward.

(e) A written declaration described by Section 679(a)(1) of this code that is not self-proved may be proved in the same manner a will written wholly in the handwriting of the testator is proved under Section 84 of this code.

(f) A written declaration described by Section 679(a)(2) of this code that is not self-proved may be proved in the same manner an attested written will produced in court is proved under Section 84 of this code.

Added by Acts 2001, 77th Leg., ch. 217, § 9, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 680. Selection of Guardian by Minor

(a) When an application is filed for the guardianship of the person or estate, or both, of a minor at least 12 years of age, the minor, by writing filed with the clerk, may choose the guardian if the court approves the choice and finds that the choice is in the best interest of the minor.

(b) A minor at least 12 years of age may select another guardian of either the minor’s person or estate, or both, if the minor has a guardian appointed by the court or the minor has a guardian appointed by will or written declaration of the parent of the minor and that

guardian dies, resigns, or is removed from guardianship. If the court is satisfied that the person selected is suitable and competent and that the appointment of the person is in the best interest of the minor, it shall make the appointment and revoke the letters of guardianship of the former guardian. The minor shall make the selection by filing an application in open court in person or by attorney.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 31, eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 681. Persons Disqualified to Serve as Guardians

A person may not be appointed guardian if the person is:

- (1) a minor;
- (2) a person whose conduct is notoriously bad;
- (3) an incapacitated person;
- (4) a person who is a party or whose parent is a party to a lawsuit concerning or affecting the welfare of the proposed ward, unless the court:
 - (A) determines that the lawsuit claim of the person who has applied to be appointed guardian is not in conflict with the lawsuit claim of the proposed ward; or
 - (B) appoints a guardian ad litem to represent the interests of the proposed ward throughout the litigation of the ward's lawsuit claim;
- (5) a person indebted to the proposed ward unless the person pays the debt before appointment;
- (6) a person asserting a claim adverse to the proposed ward or the proposed ward's property, real or personal;
- (7) a person who, because of inexperience, lack of education, or other good reason, is incapable of properly and prudently managing and controlling the ward or the ward's estate;
- (8) a person, institution, or corporation found unsuitable by the court;
- (9) a person disqualified in a declaration made under Section 679 of this code;
- (10) a nonresident person who has not filed with the court the name of a resident agent to accept service of process in all actions or proceedings relating to the guardianship; or
- (11) a person who does not have the certification to serve as guardian that is required by Section 697B of this code.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 32, eff. Sept. 1, 1995. Amended by Acts 2009, 81st Leg., ch. 509, § 1, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 682. Application; Contents

Any person may commence a proceeding for the appointment of a guardian by filing a written

application in a court having jurisdiction and venue. The application must be sworn to by the applicant and state:

- (1) the name, sex, date of birth, and address of the proposed ward;
- (2) the name, relationship, and address of the person the applicant desires to have appointed as guardian;
- (3) whether guardianship of the person or estate, or both, is sought;
- (4) the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation or termination of rights requested to be included in the court's order of appointment, including a termination of:
 - (A) the right of a proposed ward who is 18 years of age or older to vote in a public election; and
 - (B) the proposed ward's eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code;
- (5) the facts requiring that a guardian be appointed and the interest of the applicant in the appointment;
- (6) the nature and description of any guardianship of any kind existing for the proposed ward in any other state;
- (7) the name and address of any person or institution having the care and custody of the proposed ward;
- (8) the approximate value and description of the proposed ward's property, including any compensation, pension, insurance, or allowance to which the proposed ward may be entitled;
- (9) the name and address of any person whom the applicant knows to hold a power of attorney signed by the proposed ward and a description of the type of power of attorney;
- (10) if the proposed ward is a minor and if known by the applicant:
 - (A) the name of each parent of the proposed ward and state the parent's address or that the parent is deceased;
 - (B) the name and age of each sibling, if any, of the proposed ward and state the sibling's address or that the sibling is deceased; and
 - (C) if each of the proposed ward's parents and adult siblings are deceased, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;
- (11) if the proposed ward is a minor, whether the minor was the subject of a legal or conservatorship proceeding within the preceding two-year period and, if so, the court involved, the nature of the proceeding, and the final disposition, if any, of the proceeding;

(12) if the proposed ward is an adult and if known by the applicant:

(A) the name of the proposed ward's spouse, if any, and state the spouse's address or that the spouse is deceased;

(B) the name of each of the proposed ward's parents and state the parent's address or that the parent is deceased;

(C) the name and age of each of the proposed ward's siblings, if any, and state the sibling's address or that the sibling is deceased;

(D) the name and age of each of the proposed ward's children, if any, and state the child's address or that the child is deceased; and

(E) if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased, or, if there is no spouse, parent, adult sibling, or adult child, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;

(13) facts showing that the court has venue over the proceeding; and

(14) if applicable, that the person whom the applicant desires to have appointed as a guardian is a private professional guardian who is certified under Subchapter C, Chapter 111, Government Code, and has complied with the requirements of Section 697 of this code.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 77, § 5, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1376, § 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 829, § 4, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 549, § 11, eff. Sept. 1, 2003. Subsec. (14) amended by Acts 2005, 79th Leg., ch. 268, § 3.09, eff. Sept. 1, 2005. Subsec. (4) amended by Acts 2007, 80th Leg., ch. 614, § 4, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 599, § 9, eff. Sept. 1, 2011.

§ 682A. Application for Appointment of Guardian for Certain Persons

(a) If a minor is a person who, because of incapacity, will require a guardianship after the ward is no longer a minor, a person may file an application under Section 682 of this code for the appointment of a guardian of the person or the estate, or both, of the proposed ward not earlier than the 180th day before the proposed ward's 18th birthday. If the application is heard before the proposed ward's 18th birthday, a guardianship created under this section may not take effect and the person appointed guardian may not give a bond or take the oath as required under Section 700 or 702 of this code until the proposed ward's 18th birthday.

(a-1) Notwithstanding any other law, if the applicant who files an application under Subsection (a) of this section or Section 682 of this code is a person

who was appointed conservator of a disabled child and the proceeding is a guardianship proceeding described by Section 601(25)(A) of this code in which the proposed ward is the incapacitated adult with respect to whom another court obtained continuing, exclusive jurisdiction in a suit affecting the parent-child relationship when the person was a child, the applicant may present to the court a written letter or certificate that meets the requirements of Section 687(a) of this code.

(a-2) If, on receipt of the letter or certificate described by Subsection (a-1) of this section, the court is able to make the findings required by Section 684 of this code, the court, notwithstanding Section 677 of this code, shall appoint the conservator as guardian without conducting a hearing and shall, to the extent possible, preserve the terms of possession and access to the ward that applied before the court obtained jurisdiction of the guardianship proceeding.

(b) Notwithstanding Section 694(b) of this code, the guardianship of the person of a minor who is the subject of an application for the appointment of a guardian of the person filed under Subsection (a) of this section is settled and closed when:

(1) the court, after a hearing on the application, determines that the appointment of a guardian of the person for the proposed ward is not necessary; or

(2) the guardian appointed by the court after a hearing on the application has qualified under Section 699 of this code.

Added by Acts 1999, 76th Leg., ch. 904, § 1, eff. Sept. 1, 1999. Subsec. (a) amended by Acts 2001, 77th Leg., ch. 217, § 10, eff. Sept. 1, 2001. Subsecs. (a-1) & (a-2) added by Acts 2007, 80th Leg., ch. 453, § 32, eff. June 16, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 21, eff. Sept. 1, 2011.

§ 683. Court's Initiation of Guardianship Proceedings

(a) If a court has probable cause to believe that a person domiciled or found in the county in which the court is located is an incapacitated person, and the person does not have a guardian in this state, the court shall appoint a guardian ad litem or court investigator to investigate the person's conditions and circumstances to determine whether the person is an incapacitated person and whether a guardianship is necessary. If after the investigation the guardian ad litem or court investigator believes that the person is an incapacitated person and that a guardianship is necessary, the guardian ad litem or court investigator shall file an application for the appointment of a guardian of the person or estate, or both, for the person.

(b) To establish probable cause under this section, the court may require:

(1) an information letter about the person believed to be incapacitated that is submitted by an

interested person and satisfies the requirements of Section 683A of this code; or

(2) a written letter or certificate from a physician who has examined the person believed to be incapacitated that satisfies the requirements of Section 687(a) of this code, except that the letter must be dated not earlier than the 120th day before the date of the appointment of a guardian ad litem or court investigator under Subsection (a) of this section and be based on an examination the physician performed not earlier than the 120th day before that date.

(c) A court that appoints a guardian ad litem under Subsection (a) of this section may authorize compensation of the guardian ad litem from available funds of the proposed ward's estate, regardless of whether a guardianship is created for the proposed ward. If after examining the ward's or proposed ward's assets the court determines the ward or proposed ward is unable to pay for services provided by the guardian ad litem, the court may authorize compensation from the county treasury.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 905, § 3, eff. Sept. 1, 1999; Acts 2007, 80th Leg., ch. 614, § 5, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 683A. Information Letter

An information letter under Section 683(b)(1) of this code about a person believed to be incapacitated may:

- (1) include the name, address, telephone number, county of residence, and date of birth of the person;
- (2) state whether the residence of the person is a private residence, health care facility, or other type of residence;
- (3) describe the relationship between the interested person and the person;
- (4) contain the names and telephone numbers of any known friends and relatives of the person;
- (5) state whether a guardian of the person or estate of the person has been appointed in this state;
- (6) state whether the person has executed a power of attorney and, if so, the designee's name, address, and telephone number;
- (7) describe any property of the person, including the estimated value of that property;
- (8) list any amount and source of monthly income of the person; and
- (9) describe the nature and degree of the person's alleged incapacity and include a statement of whether the person is in imminent danger of serious impairment to the person's physical health, safety, or estate.

Added by Acts 1999, 76th Leg., ch. 905, § 4, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 684. Findings Required

(a) Before appointing a guardian, the court must find by clear and convincing evidence that:

(1) the proposed ward is an incapacitated person;

(2) it is in the best interest of the proposed ward to have the court appoint a person as guardian of the proposed ward; and

(3) the rights of the proposed ward or the proposed ward's property will be protected by the appointment of a guardian.

(b) Before appointing a guardian, the court must find by a preponderance of the evidence that:

(1) the court has venue of the case;

(2) the person to be appointed guardian is eligible to act as guardian and is entitled to appointment, or, if no eligible person entitled to appointment applies, the person appointed is a proper person to act as guardian;

(3) if a guardian is appointed for a minor, the guardianship is not created for the primary purpose of enabling the minor to establish residency for enrollment in a school or school district for which the minor is not otherwise eligible for enrollment; and

(4) the proposed ward is totally without capacity as provided by this code to care for himself or herself and to manage the individual's property, or the proposed ward lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage the individual's property.

(c) The court may not grant an application to create a guardianship unless the applicant proves each element required by this code. A determination of incapacity of an adult proposed ward, other than a person who must have a guardian appointed to receive funds due the person from any governmental source, must be evidenced by recurring acts or occurrences within the preceding six-month period and not by isolated instances of negligence or bad judgment.

(d) A court may not appoint a guardian of the estate of a minor when a payment of claims is made under Section 887 of this code.

(e) A certificate of the executive head or a representative of the bureau, department, or agency of the government, to the effect that the appointment of a guardian is a condition precedent to the payment of any funds due the proposed ward from that governmental entity, is prima facie evidence of the necessity for the appointment of a guardian.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 33, eff. Sept. 1, 1995; Subsec. (b) amended by Acts 1997, 75th Leg., ch. 1376, § 3, eff. Sept. 1, 1997; Subsec. (c) amended by Acts 1999, 76th Leg., ch. 379, § 5, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 685. Hearing for Appointment of Guardian; Right to Jury Trial

(a) A proposed ward must be present at a hearing to appoint a guardian unless the court, on the record or in the order, determines that a personal appearance is not necessary. The court may close the hearing if the proposed ward or the proposed ward's counsel requests a closed hearing.

(b) The proposed ward is entitled, on request, to a jury trial.

(c) At the hearing, the court shall:

(1) inquire into the ability of any allegedly incapacitated adult person to feed, clothe, and shelter himself or herself, to care for the individual's own physical health, and to manage the individual's property or financial affairs;

(2) ascertain the age of any proposed ward who is a minor;

(3) inquire into the governmental reports for any person who must have a guardian appointed to receive funds due the person from any governmental source; and

(4) inquire into the qualifications, abilities, and capabilities of the person seeking to be appointed guardian.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (a) amended by Acts 1995, 74th Leg., ch. 1039, § 34, eff. Sept. 1, 1995; Subsecs. (a), (c) amended by Acts 1999, 76th Leg., ch. 379, § 6, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 686. Use of Records in Hearing to Appoint Guardian

(a) Before a hearing may be held for the appointment of a guardian, current and relevant medical, psychological, and intellectual testing records of the proposed ward must be provided to the attorney ad litem appointed to represent the proposed ward unless:

(1) the proposed ward is a minor or a person who must have a guardian appointed to receive funds due the person from any governmental source; or

(2) the court makes a finding on the record that no current or relevant records exist and examining the proposed ward for the purpose of creating the records is impractical.

(b) Current medical, psychological, and intellectual testing records are a sufficient basis for a determination of guardianship.

(c) The findings and recommendations contained in the medical, psychological, and intellectual testing records are not binding on the court.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (a) amended by Acts 1999, 76th Leg., ch. 379, § 7, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 687. Examinations and Report

(a) Except as provided by Subsection (c) of this section, the court may not grant an application to create a guardianship for an incapacitated person, other than a minor or person for whom it is necessary to have a guardian appointed only to receive funds from a governmental source, unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that is dated not earlier than the 120th day before the date of the filing of the application and based on an examination the physician performed not earlier than the 120th day before the date of the filing of the application. The letter or certificate must:

(1) describe the nature, degree, and severity of incapacity, including functional deficits, if any, regarding the proposed ward's ability to:

(A) handle business and managerial matters;

(B) manage financial matters;

(C) operate a motor vehicle;

(D) make personal decisions regarding residence, voting, and marriage; and

(E) consent to medical, dental, psychological, or psychiatric treatment;

(2) provide an evaluation of the proposed ward's physical condition and mental function and summarize the proposed ward's medical history if reasonably available;

(3) state how or in what manner the proposed ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the person's physical or mental health, including the proposed ward's ability to:

(A) understand or communicate;

(B) recognize familiar objects and individuals;

(C) perform simple calculations;

(D) reason logically; and

(E) administer to daily life activities;

(4) state whether any current medication affects the demeanor of the proposed ward or the proposed ward's ability to participate fully in a court proceeding;

(5) describe the precise physical and mental conditions underlying a diagnosis of a mental disability, and state whether the proposed ward would benefit from supports and services that would allow the individual to live in the least restrictive setting;

(6) in providing a description under Subdivision (1) of this subsection regarding the proposed ward's ability to operate a motor vehicle and make personal decisions regarding voting, state whether in the physician's opinion the proposed ward:

(A) has the mental capacity to vote in a public election; and

(B) has the ability to safely operate a motor vehicle; and

(7) include any other information required by the court.

(b) If the court determines it is necessary, the court may appoint the necessary physicians to examine the proposed ward. The court must make its determination with respect to the necessity for a physician's examination of the proposed ward at a hearing held for that purpose. Not later than the fourth day before the date of the hearing, the applicant shall give to the proposed ward and the proposed ward's attorney ad litem written notice specifying the purpose and the date and time of the hearing. A physician who examines the proposed ward, other than a physician or psychologist who examines the proposed ward under Subsection (c)(2) of this section, shall make available to an attorney ad litem appointed to represent the proposed ward, for inspection, a written letter or certificate from the physician that complies with the requirements of Subsection (a) of this section.

(c) If the basis of the proposed ward's alleged incapacity is mental retardation, the court may not grant an application to create a guardianship for the proposed ward unless the applicant presents to the court a written letter or certificate that:

- (1) complies with Subsection (a) of this section; or
- (2) shows that:

(A) not earlier than 24 months before the date of the hearing, the proposed ward has been examined by a physician or psychologist licensed in this state or certified by the Department of Aging and Disability Services to perform the examination, in accordance with rules of the executive commissioner of the Health and Human Services Commission governing examinations of that kind; and

(B) the physician's or psychologist's written findings and recommendations to the court include a statement as to whether the physician or psychologist has made a determination of mental retardation in accordance with Section 593.005, Health and Safety Code.

Added by Acts 1995, 74th Leg., ch. 1039, § 35, eff. Sept. 1, 1995. Subsec. (a) amended by Acts 1999, 76th Leg., ch. 379, § 8, eff. Sept. 1, 1999; Subsec. (b) amended by Acts 2001, 77th Leg., ch. 1174, § 3, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 549, § 12, eff. Sept. 1, 2003. Subsec. (a) amended by Acts 2007, 80th Leg., ch. 614, § 6, eff. Sept. 1, 2007. Amended by Acts 2009, 81st Leg., ch. 575, § 1, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 22, eff. Sept. 1, 2011.

§ 689. Preference of Ward

Before appointing a guardian, the court shall make a reasonable effort to consider the incapacitated person's preference of the person to be appointed guardian and, to the extent not inconsistent with other provisions of

this chapter, shall give due consideration to the preference indicated by the incapacitated person.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 690. Persons Appointed Guardian

Only one person may be appointed as guardian of the person or estate, but one person may be appointed guardian of the person and another of the estate, if it is in the best interest of the ward. Nothing in this section prohibits the joint appointment, if the court finds it to be in the best interest of the ward, of:

- (1) a husband and wife;
- (2) joint managing conservators;
- (3) coguardians appointed under the laws of a jurisdiction other than this state; or
- (4) both parents of an adult who is incapacitated if the incapacitated person:

(A) has not been the subject of a suit affecting the parent-child relationship; or

(B) has been the subject of a suit affecting the parent-child relationship and both of the incapacitated person's parents were named as joint managing conservators in the suit but are no longer serving in that capacity.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 36, eff. Sept. 1, 1995; Acts 2007, 80th Leg., ch. 614, § 7, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 692. Dismissal of Application

If it is found that an adult person possesses the capacity to care for himself or herself and to manage the individual's property as would a reasonably prudent person, the court shall dismiss the application for guardianship.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 38, eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 693. Order of Court

(a) If it is found that the proposed ward is totally without capacity to care for himself or herself, to manage the individual's property, to operate a motor vehicle, and to vote in a public election, the court may appoint a guardian of the individual's person or estate, or both, with full authority over the incapacitated person except as provided by law. An order appointing a guardian under this subsection must contain findings of fact and specify:

- (1) the information required by Subsection (c) of this section;
- (2) that the guardian has full authority over the incapacitated person;
- (3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the

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guardian to expend for the education and maintenance of the person under Section 776 of this code;

(4) whether the person is totally incapacitated because of a mental condition; and

(5) that the person does not have the capacity to operate a motor vehicle and to vote in a public election.

(b) If it is found that the person lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage the individual's property, the court may appoint a guardian with limited powers and permit the individual to care for himself or herself or to manage the individual's property commensurate with the individual's ability. An order appointing a guardian under this subsection must contain findings of fact and specify:

(1) the information required by Subsection (c) of this section;

(2) the specific powers, limitations, or duties of the guardian with respect to the care of the person or the management of the person's property by the guardian;

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to expend for the education and maintenance of the person under Section 776 of this code; and

(4) whether the person is incapacitated because of a mental condition and, if so, whether the person retains the right to vote in a public election or maintains eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code.

(c) The order of the court appointing a guardian must specify:

(1) the name of the person appointed;

(2) the name of the ward;

(3) whether the guardian is of the person or the estate, or of both, of the ward;

(4) the amount of any bond required;

(5) if it is a guardianship of the estate and the court deems an appraisal is necessary, one or more but not more than three disinterested persons to appraise the estate and to return the appraisal to the court; and

(6) that the clerk will issue letters of guardianship to the person appointed when the person has qualified according to law.

(d) An order appointing a guardian may not duplicate or conflict with the powers and duties of any other guardian.

(e) An order appointing a guardian or a successor guardian may specify a period of not more than one year during which a petition for adjudication that the incapacitated person no longer requires the guardianship may not be filed without special leave.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 39,

eff. Sept. 1, 1995. Subsecs. (a) & (b) amended by Acts 2007, 80th Leg., ch. 614, § 7, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 694. Term of Appointment of Guardian

(a) Unless otherwise discharged as provided by law, a guardian remains in office until the estate is closed.

(b) The guardianship shall be settled and closed when the incapacitated person:

(1) dies and, if the person was married, the person's spouse qualifies as survivor in community;

(2) is found by the court to have full capacity to care for himself or herself and to manage the person's property;

(3) is no longer a minor; or

(4) no longer must have a guardian appointed to receive funds due the person from any governmental source.

(c) An order appointing a guardian or a successor guardian may specify a period of not more than one year during which a petition for adjudication that the incapacitated person no longer requires the guardianship may not be filed without special leave.

(d) A request for an order under this section may be made by informal letter to the court. A person who knowingly interferes with the transmission of the request to the court may be adjudged guilty of contempt of court.

(e) If a nonresident guardian of a nonresident ward qualifies as guardian under this chapter, the guardianship of any resident guardian may be terminated.

(f) Repealed by Acts 1999, 76th Leg., ch. 379, § 10, eff. Sept. 1, 1999.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 40, eff. Sept. 1, 1995; Subsec. (b) amended by Acts 1999, 76th Leg., ch. 379, § 9, eff. Sept. 1, 1999; Subsec. (f) repealed by Acts 1999, 76th Leg., ch. 379, § 10, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 694A. Complete Restoration of Ward's Capacity or Modification of Guardianship

(a) A ward or any person interested in the ward's welfare may file a written application with the court for an order:

(1) finding that the ward is no longer an incapacitated person and ordering the settlement and closing of the guardianship;

(2) finding that the ward lacks the capacity to do some or all of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward's own physical health, or to manage the ward's own financial affairs and granting additional powers or duties to the guardian; or

(3) finding that the ward has the capacity to do some, but not all, of the tasks necessary to provide food, clothing, or shelter for himself or herself, to care for the ward's own physical health, or to manage the ward's own financial affairs and:

(A) limiting the powers or duties of the guardian; and

(B) permitting the ward to care for himself or herself or to manage the ward's own financial affairs commensurate with the ward's ability.

(b) A ward may make a request for an order under this section by informal letter to the court. A person who knowingly interferes with the transmission of the request to the court may be adjudged guilty of contempt of court.

(c) On receipt of an informal letter under Subsection (b) of this section, the court shall appoint the court investigator or a guardian ad litem to investigate the circumstances of the ward, including any circumstances alleged in the informal letter, to determine whether the ward is no longer an incapacitated person or whether a modification of the guardianship is necessary. The court investigator or guardian ad litem shall file with the court a report of the investigation's findings and conclusions and, if the court investigator or the guardian ad litem determines that it is in the best interest of the ward to terminate or modify the guardianship, the court investigator or guardian ad litem, as appropriate, shall file an application under Subsection (a) of this section on the ward's behalf. A guardian ad litem appointed under this subsection may also be appointed by the court to serve as attorney ad litem under Section 694C of this code.

(d) When an application is filed under this section, citation shall be served on the ward's guardian and on the ward if the ward is not the applicant.

(e) Except as otherwise provided by the court, on good cause shown by the applicant, a person may not reapply for complete restoration of a ward's capacity or modification of a ward's guardianship before the first anniversary of the date of the hearing on the last preceding application.

Added by Acts 1995, 74th Leg., ch. 1039, § 41, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 829, § 5, eff. Sept. 1, 1999. Subsec. (c) amended by 2005 Acts, 79th Leg., ch. 200, § 4, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 694B. Contents of Application

An application filed under Section 694A of this code must be sworn to by the applicant and must:

(1) contain the name, sex, date of birth, and address of the ward;

(2) contain the name and address of any person serving as guardian of the person of the ward on the date the application is filed;

(3) contain the name and address of any person serving as guardian of the estate of the ward on the date the application is filed;

(4) state the nature and description of the ward's guardianship;

(5) state the specific areas of protection and assistance and any limitation of rights that exist;

(6) state whether the relief being sought is:

(A) a restoration of the ward's capacity because the ward is no longer an incapacitated person;

(B) the granting of additional powers or duties to the guardian; or

(C) the limitation of powers granted to or duties performed by the guardian;

(7) if the relief being sought under the application is described by Subdivision (6)(B) or (C) of this section, state:

(A) the nature and degree of the ward's incapacity;

(B) the specific areas of protection and assistance to be provided to the ward and requested to be included in the court's order; and

(C) any limitation of the ward's rights requested to be included in the court's order;

(8) state the approximate value and description of the ward's property, including any compensation, pension, insurance, or allowance to which the ward is or may be entitled; and

(9) if the ward is 60 years of age or older, contain the names and addresses, to the best of the applicant's knowledge, of the ward's spouse, siblings, and children or, if there is no known spouse, sibling, or child, the names and addresses of the ward's next of kin.

Added by Acts 1999, 76th Leg., ch. 829, § 6, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 694C. Appointment of Attorney ad Litem

(a) The court shall appoint an attorney ad litem to represent a ward in a proceeding for the complete restoration of the ward's capacity or for the modification of the ward's guardianship.

(b) Unless otherwise provided by the court, an attorney ad litem appointed under this section shall represent the ward only for purposes of the restoration or modification proceeding.

(c) An attorney ad litem appointed under this section is entitled to reasonable compensation for services in the amount set by the court to be taxed as costs in the proceeding, regardless of whether the proceeding results in the restoration of the ward's capacity or a modification of the ward's guardianship.

Added by Acts 1999, 76th Leg., ch. 829, § 6, eff. Sept. 1, 1999. Subsec. (c) added by Acts 2007, 80th Leg., ch. 614, § 9, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 694D. Hearing

(a) At a hearing on an application for complete restoration of a ward's capacity or modification of a ward's guardianship, the court shall consider only evidence regarding the ward's mental or physical capacity at the time of the hearing that is relevant to the restoration of capacity or modification of the guardianship, as appropriate.

(b) The party who filed the application has the burden of proof at the hearing.

Added by Acts 1999, 76th Leg., ch. 829, § 6, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 694E. Findings Required

(a) Before ordering the settlement and closing of the guardianship under an application filed under Section 694A of this code, the court must find by a preponderance of the evidence that the ward is no longer partially or fully incapacitated.

(b) Before granting additional powers to the guardian or requiring the guardian to perform additional duties under an application filed under Section 694A of this code, the court must find by a preponderance of the evidence that the current nature and degree of the ward's incapacity warrants a modification of the guardianship and that some or all of the ward's rights need to be further restricted.

(c) Before limiting the powers granted to or duties required to be performed by the guardian under an application filed under Section 694A of this code, the court must find by a preponderance of the evidence that the current nature and degree of the ward's incapacity warrants a modification of the guardianship and that some of the ward's rights need to be restored.

Added by Acts 1999, 76th Leg., ch. 829, § 6, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 694F. Examinations and Reports Relating to Complete Restoration of Ward's Capacity or Modification of Guardianship

(a) The court may not grant an order completely restoring a ward's capacity or modifying a ward's guardianship under an application filed under Section 694A of this code unless, in addition to other requirements prescribed by this code, the applicant presents to the court a written letter or certificate from a physician licensed in this state that is dated not earlier than the 120th day before the date of the filing of the application or dated after the date on which the application was filed but before the date of the hearing. The letter or certificate must:

(1) describe the nature and degree of incapacity, including the medical history if reasonably available, or state that, in the physician's opinion, the ward has the capacity to provide food, clothing, and shelter for himself or herself, to care for the

ward's own physical health, and to manage the financial affairs of the ward;

(2) provide a medical prognosis specifying the estimated severity of any incapacity;

(3) state how or in what manner the ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the person's physical or mental health;

(4) state whether any current medication affects the demeanor of the ward or the ward's ability to participate fully in a court proceeding;

(5) describe the precise physical and mental conditions underlying a diagnosis of senility, if applicable; and

(6) include any other information required by the court.

(b) If the court determines it is necessary, the court may appoint the necessary physicians to examine the ward in the same manner and to the same extent as a ward is examined by a physician under Section 687 of this code.

Added by Acts 1999, 76th Leg., ch. 829, § 6, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 694G. Order of Complete Restoration of Ward's Capacity

If the court finds that a ward is no longer an incapacitated person, the order completely restoring the ward's capacity must contain findings of fact and specify:

(1) the information required by Section 694J of this code;

(2) that the ward is no longer an incapacitated person;

(3) that there is no further need for a guardianship of the person or estate of the ward;

(3-a) if the ward's incapacity resulted from a mental condition, that the ward's mental capacity is completely restored;

(4) that the guardian is required to:

(A) immediately settle the guardianship in accordance with this chapter; and

(B) deliver all of the remaining guardianship estate to the ward; and

(5) that the clerk shall revoke letters of guardianship when the guardianship is finally settled and closed.

Added by Acts 1999, 76th Leg., ch. 829, § 6, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 484, § 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1174, § 4, eff. Sept. 1, 2001. Subsec. (3-a) added by Acts 2007, 80th Leg., ch. 614, § 10, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 694H. Modification of Guardianship

If the court finds that a guardian's powers or duties should be expanded or limited, the order modifying the guardianship must contain findings of fact and specify:

(1) the information required by Section 694J of this code;

(2) the specific powers, limitations, or duties of the guardian with respect to the care of the ward or the management of the property of the ward, as appropriate;

(3) the specific areas of protection and assistance to be provided to the ward;

(4) any limitation of the ward's rights;

(5) if the ward's incapacity resulted from a mental condition, whether the ward retains the right to vote; and

(6) that the clerk shall modify the letters of guardianship to the extent applicable to conform to the order.

Added by Acts 1999, 76th Leg., ch. 829, § 6, eff. Sept. 1, 1999. Amended by Acts 2007, 80th Leg., ch. 614, § 10, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 694I. Dismissal of Application

If the court finds that a modification of the ward's guardianship is not necessary, including that the ward's capacity has not been restored, the court shall dismiss the application and enter an order that contains findings of fact and specifies:

(1) the information required by Section 694J of this code; and

(2) that the powers, limitations, or duties of the guardian with respect to the care of the ward or the management of the ward's property will remain unchanged.

Added by Acts 1999, 76th Leg., ch. 829, § 6, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 694J. Contents of Order

(a) A court order entered with respect to a request made under Section 694A of this code to completely restore a ward's capacity or modify a ward's guardianship must:

(1) contain the name of the guardian;

(2) contain the name of the ward; and

(3) state whether the type of guardianship being addressed at the proceeding is a:

(A) guardianship of the person;

(B) guardianship of the estate; or

(C) guardianship of both the person and the estate.

(b) In an order described by this section, the court may not grant a power to a guardian or require the guardian to perform a duty that is a power granted to or a duty required to be performed by another guardian.

Added by Acts 1999, 76th Leg., ch. 829, § 6, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 694K. Attorney Retained on Ward's Behalf

(a) A ward may retain an attorney for a proceeding involving the complete restoration of the ward's capacity or modification of the ward's guardianship.

(b) The court may order that compensation for services provided by an attorney retained under this section be paid from funds in the ward's estate only if the court finds that the attorney had a good-faith belief that the ward had the capacity necessary to retain the attorney's services.

Added by Acts 1999, 76th Leg., ch. 829, § 6, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 694L. Payment for Guardians Ad Litem

As provided by Section 645(b) of this code, a guardian ad litem appointed in a proceeding involving the complete restoration of a ward's capacity or modification of a ward's guardianship is entitled to reasonable compensation for services in the amount set by the court to be taxed as costs in the proceeding, regardless of whether the proceeding results in the restoration of the ward's capacity or modification of the ward's guardianship.

Added by Acts 2007, 80th Leg., ch. 614, § 11, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 695. Appointment of Successor Guardian

(a) If a guardian dies, resigns, or is removed, the court may, on application and on service of notice as directed by the court, appoint a successor guardian. On a finding that a necessity for the immediate appointment of a successor guardian exists, the court may appoint a successor guardian without citation or notice.

(b) A successor guardian has the powers and rights and is subject to all of the duties of the preceding guardian.

(c) The court may appoint the Department of Aging and Disability Services as a successor guardian of the person or estate, or both, of a ward who has been adjudicated as totally incapacitated if:

(1) there is no less restrictive alternative to continuation of the guardianship;

(2) there is no family member or other suitable person, including a guardianship program, willing and able to serve as the ward's successor guardian;

(3) the ward is located more than 100 miles from the court that created the guardianship;

(4) the ward has private assets or access to government benefits to pay for the needs of the ward;

(5) the department is served with citation and a hearing is held regarding the department's appointment as proposed successor guardian; and

(6) the appointment of the department does not violate a limitation imposed by Subsection (d) of this section.

(d) The number of appointments under Subsection (c) of this section is subject to an annual limit of 55. The appointments must be distributed equally or as near as equally as possible among the health and human services regions of this state. The Department of Aging and Disability Services at its discretion may establish a different distribution scheme to promote the efficient use and administration of resources.

(e) If the Department of Aging and Disability Services is named as a proposed successor guardian in an application in which the department is not the applicant, citation must be issued and served on the department as provided by Section 633(c)(5) of this code.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (a) amended by Acts 2007, 80th Leg., ch. 614, § 11, eff. Sept. 1, 2007. Subsecs. (c), (d), (e) added by Acts 2009, 81st Leg., ch. 726, § 3, eff. June 19, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 695A. Successor Guardians for Wards of Guardianship Programs or Governmental Entities

(a) If a guardianship program or governmental entity serving as a guardian for a ward under this chapter becomes aware of a family member or friend of the ward or any other interested person who is willing and able to serve as the ward's successor guardian, the program or entity shall notify the court in which the guardianship is pending of the individual's willingness and ability.

(a-1) If, while serving as a guardian for a ward under this chapter, the Department of Aging and Disability Services becomes aware of a guardianship program or private professional guardian willing and able to serve as the ward's successor guardian and the department is not aware of a family member or friend of the ward or any other interested person who is willing and able to serve as the ward's successor guardian, the department shall notify the court in which the guardianship is pending of the guardianship program's or private professional guardian's willingness and ability to serve.

(b) When the court is notified of the existence of a proposed successor guardian under Subsection (a) of this section or the court otherwise becomes aware of a family member, friend, or any other interested person who is willing and able to serve as a successor guardian for a ward of a guardianship program or governmental entity, the court shall determine whether the proposed successor guardian is qualified to serve under this chapter as the ward's successor guardian.

(c) If the court finds under Subsection (b) of this section that the proposed successor guardian for a ward is not disqualified from being appointed as the ward's successor guardian under Section 681 of this code and that the appointment is in the ward's best interests, the guardianship program or governmental entity serving as the ward's guardian or the court, on the court's own

motion, may file an application to appoint the individual as the ward's successor guardian. Service of notice on an application filed under this subsection shall be made as directed by the court.

Added by Acts 1999, 76th Leg., ch. 906, § 1, eff. Sept. 1, 1999. Subsec. (a-1) added by Acts 2005, 79th Leg., ch. 268, § 3.10, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 696. Appointment of Private Professional Guardians

A court may not appoint a private professional guardian to serve as a guardian or permit a private professional guardian to continue to serve as a guardian under this code if the private professional guardian:

- (1) has not complied with the requirements of Section 697 of this code; or
- (2) is not certified as provided by Section 697B of this code.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsecs. (1), (2) added by Acts 2005, 79th Leg., ch. 268, § 3.11, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 696A. Appointment of Public Guardians

(a) An individual employed by or contracting with a guardianship program must be certified as provided by Section 697B of this code to provide guardianship services to a ward of the guardianship program.

(b) An employee of the Department of Aging and Disability Services must be certified as provided by Section 697B of this code to provide guardianship services to a ward of the department.

Added by Acts 2005, 79th Leg., ch. 268, § 3.12, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 696B. Appointment of Family Members or Friends

A family member or friend of an incapacitated person is not required to be certified under Subchapter C, Chapter 111, Government Code, or any other law to serve as the person's guardian.

Added by Acts 2005, 79th Leg., ch. 268, § 3.12, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 697. Registration of Private Professional Guardians

(a) A private professional guardian must apply annually to the clerk of the county having venue over the proceeding for the appointment of a guardian for a certificate of registration. The application must include a sworn statement containing the following information concerning a private professional guardian or each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian:

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(1) educational background and professional experience;

(2) three or more professional references;

(3) the names of all of the wards the private professional guardian or person is or will be serving as a guardian;

(4) the aggregate fair market value of the property of all wards that is being or will be managed by the private professional guardian or person;

(5) place of residence, business address, and business telephone number;

(6) whether the private professional guardian or person has ever been removed as a guardian by the court or resigned as a guardian in a particular case, and, if so, a description of the circumstances causing the removal or resignation, and the style of the suit, the docket number, and the court having jurisdiction over the proceeding; and

(7) the certification number or provisional certification number issued by the Guardianship Certification Board to the private professional guardian or person.

(b) The application must be accompanied by a nonrefundable fee set by the clerk in an amount necessary to cover the cost of administering this section.

(c) The term of the registration begins on the date that the requirements are met and extends through December 31 of the initial year. After the initial year of registration, the term of the registration begins on January 1 and ends on December 31 of each year. A renewal application must be completed during December of the year preceding the year for which the renewal is requested.

(d) The clerk shall bring the information received under this section to the judge's attention for review. The judge shall use the information only in determining whether to appoint, remove, or continue the appointment of a private professional guardian.

(e) Not later than January 31 of each year, the clerk shall submit to the Guardianship Certification Board the names and business addresses of private professional guardians who have satisfied the registration requirements under this section during the preceding year.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (a) amended by and Subsec. (e) added by Acts 1999, 76th Leg., ch. 1116, § 2, eff. Sept. 1, 1999. Subsecs. (a), (c), (e) amended by Acts 2005, 79th Leg., ch. 268, § 3.13, eff. Sept. 1, 2005. Subsecs. (a), (e) amended by Acts 2009, 81st Leg., ch. 510, § 2, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 697A. List of Certain Public Guardians Maintained by County Clerks or Guardianship Certification Board

(a) Not later than January 31 of each year, each guardianship program operating in a county shall

submit to the county clerk a copy of the report submitted to the Guardianship Certification Board under Section 111.044, Government Code.

(b) Not later than January 31 of each year, the Department of Aging and Disability Services shall submit to the Guardianship Certification Board a statement containing:

(1) the name, address, and telephone number of each department employee who is or will be providing guardianship services to a ward or proposed ward on behalf of the department; and

(2) the name of each county in which each employee named in Subdivision (1) of this subsection is providing or is authorized to provide those services.

Added by Acts 2005, 79th Leg., ch. 268, § 3.14, eff. Sept. 1, 2005. Heading and Subsecs. (b) & (c) amended by Acts 2007, 80th Leg., ch. 291, §§ 1 & 2, eff. Sept. 1, 2007. Amended by Acts 2009, 81st Leg., ch. 510, § 3, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 697B. Certification Requirement for Private Professional Guardians and Public Guardians

(a) The following persons must be certified under Subchapter C, Chapter 111, Government Code:

(1) an individual who is a private professional guardian;

(2) an individual who will represent the interests of a ward as a guardian on behalf of a private professional guardian;

(3) an individual providing guardianship services to a ward of a guardianship program on the program's behalf, except as provided by Subsection (d) of this section; and

(4) an employee of the Department of Aging and Disability Services providing guardianship services to a ward of the department.

(b) A person whose certification has expired must obtain a new certification under Subchapter C, Chapter 111, Government Code, to be allowed to provide or continue to provide guardianship services to a ward under this code.

(c) The court shall notify the Guardianship Certification Board if the court becomes aware of a person who is not complying with the terms of a certification issued under Subchapter C, Chapter 111, Government Code, or with the standards and rules adopted under that subchapter.

(d) An individual volunteering with a guardianship program or with the Department of Aging and Disability Services is not required to be certified as provided by this section to provide guardianship services or other services under Section 161.114, Human Resources Code, on the program's or the department's behalf.

(e) In this section, "certified" includes holding a provisional certificate under Section 111.0421, Government Code.

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Added by Acts 2005, 79th Leg., ch. 268, § 3.14, eff. Sept. 1, 2005. Subsec. (e) added by Acts 2007, 80th Leg., ch. 16, § 3, eff. April 25, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 599, § 10, eff. Sept. 1, 2011.

§ 698. Access to Criminal History Records

(a) Except as provided by Subsections (a-1), (a-5), and (a-6) of this section, the clerk of the county having venue over the proceeding for the appointment of a guardian shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to:

- (1) a private professional guardian;
- (2) each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian;
- (3) each person employed by a private professional guardian who will:
 - (A) have personal contact with award or proposed ward;
 - (B) exercise control over and manage a ward's estate; or
 - (C) perform any duties with respect to the management of a ward's estate;
- (4) each person employed by or volunteering or contracting with a guardianship program to provide guardianship services to a ward of the program on the program's behalf; or
- (5) any other person proposed to serve as a guardian under this chapter, including a proposed temporary guardian and a proposed successor guardian, other than the ward's or proposed ward's family member or an attorney.

(a-1) The Department of Aging and Disability Services shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to each individual who is or will be providing guardianship services to a ward of or referred by the department, including:

- (1) an employee of or an applicant selected for an employment position with the Department of Aging and Disability Services;
- (2) a volunteer or an applicant selected to volunteer with the Department of Aging and Disability Services;
- (3) an employee of or an applicant selected for an employment position with a business entity or other person that contracts with the Department of Aging and Disability Services to provide guardianship services to a ward referred by the department; and
- (4) a volunteer or an applicant selected to volunteer with a business entity or other person described by Subdivision (3) of this subsection.

(a-2) The information in Subsection (a-1) of this section regarding applicants for employment positions must be obtained before an offer of employment, and

the information regarding applicant volunteers must be obtained before the person's contact with a ward of or referred by the Department of Aging and Disability Services.

(a-3) The information in Subsection (a-1) of this section regarding employees or volunteers providing guardianship services must be obtained annually.

(a-4) The Department of Aging and Disability Services shall provide the information obtained under Subsection (a-1) of this section to:

- (1) the clerk of the county having venue over the guardianship proceeding at the request of the court; and
- (2) the Guardianship Certification Board at the request of the board.

(a-5) Not later than the 10th day before the date of the hearing to appoint a guardian, a person may submit to the clerk a copy of the person's criminal history record information required under Subsection (a)(5) of this section that the person obtains from the Department of Public Safety or the Federal Bureau of Investigation not earlier than the 30th day before the date of the hearing.

(a-6) The clerk described by Subsection (a) of this section is not required to obtain criminal history record information for a person who holds a certificate issued under Section 111.042, Government Code, or a provisional certificate issued under Section 111.0421, Government Code, if the Guardianship Certification Board conducted a criminal history check on the person before issuing or renewing the certificate. The board shall provide to the clerk at the court's request the criminal history record information that was obtained from the Department of Public Safety or the Federal Bureau of Investigation.

(b) The criminal history record information obtained or provided under Subsection (a), (a-5), or (a-6) of this section is for the exclusive use of the court and is privileged and confidential. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order or consent of the person being investigated. The county clerk may destroy the criminal history information records after the records are used for the purposes authorized by this section.

(b-1) The criminal history record information obtained under Subsection (a-4) of this section is for the exclusive use of the court or Guardianship Certification Board, as appropriate, and is privileged and confidential. The information may not be released or otherwise disclosed to any person or agency except on court order, with the consent of the person being investigated, or as authorized by Subsection (a-6) of this section or Section 411.1386(a-6), Government Code. The county clerk or Guardianship Certification Board may destroy the criminal history record information after the information is used for the purposes authorized by this section.

(c) The court shall use the information obtained under this section only in determining whether to:

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(1) appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the Department of Aging and Disability Services; or

(2) appoint any other person proposed to serve as a guardian under this chapter, including a proposed temporary guardian and a proposed successor guardian, other than the ward's or proposed ward's family member or an attorney.

(c-1) Criminal history record information obtained by the Guardianship Certification Board under Subsection (a-4)(2) of this section may be used for any purpose related to the issuance, denial, renewal, suspension, or revocation of a certificate issued by the board.

(d) A person commits an offense if the person releases or discloses any information received under this section without the authorization prescribed by Subsection (b) or (b-1) of this section. An offense under this subsection is a Class A misdemeanor.

(e) The clerk may charge a \$10 fee to recover the costs of obtaining criminal history information records authorized by Subsection (a) of this section.

(f) This section does not prohibit the Department of Aging and Disability Services from obtaining and using criminal history record information as provided by other law.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (a) amended by Acts 1999, 76th Leg., ch. 1116, § 3, eff. Sept. 1, 1999. Subsecs. (a), (c) amended by Acts 2005, 79th Leg., ch. 268, § 3.15, eff. Sept. 1, 2005. Amended by Acts 2007, 80th Leg., ch. 361, § 3, eff. Sept. 1, 2007. Subsecs. (a), (b), (b-1) amended and subsec. (a-6) added by acts 2009, 81st Leg., ch. 511, § 3, eff. June 19, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart B. Qualification

§ 699. How Guardians Qualify

A guardian is deemed to have duly qualified when the guardian has taken and filed the oath required under Section 700 of this code, has made the required bond, and has filed it with the clerk, and has the bond approved by the judge. A guardian who is not required to make bond, is deemed to have duly qualified when the guardian has taken and filed the required oath.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 700. Oath of Guardian

(a) The guardian shall take an oath to discharge faithfully the duties of guardian for the person or estate, or both, of a ward.

(b) A representative of the Department of Aging and Disability Services shall take the oath required by

Subsection (a) of this section if the department is appointed guardian.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1022, § 101, eff. Sept. 1, 1997. Subsec. (b) amended by Acts 2005, 79th Leg., ch. 268, § 3.16, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 701. Time for Taking Oath and Giving Bond

Except as provided by Section 682A(a) of this code, the oath of a guardian may be taken and subscribed, or the bond of a guardian may be given and approved, at any time before the expiration of the 20th day after the date of the order granting letters of guardianship, or before the letters have been revoked for a failure to qualify within the time allowed. An oath may be taken before any person authorized to administer oaths under the laws of this state.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 217, § 11, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 702. Bond Required of Guardian of the Person or Estate

(a) Except as provided by Subsections (b) and (c) of this section, a guardian of the person or of the estate of a ward is required to give bond.

(b) A bond is not required to be given by a guardian that is:

(1) a corporate fiduciary, as defined by Section 601 of this code; or

(2) a guardianship program operated by a county.

(c) When a will that is made by a surviving parent and is probated in a court in this state or a written declaration that is made by a surviving parent directs that the guardian appointed in the will or declaration serve without bond, the court finding that the person is qualified shall issue letters of guardianship of the person to the person named to be appointed guardian in the will or declaration without requirement of bond. The court may not waive the requirement of a bond for the guardian of the estate of a ward, regardless of whether a surviving parent's will or declaration directs the court to waive the bond.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (b) amended by Acts 1995, 74th Leg., ch. 642, § 13, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 1039, § 42, eff. Sept. 1, 1995; Subsec. (b) amended by Acts 1997, 75th Leg., ch. 924, § 1, eff. Sept. 1, 1997; Subsec. (c) amended by Acts 1999, 76th Leg., ch. 1078, § 1, eff. Sept. 1, 1999; Subsec. (b) amended by Acts 2001, 77th Leg., ch. 217, § 12, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 702A. Types of Bonds Acceptable for Guardian of the Person

(a) This section applies only to a bond required to be posted by a guardian of the person of a ward when there is no guardian of the ward's estate.

(b) To ensure the performance of the guardian's duties, the court may accept only:

- (1) a corporate surety bond;
- (2) a personal surety bond;
- (3) a deposit of money instead of a surety bond;

or

- (4) a personal bond.

(c) In determining the appropriate type and amount of bond to set for the guardian, the court shall consider:

- (1) the familial relationship of the guardian to the ward;
- (2) the guardian's ties to the community;
- (3) the guardian's financial condition;
- (4) the guardian's past history of compliance with the court; and
- (5) the reason the guardian may have previously been denied a corporate surety bond.

Added by Acts 1997, 75th Leg., ch. 924, § 2, eff. Sept. 1, 1997. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 703. Bond of Guardian of the Estate

(a) Except when bond is not required under this chapter, before being issued letters of guardianship of estates, the recipient of letters shall give a bond that is conditioned as required by law and that is payable to the judge of the county in which the guardianship proceedings are pending or to the judge's successors in office. A bond of the guardian of the estate must have the written approval of either of the judges in the judge's official capacity and shall be executed and approved in accordance with Subsections (b)-(q) of this section.

(b) The judge shall set the penalty of the bond in an amount that is sufficient to protect the guardianship and its creditors, as provided by this chapter.

(c) If a bond is or will be required of a guardian of an estate, the court, before setting the penalty of the bond, shall hear evidence and determine:

- (1) the amount of cash on hand and where deposited, and the amount of cash estimated to be needed for administrative purposes, including the operation of a business, factory, farm, or ranch owned by the guardianship estate, and administrative expenses for one year;
- (2) the revenue anticipated to be received in the succeeding 12 months from dividends, interest, rentals, or use of real or personal property belonging to the guardianship estate and the aggregate amount of any installments or periodic payments to be collected;
- (3) the estimated value of certificates of stock, bonds, notes, or securities of the ward, the name of the depository in which the stocks, bonds, notes, or

securities of the ward are held for safekeeping, the face value of life insurance or other policies payable to the person on whose guardianship administration is sought or to the person's estate, and other personal property that is owned by the guardianship, or by a person with a disability; and

- (4) the estimated amount of debts due and owing by the ward.

(d) The judge shall set the penalty of the bond in an amount equal to the estimated value of all personal property belonging to the ward, with an additional amount to cover revenue anticipated to be derived during the succeeding 12 months from interest, dividends, collectible claims, the aggregate amount of any installments or periodic payments exclusive of income derived or to be derived from federal social security payments, and rentals for use of real and personal property, provided that the penalty of the original bond shall be reduced in proportion to the amount of cash or value of securities or other assets authorized or required to be deposited or placed in safekeeping by court order, or voluntarily made by the guardian or by the sureties on the bond of the guardian as provided in Subsections (f) and (g) of this section.

(e) If the court considers it to be in the best interests of the ward, the court may require that the guardian and the corporate or personal sureties on the bond of the guardian of the ward agree to deposit any or all cash and safekeeping of other assets of the guardianship estate in a financial institution as defined by Section 201.101, Finance Code, with its main office or a branch office in this state and qualified to act as a depository in this state under the laws of this state or of the United States, and, if the depository is otherwise proper, the court may require the deposit to be made in a manner so as to prevent the withdrawal of the money or other assets in the guardianship estate without the written consent of the surety or on court order made on the notice to the surety. An agreement made by a guardian and the sureties on the bond of the guardian under this section does not release from liability or change the liability of the principal or sureties as established by the terms of the bond.

(f) Cash, securities, or other personal assets of a ward that a ward is entitled to receive may, and if it is deemed by the court in the best interests of the ward shall, be deposited or placed in safekeeping in one or more of the depositories described in this section on the terms prescribed by the court. The court in which the guardianship proceeding is pending, on its own motion or on written application of the guardian or of any other person interested in the ward, may authorize or require additional assets of the guardianship estate then on hand or as they accrue during the pendency of the guardianship proceeding to be deposited or held in safekeeping as provided by this section. The amount of the guardian's bond shall be reduced in proportion to the cash deposited or the value of the securities or other assets placed in safekeeping. Cash that is deposited, securities or other assets held in safekeeping, or

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portions of the cash, securities, or other assets held in safekeeping may be withdrawn from a depository only on court order. The bond of the guardian shall be increased in proportion to the amount of cash or the value of securities or other assets that are authorized to be withdrawn.

(g) In lieu of giving a surety or sureties on a bond that is required of the guardian, or for purposes of reducing the amount of the bond, the guardian of an estate may deposit out of the guardian's own assets cash or securities that are acceptable to the court with a financial institution as defined by Section 201.101, Finance Code, with its main office or a branch office in this state. If the deposit is otherwise proper, the deposit must be equal in amount or value to the amount of the bond required or the bond shall be reduced by the value of assets that are deposited.

(h) The depository shall issue a receipt for a deposit in lieu of a surety showing the amount of cash or, if securities, the amount and description of the securities and agreeing not to disburse or deliver the cash or securities except on receipt of a certified copy of an order of the court in which the proceeding is pending. The receipt must be attached to the guardian's bond and be delivered to and filed by the county clerk after the receipt is approved by the judge.

(i) The amount of cash or securities on deposit may be increased or decreased by court order from time to time as the interests of the guardianship shall require.

(j) A cash or security deposit in lieu of a surety on the bond may be withdrawn or released only on order of a court that has jurisdiction.

(k) A creditor has the same rights against the guardian and the deposits as are provided for recovery against sureties on a bond.

(l) The court on its own motion or on written application by the guardian or any other person interested in the guardianship may require that the guardian give adequate bond in lieu of the deposit or may authorize withdrawal of the deposit and substitution of a bond with sureties on the bond. In either case, the guardian shall file a sworn statement showing the condition of the guardianship. The guardian is subject to removal as in other cases if the guardian does not file the sworn statement before the 21st day after the guardian is personally served with notice of the filing of the application or before the 21st day after the date the court enters its motion. The deposit may not be released or withdrawn until the court is satisfied as to the condition of the guardianship estate, determines the amount of bond, and receives and approves the bond.

(m) On the closing of a guardianship, a deposit or a portion of a deposit that remains on hand, whether of the assets of the guardian, the guardianship, or surety, shall be released by court order and paid to the person entitled to the assets. A writ of attachment or garnishment does not lie against the deposit except as to claims of creditors of the guardianship being administered or of persons interested in the

guardianship, including distributees and wards, and only if the court has ordered distribution, and only to the extent of the ordered distribution.

(n) The surety on the bond may be an authorized corporate or personal surety.

(o) When the bond is more than \$50,000, the court may require that the bond be signed by two or more authorized corporate sureties or by one corporate surety and two or more good and sufficient personal sureties. The guardianship shall pay the cost of a bond with corporate sureties.

(p) If the sureties are natural persons, there may not be less than two sureties, each of whom shall make affidavit in the manner prescribed by this chapter. The judge must be satisfied that each surety owns property in this state, over and above that exempt by law, sufficient to qualify as a surety as required by law. Except as otherwise provided by law, only one surety is required if the surety is an authorized corporate surety. A personal surety, instead of making an affidavit or creating a lien on specific real estate when an affidavit or lien is required, may deposit the personal surety's own cash or securities in the same manner as a guardian in lieu of pledging real property as security, subject to the provisions covering the deposits when made by guardians.

(q) If the guardian is a temporary guardian, the judge shall set the amount of the bond.

(r) The provisions of this section relating to the deposit of cash and safekeeping of securities cover, as far as they may apply, the orders entered by the court when:

- (1) real or personal property of a guardianship has been authorized to be sold or rented;
- (2) money is borrowed from the guardianship;
- (3) real property, or an interest in real property, has been authorized to be leased for mineral development or made subject to unitization;
- (4) the general bond has been found insufficient; or
- (5) money is borrowed or invested on behalf of a ward.

(s) In determining the amount of the bond, the court may not take into account the assets of the estate that are placed in a management trust under Subpart N, Part 4.1 of this code.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsecs. (e), (g) amended by Acts 1999, 76th Leg., ch. 344, § 6.006, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 704. Form of Bond

The following form, or the same in substance, may be used for the bonds of guardians:

"The State of Texas

"County of _____

"Know all men by these presents that we, A.B., as principal, and E.F., as sureties, are held and firmly bound to the county judge of the County of ____ and

his successors in office, in the sum of \$ ____; conditioned that the above bound A.B., who has been appointed by the judge of the county as guardian or temporary guardian of the person or of the estate, or both, _____, stating in each case whether or not the person is a minor or an incapacitated person other than a minor, shall well and truly perform all of the duties required of the guardian or temporary guardian of the estate by law under appointment.”

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 705. Bond to be Filed

A bond required under this chapter shall be subscribed by the principals and sureties, and shall be filed with the clerk when approved by the court.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 706. Bond of Joint Guardians

When two or more persons are appointed guardians and are required to give a bond by the court or under this chapter, the court may require either a separate bond from each person or one joint bond from all of the persons.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 707. Bond of Married Persons

When a married person is appointed guardian, the person may jointly execute, with or without, the person’s spouse, the bond required by law. The bond shall bind the person’s separate estate and may bind the person’s spouse only if the bond is signed by the spouse.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 708. Bond of Married Person Younger than 18 Years of Age

When a person who is younger than 18 years of age and is or has been married accepts and qualifies as guardian, a bond required to be executed by the person shall be as valid and binding for all purposes as if the person were of lawful age.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 708A. Bond of Guardianship Program

The judge may require a guardianship program that is appointed guardian under this chapter to file one bond that:

(1) meets all the conditions required under this chapter; and

(2) is in an amount that is sufficient to protect the guardianship and the creditors of the guardianship of all of the wards of the guardianship program.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 709. Affidavit of Personal Surety; Lien on Specific Property when Required; Subordination of Lien Authorized

(a) Before a judge considers a bond with a personal surety, each personal surety shall execute an affidavit stating the amount of the surety’s assets, reachable by creditors, of a value over and above the surety’s liabilities. The total of the surety’s worth must be equal to at least double the amount of the bond. The affidavit shall be presented to the judge for the judge’s consideration and, if approved, shall be attached to and form part of the bond.

(b) If the judge finds that the estimated value of personal property of the guardianship that cannot be deposited or held in safekeeping as provided by this section is such that personal sureties cannot be accepted without the creation of a specific lien on the real property of the sureties, the judge shall enter an order requiring that each surety designate real property owned by the surety in this state subject to execution. The designated property must be of a value over and above all liens and unpaid taxes, equal at least to the amount of the bond, giving an adequate legal description of the property, all of which shall be incorporated in an affidavit by the surety, approved by the judge, and attached to and form part of the bond. If the surety does not comply with the order, the judge may require that the bond be signed by an authorized corporate surety or by an authorized corporate surety and two or more personal sureties.

(c) If a personal surety who has been required to create a lien on specific real estate desires to lease the real property for mineral development, the personal surety may file the surety’s written application in the court in which the proceeding is pending to request subordination of the lien to the proposed lease. The judge of the court in which the proceeding is pending may enter an order granting the application. A certified copy of an order entered under this subsection that is filed and recorded in the deed records of the proper county is sufficient to subordinate the lien to the rights of a lessee in the proposed lease.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 710. Bond as Lien on Real Property of Surety

When a personal surety is required by the court to create a lien on specific real property as a condition of

the personal surety's acceptance as surety on a bond, a lien on the surety's real property in this state that is described in the affidavit of the surety, and only on the property, shall arise as security for the performance of the obligation of the bond. Before letters are issued to the guardian, the clerk of the court shall mail to the office of the county clerk of each county in which any real property set forth in the surety's affidavit is located a statement signed by the clerk that gives a sufficient description of the real property, the name of the principal and sureties, the amount of the bond, the name of the guardianship, and the court in which the bond is given. The county clerk to whom such statement is sent shall record the statement in the deed records of the county. The recorded statement shall be duly indexed in such a manner that the existence and character of a lien may conveniently be determined, and the recording and indexing of the statement is constructive notice to a person of the existence of the lien on the real property located in the county, effective as of the date of the indexing.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 711. When New Bond May Be Required

A guardian may be required to give a new bond when:

- (1) one of the sureties on the bond dies, removes beyond the limits of the state, or becomes insolvent;
- (2) in the opinion of the court, the sureties on the bond are insufficient;
- (3) in the opinion of the court, the bond is defective;
- (4) the amount of the bond is insufficient;
- (5) one of the sureties petitions the court to be discharged from future liability on the bond; or
- (6) the bond and the record of the bond has been lost or destroyed.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 712. Demand for New Bond by Interested Person

A person interested in a guardianship may allege, on application in writing that is filed with the county clerk of the county in which the guardianship proceeding is pending, that the guardian's bond is insufficient or defective or has been, with the record of the bond, lost or destroyed, and may cause the guardian to be cited to appear and show cause why the guardian should not give a new bond.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 713. Judge to Require New Bond

When it is made known to a judge that a bond is insufficient or that the bond has, with the record of the bond, been lost or destroyed, the judge shall:

- (1) without delay and without notice enter an order requiring the guardian to give a new bond; or
- (2) without delay cause the guardian to be cited to show cause why the guardian should not give a new bond.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Acts 2007, 80th Leg., ch. 683, § 2, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 714. Order Requiring New Bond

(a) The order entered under Section 713(1) of this code must state the reasons for requiring a new bond, the amount of the new bond, and the time within which the new bond must be given, which may not be earlier than the 10th day after the date of the order. If the guardian opposes the order, the guardian may demand a hearing on the order. The hearing must be held before the expiration of the time within which the new bond must be given.

(b) On the return of a citation ordering a guardian to show cause why the guardian should not give a new bond, the judge on the day contained in the return of citation as the day for the hearing of the matter, shall proceed to inquire into the sufficiency of the reasons for requiring a new bond. If the judge is satisfied that a new bond should be required, the judge shall enter an order to that effect that states the amount of the new bond and the time within which the new bond shall be given, which may not be later than 20 days from the date of the order issued by the judge under this subsection.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Acts 2007, 80th Leg., ch. 683, § 2, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 715. Order Suspends Powers of Guardians

When a guardian is required to give a new bond, the order requiring the bond has the effect of suspending the guardian's powers, and the guardian may not pay out any money of the guardianship or do any other official act, except to preserve the property of the guardianship, until a new bond has been given and approved.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 716. Decrease in Amount of Bond

A guardian required to give bond at any time may file with the clerk a written application to the court to have the bond reduced. After an application has been filed by the guardian under this section, the clerk shall issue and cause to be posted notice to all persons

interested in the estate and to a surety on the bond, apprising the persons and surety of the fact and nature of the application and of the time at which the judge will hear the application. The judge may permit the filing of a new bond in a reduced amount on the submission of proof that a smaller bond than the one in effect will be adequate to meet the requirements of the law and protect the guardianship and on the approval of an accounting filed at the time of the application.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 717. Discharge of Sureties on Execution of New Bond

When a new bond has been given and approved, the judge shall enter an order discharging the sureties on the former bond from all liability for the future acts of the principal.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 718. Release of Sureties Before Guardianship Fully Administered

A surety on the guardian's bond at any time may file with the clerk a petition with the court in which the proceeding is pending, praying that the guardian be required to give a new bond and that the petitioner be discharged from all liability for the future acts of the guardian. If a petition is filed, the guardian shall be cited to appear and give a new bond.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 719. Release of Lien Before Guardianship Fully Administered

If a personal surety who has given a lien on specific real property as security applies to the court to have the lien released, the court shall order the release requested if the court is satisfied that the bond is sufficient without the lien on the property or if sufficient other real or personal property of the surety is substituted on the same terms and conditions required for the lien that is to be released. If the personal surety who requests the release of the lien does not offer a lien on other real or personal property and if the court is not satisfied that the bond is sufficient without the substitution of other property, the court shall order the guardian to appear and give a new bond.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 720. Release of Recorded Lien on Surety's Property

A certified copy of the court order that describes the property, releases the lien, and is filed with the county

clerk and recorded in the deed records of the county in which the property is located has the effect of cancelling the lien on the property.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 721. Revocation of Letters for Failure to Give Bond

If a guardian of a ward fails to give the bond required by the court within the time required under this chapter, another person may be appointed guardian of the ward.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 722. Guardian Without Bond Required to Give Bond

If a bond is not required of an individual guardian of the estate, a person who has a debt, claim, or demand against the guardianship, to the justice of which oath has been made by the person, the person's agent or attorney, or any other person interested in the guardianship, in person or as the representative of another person, may file a complaint under oath in writing in the court in which the guardian was appointed, and the court, after a complaint is filed under this section, shall cite the guardian to appear and show cause why the guardian should not be required to give bond.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 723. Order Requiring Bond

On hearing a complaint under Section 722 of this code, if it appears to the court that a guardian is wasting, mismanaging, or misapplying the guardianship estate and that a creditor may probably lose his debt, or that a person's interest in the guardianship may be diminished or lost, the court shall enter an order requiring the guardian to give a bond not later than the 10th day after the date of the order.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 724. Amount of Bond

A bond that is required under Section 723 of this code shall be in an amount that is sufficient to protect the guardianship and its creditors. The bond shall be approved by and payable to the judge and shall be conditioned that the guardian will well and truly administer the guardianship and that the guardian will not waste, mismanage, or misapply the guardianship estate.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1,

1993. *Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.*

§ 725. Failure to Give Bond

If the guardian fails to give the bond required under Section 723 of this code, and the judge does not extend the time, the judge, without citation, shall remove the guardian and appoint a competent person as guardian of the ward who:

- (1) shall administer the guardianship according to the provisions of a will or law;
- (2) shall take the oath required of a guardian as the case may be before the person enters on the administration of the guardianship; and
- (3) shall give bond in the same manner and in the same amount provided in this chapter for the issuance of original letters of guardianship.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 726. Bonds Not Void on First Recovery

The bond of a guardian is not void on the first recovery, but the bond may be sued on and prosecuted from time to time until the whole amount of the bond is recovered.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Part 4. Administration of Guardianship

Subpart A. Inventory, Appraisement, and List of Claims

§ 727. Appointment of Appraisers

After letters of guardianship of the estate have been granted and on its own motion or on the motion of any interested person, the court for good cause shown shall appoint at least one but not more than three disinterested persons who are citizens of the county in which letters were granted to appraise the property of the ward. If the court appoints an appraiser under this section and part of the estate is located in a county other than the county in which letters were granted, the court may appoint at least one but not more than three disinterested persons who are citizens of the county in which the part of the estate is located to appraise the property of the estate located in the county if the court considers it necessary to appoint an appraiser.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2005, 79th Leg., ch. 5, § 2, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 728. Failure of Appraiser to Serve

If an appraiser appointed under Section 727 of this code fails or refuses to act, the court shall remove the

appraiser and appoint one or more appraisers.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 729. Inventory and Appraisement

(a) Not later than the 30th day after the date the guardian of the estate qualifies as guardian, unless a longer time is granted by the court, the guardian of the estate shall file with the clerk of the court a verified, full and detailed inventory, in one written instrument, of all the property of the ward that has come into the guardian's possession or knowledge. The inventory filed by the guardian under this section must include:

- (1) all real property of the ward that is located in this state; and
- (2) all personal property of the ward wherever located.

(b) The guardian shall set out in the inventory the guardian's appraisement of the fair market value of each item of the property on the date of the grant of letters of guardianship. If the court appoints an appraiser of the estate, the guardian shall determine the fair market value of each item of the inventory with the assistance of the appraiser and shall set out in the inventory the appraisement made by the appraiser.

(c) An inventory made under this section must specify:

- (1) what portion of the property is separate property and what portion is community property; and
- (2) if any of the property is owned in common with other persons, the interest owned by the ward.

(d) The inventory, when approved by the court and duly filed with the clerk of court, is for purposes of this chapter the inventory and appraisement of the estate referred to in this chapter.

(e) The court for good cause shown may require the filing of the inventory and appraisement at a time not later than the 90th day after the date of qualification of the guardian.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 549, § 13, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 23, eff. Sept. 1, 2011.

§ 730. List of Claims

The guardian shall make and attach to an inventory under Section 729 of this code a full and complete list of all claims due or owing to the ward that must state:

- (1) the name of each person indebted to the ward and the address of the person if known;
- (2) the nature of the debt, whether it is a note, bill, bond, or other written obligation or whether it is an account or verbal contract;
- (3) the date of the indebtedness and the date when the debt is or was due;

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(4) the amount of each claim, the rate of interest on each claim, and time for which the claim bears interest; and

(5) what portion of the claim is held in common with others and the interest of the estate in the claim.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 24, eff. Sept. 1, 2011.

§ 731. Affidavit Attached

The guardian of the estate shall attach to the inventory and list of claims the guardian's affidavit subscribed and sworn to before an officer in the county authorized by law to administer oaths that the inventory and list of claims are a true and complete statement of the property and claims of the estate that have come to the guardian's knowledge.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 732. Appraiser Fees

An appraiser appointed by the court is entitled to receive a reasonable fee for the performance of the appraiser's duties as an appraiser that are to be paid out of the estate.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 733. Court Action

(a) On return of the inventory, appraisal, and list of claims, the judge shall examine and approve or disapprove the inventory, appraisal, or list of claims as follows:

(1) if the judge approves the inventory, appraisal, and list of claims, the judge shall issue an order to that effect; and

(2) if the judge does not approve the inventory, appraisal, or list of claims, the judge shall enter an order to that effect.

(b) The court order shall require the return of another inventory, appraisal, and list of claims, or whichever of them is disapproved, within a time specified in the order but not later than 20 days after the date of the order. The judge may appoint new appraisers if the judge deems it necessary.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 734. Discovery of Additional Property

The guardian of the estate shall promptly file with the clerk of court a verified, full, and detailed supplemental inventory and appraisal if property or claims that are not included in the inventory come to the guardian's possession or knowledge after the guardian

files the inventory and appraisal required under Section 729 of this code.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 735. Additional Inventory or List of Claims

(a) On the written complaint of an interested person that property or claims of the estate have not been included in the inventory and list of claims filed by the guardian, the guardian of an estate shall be cited to appear before the court in which the cause is pending and show cause why the guardian should not be required to make and return an additional inventory or list of claims, or both.

(b) After hearing a complaint filed under this section and being satisfied of the truth of the complaint, the court shall enter an order requiring the additional inventory or list of claims, or both, to be made and returned in like manner as the original inventory, not later than 20 days after the date of the order, as may be set by the court. The additional inventory or list of claims must include only property or claims that were not inventoried or listed by the guardian.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 736. Correction When Inventory, Appraisal, or List of Claims Erroneous or Unjust

A person interested in an estate who deems an inventory, appraisal, or list of claims returned by the guardian erroneous or unjust in any particular form may file a written complaint that sets forth and points out the alleged erroneous or unjust items and cause the guardian to be cited to appear before the court and show cause why the errors should not be corrected. On the hearing of a complaint filed under this section, if the court is satisfied from the evidence that the inventory, appraisal, or list of claims is erroneous or unjust in any particular form as alleged in the complaint, the court shall enter an order that specifies the erroneous or unjust items and the corrections to be made and that appoints an appraiser to make a new appraisal correcting the erroneous or unjust items and requires the return of the new appraisal not later than the 20th day after the date of the order. The court may also, on its own motion or on motion of the guardian of the estate, have a new appraisal made for the purposes described by this section.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 737. Effect of Reappraisal

When a reappraisal is made, returned, and approved by the court, the reappraisal stands in place of the original appraisal. Not more than one reappraisal shall be made, but any person interested

in the estate may object to the reappraisal before or after the reappraisal is approved. If the court finds that the reappraisal is erroneous or unjust, the court shall appraise the property on the basis of the evidence before the court.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 738. Failure of Joint Guardians to Return an Inventory, Appraisal, and List of Claims

If there is more than one qualified guardian of the estate, one or more of the guardians, on the neglect of the other guardians, may make and return an inventory and appraisal and list of claims. The guardian so neglecting may not thereafter interfere with the estate or have any power over the estate. The guardian that returns an inventory, appraisal, and list of claims has the whole administration, unless, not later than the 60th day after the date of return, each of the delinquent guardians assigns to the court in writing and under oath a reasonable excuse that the court may deem satisfactory. If no excuse is filed or if the excuse filed by a delinquent guardian is insufficient, the court shall enter an order removing the delinquent guardian and revoking the guardian's letters.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 739. Use of Inventories, Appraisements, and Lists of Claims as Evidence

All inventories, appraisements, and lists of claims that have been taken, returned, and approved in accordance with the law, or the record of an inventory, appraisal, or list of claims, or copies of either the originals or the record, duly certified under the seal of the county court affixed by the clerk, may be given in evidence in any of the courts of this state in any suit by or against the guardian of the estate, but may not be conclusive for or against the guardian of the estate if it is shown that any property or claims of the estate are not shown in the inventory, appraisal, or list of claims or that the value of the property or claims of the estate actually was in excess of the value shown in the appraisal and list of claims.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart B. Annual Accounts, Reports, and Other Exhibits

§ 741. Annual Accounts Required

(a) Not later than the 60th day after the expiration of 12 months from the date of qualification, unless the court extends that time period, the guardian of the estate of a ward shall return to the court an exhibit in writing

under oath setting forth a list of all claims against the estate that were presented to the guardian within the period covered by the account and specifying which claims have been allowed, paid, or rejected by the guardian and the date when any claim was rejected and which claims have been the subject of a lawsuit and the status of the lawsuit, and showing:

(1) all property that has come to the guardian's knowledge or into the guardian's possession that has not been previously listed or inventoried as property of the ward;

(2) any changes in the property of the ward that have not been previously reported;

(3) a complete account of receipts and disbursements for the period covered by the account, and the source and nature of the receipts and disbursements, with receipts of principal and income shown separately;

(4) a complete, accurate, and detailed description of the property being administered, the condition of the property, and the use being made of the property and, if rented, the terms of the rental and the price for which the property is being rented;

(5) the cash balance on hand and the name and location of the depository where the cash balance is kept and any other sums of cash in savings accounts or other form, deposited subject to court order, and the name and location of the depository of the cash; and

(6) a detailed description of personal property of the estate, that, with respect to bonds, notes, and other securities, includes the names of obligor and obligee, or if payable to bearer, so state; the date of issue and maturity; the rate of interest; serial or other identifying numbers; in what manner the property is secured; and other data necessary to identify the same fully, and how and where held for safekeeping.

(b) A guardian of the estate shall file annual accounts conforming to the essential requirements of those in Subsection (a) of this section as to changes in the assets of the estate after rendition of the former account so that the true condition of the estate, with respect to money or securities or other property, can be ascertained by the court or by any interested person, by adding to the balances forward the receipts, and then subtracting the disbursements. The description of property sufficiently described in an inventory or previous account may be by reference to the property.

(c) The following shall be annexed to all annual accounts of guardians of estates:

(1) proper vouchers for each item of credit claimed in the account, or, in the absence of a voucher, the item must be supported by evidence satisfactory to the court, and original vouchers may, on application, be returned to the guardian after approval of the guardian's account;

(2) an official letter from the bank or other depository in which the money on hand of the estate

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or ward is deposited that shows the amounts in general or special deposits; and

(3) proof of the existence and possession of securities owned by the estate, or shown by the accounting, and other assets held by a depository subject to court order, the proof by one of the following means:

(A) an official letter from the bank or other depository that holds the securities or other assets for safekeeping; provided, that if the depository is the representative, the official letter shall be signed by a representative of the depository other than the depository that verifies the account;

(B) a certificate of an authorized representative of the corporation that is the surety on the representative's bonds;

(C) a certificate of the clerk or a deputy clerk of a court of record in this state; or

(D) an affidavit of any other reputable person designated by the court on request of the guardian or other interested party.

(d) A certificate or affidavit under this section shall be to the effect that the affiant has examined the assets exhibited to the affiant by the guardian as assets of the estate in which the accounting is made, shall describe the assets by reference to the account or otherwise sufficiently to identify those assets exhibited, and shall state the time when and the place where the assets were exhibited. Instead of using a certificate or an affidavit, the representative may exhibit the securities to the judge of the court who shall endorse on the account, or include in the judge's order with respect to the account, a statement that the securities shown to the judge as on hand were in fact exhibited to the judge and that those securities exhibited to the judge were the same as those shown in the account, or note any variance. If the securities are exhibited at any place other than where deposited for safekeeping, it shall be at the expense and risk of the representative. The judge may require additional evidence as to the existence and custody of the securities and other personal property as in the judge's discretion the judge considers proper, and the judge may require the representative to exhibit the securities to the judge, or any person designated by the judge, at any time at the place where the securities are held for safekeeping.

(e) The guardian of the estate filing the account shall attach to the account the guardian's affidavit that:

(1) the account contains a correct and complete statement of the matters to which the account relates;

(2) the guardian has paid the bond premium for the next accounting period;

(3) the guardian has filed all tax returns of the ward due during the accounting period; and

(4) the guardian has paid all taxes the ward owed during the accounting period, showing:

(A) the amount of the taxes;

(B) the date the guardian paid the taxes; and

(C) the name of the governmental entity to which the guardian paid the taxes.

(f) If the guardian, on the ward's behalf, has not filed a tax return or paid taxes that are due on the filing of the account under this section, the guardian of the estate filing the account shall attach to the account a description of the taxes and the reasons for the guardian's failure to file the return or pay the taxes.

(g) If the estate produces negligible or fixed income, the court has the power to waive the filing of annual accounts, and the court may permit the guardian to receive all income and apply it to the support, maintenance, and education of the ward and account to the court for income and corpus of the estate when the estate must be closed.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 742. Action on Annual Accounts

(a) The rules in this section govern the handling of annual accounts.

(b) Annual accounts shall be filed with the county clerk, and the filing of the accounts shall be noted on the judge's docket.

(c) Before being considered by the judge, the account must remain on file for 10 days.

(d) After the expiration of 10 days after the filing of an annual account, the judge shall consider the annual account, and may continue the hearing on the account until the judge is fully advised as to all items of the account.

(e) An accounting may not be approved unless possession of cash, listed securities, or other assets held in safekeeping or on deposit under court order has been proved as required by law.

(f) If an account is found to be incorrect, it shall be corrected. When corrected to the satisfaction of the court, the account shall be approved by a court order, and the court shall act with respect to unpaid claims, as follows:

(1) if it appears from the exhibit, or from other evidence, that the estate is wholly solvent, and that the guardian has sufficient funds for the payment of every claim against the estate, the court shall order immediate payment made of all claims allowed and approved or established by judgment; and

(2) if it appears from the account, or from other evidence, that the funds on hand are not sufficient for the payment of all the claims, or if the estate is insolvent and the guardian has any funds on hand, the court shall order the funds to be applied to the payment of all claims having a preference in the order of their priority if any claim is still unpaid, and then 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 not later than 12 months after the date of the granting of letters of guardianship

and those claims that are in suit or on which suit may yet be instituted.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (f) amended by Acts 1995, 74th Leg., ch. 1039, § 43, eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 743. Reports of Guardians of the Person

(a) The guardian of the person of a ward shall return to the court a sworn, written report showing each item of receipts and disbursements for the support and maintenance of the ward, the education of the ward when necessary, and support and maintenance of the ward's dependents, when authorized by order of court.

(b) The guardian of the person, whether or not there is a separate guardian of the estate, shall submit to the court an annual report by sworn affidavit that contains the following information:

(1) the guardian's current name, address, and phone number;

(2) the ward's current:

(A) name, address, and phone number; and

(B) age and date of birth;

(3) the type of home in which the ward resides, described as the ward's own; a nursing, guardian's, foster, or boarding home; a relative's home, and the ward's relationship to the relative; a hospital or medical facility; or other type of residence;

(4) the length of time the ward has resided in the present home and, if there has been a change in the ward's residence in the past year, the reason for the change;

(5) the date the guardian most recently saw the ward, and how frequently the guardian has seen the ward in the past year;

(6) a statement indicating whether or not the guardian has possession or control of the ward's estate;

(7) the following statements concerning the ward's health during the past year:

(A) whether the ward's mental health has improved, deteriorated, or remained unchanged, and a description if there has been a change; and

(B) whether the ward's physical health has improved, deteriorated, or remained unchanged, and a description if there has been a change;

(8) a statement concerning whether or not the ward has regular medical care, and the ward's treatment or evaluation by any of the following persons during the last year, including the name of that person, and the treatment involved:

(A) a physician;

(B) a psychiatrist, psychologist, or other mental health care provider;

(C) a dentist;

(D) a social or other caseworker; or

(E) another individual who provided treatment;

(9) a description of the ward's activities during the past year, including recreational, educational, social, and occupational activities, or if no activities are available or if the ward is unable or has refused to participate in them, a statement to that effect;

(10) the guardian's evaluation of the ward's living arrangements as excellent, average, or below average, including an explanation if the conditions are below average;

(11) the guardian's evaluation of whether the ward is content or unhappy with the ward's living arrangements;

(12) the guardian's evaluation of unmet needs of the ward;

(13) a statement of whether or not the guardian's power should be increased, decreased, or unaltered, including an explanation if a change is recommended;

(14) a statement that the guardian has paid the bond premium for the next reporting period; and

(15) any additional information the guardian desires to share with the court regarding the ward, including whether the guardian has filed for emergency detention of the ward under Subchapter A, Chapter 573, Health and Safety Code, and if applicable, the number of times the guardian has filed and the dates of the applications.

(15) any additional information the guardian desires to share with the court regarding the ward, including whether the guardian has filed for emergency detention of the ward under Subchapter A, Chapter 573, Health and Safety Code, and if applicable, the number of times the guardian has filed and the dates of the applications.

(c) If the ward is deceased, the guardian shall provide the court with the date and place of death, if known, in lieu of the information about the ward otherwise required to be provided in the annual report.

(d) Unless the judge is satisfied that the facts stated are true, he shall issue orders as are necessary for the best interests of the ward.

(e) If the judge is satisfied that the facts stated in the report are true, the court shall approve the report.

(f) The court on the court's own motion may waive the costs and fees related to the filing of a report approved under Subsection (e) of this section.

(g) Once each year for the duration of the guardianship, a guardian of the person shall file the report that contains the information required by Subsections (a) and (b) of this section. Except as provided by Subsection (h) of this section, the report must cover a 12-month reporting period that begins on the date the guardian qualifies to serve.

(h) The court may change a reporting period for purposes of this section but may not extend a reporting period so that it covers more than 12 months.

(i) Each report is due not later than the 60th day after the date on which the reporting period ends.

(j) A guardian of the person may complete and file the report required under this section without the assistance of an attorney.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (a) amended by Acts 1995, 74th Leg., ch. 1039, § 44, eff. Sept. 1, 1995; Subsecs. (e) to (i) added by Acts 1995, 74th Leg., ch. 1039, § 45, eff. Sept. 1, 1995; Subsec. (b) amended by Acts 1997, 75th Leg., ch. 1403, § 3, eff. Sept. 1, 1997; Subsec. (j) added by Acts 1999, 76th Leg., ch. 905, § 5, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 692, § 1, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 744. Penalty for Failure to File Accountings, Exhibits, or Reports

If a guardian fails to file any accounting, exhibit, report of the guardian of the person, or other report required by this chapter, any person interested in the estate may, on written complaint filed with the clerk of the court, or the court on its own motion, may cause the guardian to be cited to appear and show cause why the guardian should not file the account, exhibit, or report; and, on hearing, the court may order the guardian to file the account, exhibit, or report, and, unless good cause is shown for the failure to file the account, exhibit, or report, the court may fine the guardian an amount not to exceed \$1,000, revoke the letters of the guardian, or fine the guardian an amount not to exceed \$1,000 and revoke the letters of the guardian.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 46, eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart C. Final Settlement, Accounting, and Discharge

§ 745. Settling Guardianships of the Estate

(a) A guardianship of the estate of a ward shall be settled when:

- (1) a minor ward dies or becomes an adult by becoming 18 years of age, or by removal of disabilities of minority according to the law of this state, or by marriage;
- (2) an incapacitated ward dies, or is decreed as provided by law to have been restored to full legal capacity;
- (3) the spouse of a married ward has qualified as survivor in community and the ward owns no separate property;
- (4) the estate of a ward becomes exhausted;
- (5) the foreseeable income accruing to a ward or to the ward's estate is so negligible that maintaining the guardianship in force would be burdensome;
- (6) all of the assets of the estate have been placed in a management trust under Subpart N of this part, or have been transferred to a pooled trust

subaccount in accordance with a court order issued as provided by Subpart I, Part 5, of this chapter, and the court determines that a guardianship of the ward's estate is no longer necessary; or

(7) the court determines for any other reason that a guardianship for the ward is no longer necessary.

(b) In a case arising under Subsection (a)(5) of this section, the court may authorize the income to be paid to a parent, or other person who has acted as guardian of the ward, to assist in the maintenance of the ward and without liability to account to the court for the income.

(c) When the estate of a minor ward consists only of cash or cash equivalents in an amount of \$100,000 or less, the guardianship of the estate may be terminated and the assets paid to the county clerk of the county in which the guardianship proceeding is pending, and the clerk shall manage the funds as provided by Section 887 of this code.

(d) In the settlement of a guardianship, the court may appoint an attorney ad litem to represent the interests of the ward, and may allow the attorney ad litem reasonable compensation to be taxed as costs.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (c) amended by Acts 1995, 74th Leg., ch. 1039, § 47, eff. Sept. 1, 1995; Sec. heading amended by Acts 2001, 77th Leg., ch. 484, § 3, eff. Sept. 1, 2001; Subsec. (a) amended by Acts 2001, 77th Leg., ch. 484, § 4, eff. Sept. 1, 2001; Subsec. (c) amended by Acts 2001, 77th Leg., ch. 127, § 1, eff. Sept. 1, 2001; Subsec. (c) amended by Acts 2001, 77th Leg., ch. 217, § 13, eff. Sept. 1, 2001; Subsec. (c) amended by Acts 2001, 77th Leg., ch. 1174, § 5, eff. Sept. 1, 2001; Subsec. (d) amended by Acts 2001, 77th Leg., ch. 484, § 4, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 549, § 14, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 25, eff. Sept. 1, 2011.

§ 746. Payment of Funeral Expenses and Other Debts on Death of Ward

Before the guardianship of a person or estate of a ward is closed on the death of a ward, the guardian, subject to the approval of the court, may make all funeral arrangements, pay for the funeral expenses out of the estate of the deceased ward, and pay all other debts out of the estate. If a personal representative of the estate of a deceased ward is appointed, the court shall on the written complaint of the personal representative cause the guardian to be cited to appear and present a final account as provided in Section 749 of this code.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 484, § 5, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 747. Termination of Guardianship of the Person

(a) When the guardianship of an incapacitated

person is required to be settled as provided by Section 745 of this code, the guardian of the person shall deliver all property of the ward in the possession or control of the guardian to the emancipated ward or other person entitled to the property. If the ward is deceased, the guardian shall deliver the property to the personal representative of the deceased ward's estate or other person entitled to the property.

(b) If there is no property of the ward in the possession or control of the guardian of the person, the guardian shall, not later than the 60th day after the date on which the guardianship is required to be settled, file with the court a sworn affidavit that states the reason the guardianship was terminated and to whom the property of the ward in the guardian's possession was delivered. The judge may issue orders as necessary for the best interests of the ward or of the estate of a deceased ward. This section does not discharge a guardian of the person from liability for breach of the guardian's fiduciary duties.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (a) amended by Acts 2001, 77th Leg., ch. 484, § 6, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 586, § 1, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 748. Payment by Guardian of Taxes or Expenses

Notwithstanding any other provision of this chapter, a probate court in which proceedings to declare heirship are maintained may order the payment by the guardian of any and all taxes or expenses of administering the estate and may order the sale of properties in the ward's estate, when necessary, for the purpose of paying the taxes or expenses of administering the estate or for the purpose of distributing the estate among the heirs.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 749. Account for Final Settlement of Estates of Wards

When a guardianship of the estate is required to be settled, the guardian shall present to the court the guardian's verified account for final settlement. In the account it shall be sufficient to refer to the inventory without describing each item of property in detail and to refer to and adopt any and all guardianship proceedings that concern sales, renting or hiring, leasing for mineral development, or any other transaction on behalf of the guardianship estate, including an exhibit, account, or voucher previously filed and approved, without restating the particular items. Each final account shall be accompanied by proper vouchers in support of each item not already accounted for and shall show, either by reference to any proceedings authorized above or by statement of the facts:

(1) the property, rents, revenues, and profits received by the guardian, and belonging to the ward, during the term of the guardianship;

(2) the disposition made of the property, rents, revenues, and profits;

(3) the expenses and debts against the estate that remain unpaid, if any;

(4) the property of the estate that remains in the hands of the guardian, if any;

(5) that the guardian has paid all required bond premiums;

(6) the tax returns the guardian has filed during the guardianship;

(7) the amount of taxes the ward owed during the guardianship that the guardian has paid;

(8) a complete account of the taxes the guardian has paid during the guardianship, including the amount of the taxes, the date the guardian paid the taxes, and the name of the governmental entity to which the guardian paid the taxes;

(9) a description of all current delinquencies in the filing of tax returns and the payment of taxes and a reason for each delinquency; and

(10) other facts as appear necessary to a full and definite understanding of the exact condition of the guardianship.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1403, § 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 484, § 7, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 750. Procedure in Case of Neglect or Failure to File Final Account or Report

(a) If a guardian charged with the duty of filing a final account or report fails or neglects so to do at the proper time, the court may, on the court's own motion, or on the written complaint of the emancipated ward or anyone interested in the ward or the ward's estate, shall cause the guardian to be cited to appear and present the account or report within the time specified in the citation.

(b) If a written complaint has not been filed by anyone interested in the guardianship of a person or estate of a minor or deceased ward, the court may, on or after the third anniversary after the date of the death of the ward or after the date the minor reaches the age of majority, remove the estate from the court's active docket without a final accounting and without appointing a successor personal representative.

(c) If a complaint has not been filed by anyone interested in the estate of a ward whose whereabouts are unknown to the court, the court may, on or after the fourth anniversary after the ward's whereabouts became unknown to the court, remove the estate from the court's active docket without a final accounting and without appointing a successor personal representative.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 751. Citation on Presentation of Account for Final Settlement

(a) On the filing of an account for final settlement by a guardian of the estate of a ward, citation must contain a statement that the final account has been filed, the time and place when it will be considered by the court, and a statement requiring the person cited to appear and contest the final account if the person determines it is proper. The county clerk shall issue the citation to the following persons and in the manner provided by this section.

(b) If a ward is a living resident of this state who is 14 years of age or older, and the ward's residence is known, the ward shall be cited by personal service, unless the ward, in person or by attorney, by writing filed with the clerk, waives the issuance and personal service of citation.

(c) If one who has been a ward is deceased, the ward's executor or administrator, if one has been appointed, shall be personally served, but no service is required if the executor or administrator is the same person as the guardian.

(d) If a ward's residence is unknown, or if the ward is a nonresident of this state, or if the ward is deceased and no representative of the ward's estate has been appointed and qualified in this state, the citation to the ward or to the ward's estate shall be by publication, unless the court by written order directs citation by posting.

(e) If the court deems further additional notice necessary, it shall require the additional notice by written order. In its discretion, the court may allow the waiver of notice of an account for final settlement in a guardianship proceeding.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 752. Court Action; Closing of Guardianship of Ward's Estate

(a) On being satisfied that citation has been duly served on all persons interested in the estate, the court shall examine the account for final settlement and the vouchers accompanying the account. After hearing all exceptions or objections to the account and evidence in support of or against the account, the court shall audit and settle the same, and restate it if that is necessary.

(b) On final settlement of an estate, if there is any part of the estate remaining in the hands of the guardian, the court shall order that it be delivered, in case of a ward, to the ward, or in the case of a deceased ward, to the personal representative of the deceased ward's estate if one has been appointed, or to any other person legally entitled to the estate.

(c) If on final settlement of an estate there is no part of the estate remaining in the hands of the guardian, the court shall discharge the guardian from the guardian's trust and order the estate closed.

(d) When the guardian of an estate has fully administered the estate in accordance with this chapter and the orders of the court and the guardian's final account has been approved, and the guardian has delivered all of the estate remaining in the guardian's hands to any person entitled to receive the estate, the court shall enter an order discharging the guardian from the guardian's trust, and declaring the estate closed.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Sec. heading amended by Acts 2001, 77th Leg., ch. 484, § 8, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 753. Money Becoming Due Pending Final Discharge

Money or any other thing of value falling due to the estate or ward while the account for final settlement is pending, other than money or any other thing of value held under Section 703(c) of this code, until the order of final discharge of the guardian is entered in the judge's guardianship docket, may be paid, delivered, or tendered to the emancipated ward, the guardian, or the personal representative of the deceased ward's estate, who shall issue a receipt for the money or other thing of value, and the obligor or payor shall be discharged of the obligation for all purposes.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2009, 81st Leg., ch. 602, § 16, eff. June 16, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 754. Inheritance Taxes Must be Paid

If the guardian has been ordered to make payment of inheritance taxes under this code, an estate of a deceased ward may not be closed unless the final account shows and the court finds that all inheritance taxes due and owing to this state with respect to all interests and properties passing through the hands of the guardian have been paid.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 755. Appointment of Attorney to Represent Ward

When the ward is dead and there is no executor or administrator of the ward's estate, or when the ward is a nonresident, or the ward's residence is unknown, the court may appoint an attorney ad litem to represent the interest of the ward in the final settlement with the guardian, and shall allow the attorney reasonable compensation out of the ward's estate for any services provided by the attorney.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 756. Offsets, Credits, and Bad Debts

In the settlement of any of the accounts of the guardian of an estate, all debts due the estate that the

court is satisfied could not have been collected by due diligence, and that have not been collected, shall be excluded from the computation.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 757. Accounting for Labor or Services of a Ward

The guardian of a ward shall account for the reasonable value of the labor or services of the ward of the guardian, or the proceeds of the labor or services, if the labor or services have been rendered by the ward, but the guardian is entitled to reasonable credits for the board, clothing, and maintenance of the ward.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 758. Procedure if Representative Fails to Deliver Estate

If a guardian, on final settlement or termination of the guardianship of the estate, neglects to deliver to the person entitled when legally demanded any portion of the estate or any funds or money in the hands of the guardian ordered to be delivered, a person entitled to the estate, funds, or money may file with the clerk of the court a written complaint alleging the fact of the guardian's neglect, the date of the person's demand, and other relevant facts. After the person files a complaint under this section, the clerk shall issue a citation to be served personally on the guardian, appraising the guardian of the complaint and citing the guardian to appear before the court and answer, if the guardian desires, at the time designated in the citation. If at the hearing the court finds that the citation was duly served and returned and that the guardian is guilty of the neglect charged, the court shall enter an order to that effect, and the guardian shall be liable to the person who filed the complaint in damages at the rate of 10 percent of the amount or appraised value of the money or estate withheld, per month, for each month or fraction of a month that the estate or money of a guardianship of the estate, or on termination of guardianship of the person, or funds is or has been withheld by the guardian after the date of demand, which damages may be recovered in any court of competent jurisdiction.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart D. Revocation of Letters, Death, Resignation, and Removal

§ 759. Appointment of Successor Guardian

(a) In case of the death of the guardian of the person or of the estate of a ward, a personal representative of the deceased guardian shall account for, pay, and

deliver to a person legally entitled to receive the property, all the property belonging to the guardianship that is entrusted to the care of the representative, at the time and in the manner as the court orders.

(b) If letters have been granted to a person, and another person whose right to be appointed successor guardian is prior and who has not waived the right and is qualified, applies for letters, the letters previously granted shall be revoked and other letters shall be granted to the applicant.

(c) If a person named in a will as guardian is not an adult when the will is probated and letters in any capacity have been granted to another person, the nominated guardian, on proof that the nominated guardian has become an adult and is not otherwise disqualified from serving as a guardian, is entitled to have the former letters revoked and appropriate letters granted to the nominated guardian. If the will names two or more persons as guardian, any one or more of whom are minors when the will is probated and letters have been issued to the persons who are adults, a minor, on becoming an adult, if not otherwise disqualified, is permitted to qualify and receive letters.

(d) If a person named in a will as guardian was ill or absent from the state when the testator died, or when the will was proved, and for that reason could not present the will for probate not later than the 30th day after the testator's death, or accept and qualify as guardian not later than the 20th day after the date the will was probated, the person may accept and qualify as guardian not later than the 60th day after the person's return or recovery from illness, on proof to the court that the person was absent or ill. If the letters have been issued to another person, the letters shall be revoked.

(e) If it is discovered after letters of guardianship have been issued that the deceased person left a lawful will, the letters shall be revoked and proper letters of guardianship issued to a person entitled to receive the letters.

(f) Except when otherwise expressly provided in this chapter, letters may not be revoked except on application, and after personal service of citation on the person whose letters are sought to be revoked, that the person appear and show cause why the application should not be granted.

(g) Money or any other thing of value falling due to a ward while the office of the guardian is vacant may be paid, delivered, or tendered to the clerk of the court for credit of the ward, and the debtor, obligor, or payor shall be discharged of the obligation for all purposes to the extent and purpose of the payment or tender. If the clerk accepts the payment or tender, the clerk shall issue a proper receipt for the payment or tender.

(h) The court may appoint as successor guardian a spouse, parent, or child of a proposed ward who has been disqualified from serving as guardian because of a litigation conflict under Section 681(4) of this code on removal of the conflict that caused the initial disqualification if the spouse, parent, or child is otherwise qualified to serve as a guardian.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (a) amended by Acts 1995, 74th Leg., ch. 1039, § 48, eff. Sept. 1, 1995. Subsecs. (a) & (f) amended by Acts 2007, 80th Leg., ch. 614, § 13, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 760. Resignation

(a) A guardian of the estate who wishes to resign the guardian's trust shall file with the clerk a written application to the court to that effect, accompanied by a full and complete exhibit and final account, duly verified, showing the true condition of the guardianship estate entrusted to the guardian's care. A guardian of the person who wishes to resign the guardian's trust shall file with the clerk a written application to the court to that effect, accompanied by a report setting forth the information required in the annual report required under this chapter, duly verified, showing the condition of the ward entrusted to the guardian's care.

(b) If the necessity exists, the court may immediately accept a resignation and appoint a successor without citation or notice but may not discharge the person resigning as guardian of the estate or release the person or the sureties on the person's bond until final order or judgment is rendered on the final account of the guardian.

(c) On the filing of an application to resign, supported by an exhibit and final account, the clerk shall call the application to the attention of the judge, who shall set a date for a hearing on the matter. The clerk shall then issue a citation to all interested persons, showing that proper application has been filed and the time and place set for hearing, at which time the interested persons may appear and contest the exhibit and account or report. The citation shall be posted, unless the court directs that it be published.

(d) At the time set for hearing, unless it has been continued by the court, if the court finds that citation has been duly issued and served, the court shall proceed to examine the exhibit and account or report and hear all evidence for and against the exhibit, account, or report and shall, if necessary, restate, and audit and settle the exhibit, account, or report. If the court is satisfied that the matters entrusted to the applicant have been handled and accounted for in accordance with the law, the court shall enter an order of approval and require that the estate remaining in the possession of the applicant, if any, be delivered to the person entitled by law to receive it. A guardian of the person is required to comply with all orders of the court concerning the ward of the guardian.

(e) A resigning guardian may not be discharged until the application has been heard, the exhibit and account or report examined, settled, and approved, and the guardian has satisfied the court that the guardian has delivered the estate, if there is any part of the estate remaining in the possession of the guardian, or has complied with all orders of the court with relation to the guardian's trust.

(f) When the resigning guardian has complied in all respects with the orders of the court, an order shall be made accepting the resignation, discharging the applicant, and, if the applicant is under bond, the sureties of the guardian.

(g) The court at any time may order a resigning guardian who has all or part of the estate of a ward to deliver all or part of the ward's estate to a person who has been appointed and has qualified as successor guardian.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (g) added by Acts 1995, 74th Leg., ch. 1039, § 49, eff. Sept. 1, 1995. Subsec. (b) amended by Acts 2007, 80th Leg., ch. 614, § 13, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 760A. Change of Resident Agent

(a) A guardian may change its resident agent to accept service of process in a guardianship proceeding or other matter relating to the guardianship by filing a statement of the change entitled "Designation of Successor Resident Agent" with the court in which the guardianship proceeding is pending. The statement must contain the names and addresses of the:

- (1) guardian;
- (2) resident agent; and
- (3) successor resident agent.

(b) The designation of a successor resident agent made in a statement filed under this section takes effect on the date on which the statement is filed with the court.

Added by Acts 2001, 77th Leg., ch. 217, § 14, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 760B. Resignation of Resident Agent

(a) A resident agent of a guardian may resign as the resident agent by giving notice to the guardian and filing with the court in which the guardianship proceeding is pending a statement entitled "Resignation of Resident Agent" that:

- (1) contains the name of the guardian;
- (2) contains the address of the guardian most recently known by the resident agent;
- (3) states that notice of the resignation has been given to the guardian and that the guardian does not have a resident agent; and
- (4) contains the date on which the notice of the resignation was given to the guardian.

(b) The resident agent shall send, by certified mail, return receipt requested, a copy of a resignation statement filed under Subsection (a) of this section to:

- (1) the guardian at the address most recently known by the agent; and
- (2) each party in the case or the party's attorney or other designated representative of record.

(c) The resignation of a resident agent takes effect on the date on which the court enters an order accepting

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the agent's resignation. A court may not enter an order accepting the agent's resignation unless the agent complies with the requirements of this section.

Added by Acts 2001, 77th Leg., ch. 217, § 14, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 761. Removal

(a) The court, on its own motion or on motion of any interested person, including the ward, and without notice, may remove any guardian appointed under this chapter who:

(1) neglects to qualify in the manner and time required by law;

(2) fails to return within 30 days after qualification, unless the time is extended by order of the court, an inventory of the property of the guardianship estate and list of claims that have come to the guardian's knowledge;

(3) having been required to give a new bond, fails to do so within the time prescribed;

(4) absents himself or herself from the state for a period of three months at one time without permission of the court, or removes from the state;

(5) cannot be served with notices or other processes because of the fact that:

(A) the guardian's whereabouts are unknown;

(B) the guardian is eluding service; or

(C) the guardian is a nonresident of this state who does not have a resident agent to accept service of process in any guardianship proceeding or other matter relating to the guardianship;

(6) has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the guardian's care;

(7) has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by Section 48.002, Human Resources Code, if engaged in with respect to an elderly or disabled person, as defined by that section; or

(8) has neglected to educate or maintain the ward as liberally as the means of the ward and the condition of the ward's estate permit.

[subsection (a-1) as added by Acts 2011, 82nd Leg., ch. 1218, § 1, eff. Sept. 1, 2011.]

(a-1) The court clerk shall issue notice of an order rendered by the court removing a guardian under Subsection (a)(1), (2), (3), (4), (6), (7), or (8) of this section. The notice must:

(1) state the names of the ward and the removed guardian;

(2) state the date the court signed the order of removal;

(3) contain the following statement printed in 12-point bold font:

"If you have been removed from serving as guardian under Section 761(a)(6) or (7), Texas Probate Code, you have the right to contest the order of removal by filing an application with the court for a hearing under Section 762, Texas Probate Code, to determine whether you should be reinstated as guardian. The application must be filed not later than the 30th day after the date the court signed the order of removal.";

(4) contain as an attachment a copy of the order of removal; and

(5) be personally served on the removed guardian not later than the seventh day after the date the court signed the order of removal.

[subsection (a-1) as added by Acts 2011, 82nd Leg., ch. 599, § 11, eff. Sept. 1, 2011.]

(a-1) In a proceeding to remove a guardian under Subsection (a)(6), (7), or (8) of this section, the court shall appoint a guardian ad litem as provided by Section 645 of this code and an attorney ad litem. The attorney ad litem has the duties prescribed by Section 647 of this code. In the interest of judicial economy, the court may appoint the same person as guardian ad litem and attorney ad litem unless a conflict exists between the interests to be represented by the guardian ad litem and attorney ad litem.

(b) The court may remove a personal representative under Subsection (a)(6) or (7) of this section only on the presentation of clear and convincing evidence given under oath.

(c) The court may remove a guardian on its own motion, or on the complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the notice, when:

(1) sufficient grounds appear to support belief that the guardian has misapplied, embezzled, or removed from the state, or that the guardian is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the care of the guardian;

(2) the guardian fails to return any account or report that is required by law to be made;

(3) the guardian fails to obey any proper order of the court having jurisdiction with respect to the performance of the guardian's duties;

(4) the guardian is proved to have been guilty of gross misconduct or mismanagement in the performance of the duties of the guardian;

(5) the guardian becomes incapacitated, or is sentenced to the penitentiary, or from any other cause becomes incapable of properly performing the duties of the guardian's trust;

(6) the guardian has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by Section 48.002, Human Resources Code, if engaged in with respect to an elderly or disabled person, as defined by that section;

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(6-a) the guardian neglects to educate or maintain the ward as liberally as the means of the ward's estate and the ward's ability or condition permit;

(7) the guardian interferes with the ward's progress or participation in programs in the community;

(8) the guardian fails to comply with the requirements of Section 697 of this code;

(9) the court determines that, because of the dissolution of the joint guardians' marriage, the termination of the guardians' joint appointment and the continuation of only one of the joint guardians as the sole guardian is in the best interest of the ward; or

(10) the guardian would be ineligible for appointment as a guardian under Section 681 of this code.

(c-1) In addition to the authority granted to the court under Subsection (c) of this section, the court may, on the complaint of the Guardianship Certification Board, remove a guardian who would be ineligible for appointment under Section 681 of this code because of the guardian's failure to maintain the certification required under Section 697B of this code. The guardian shall be cited to appear and contest the request for removal under this subsection in the manner provided by Subsection (c) of this section.

(d) The order of removal shall state the cause of the removal. It must require that any letters issued to the person who is removed shall, if the removed person has been personally served with citation, be surrendered and that all those letters be cancelled of record, whether or not delivered. It must further require, as to all the estate remaining in the hands of a removed person, delivery of the estate to the person or persons entitled to the estate, or to one who has been appointed and has qualified as successor guardian, and as to the person of a ward, that control be relinquished as required in the order.

(e) If a joint guardian is removed under Subsection (c)(9) of this section, the other joint guardian is entitled to continue to serve as the sole guardian unless removed for a reason other than the dissolution of the joint guardians' marriage.

(f) If the necessity exists, the court may immediately appoint a successor guardian without citation or notice but may not discharge the person removed as guardian of the estate or release the person or the sureties on the person's bond until final order or judgment is rendered on the final account of the guardian. Subject to an order of the court, a successor guardian has the rights and powers of the removed guardian.

(g) The court at any time may order a person removed as guardian under this section who has all or part of the estate of a ward to deliver all or part of the ward's estate to a person who has been appointed and has qualified as successor guardian.

(h) The appointment of a successor guardian under Subsection (f) of this section does not preclude an

interested person from filing an application to be appointed guardian of the ward for whom the successor guardian was appointed. The court shall hold a hearing on an application filed under the circumstances described by this subsection. At the conclusion of the hearing, the court may set aside the appointment of the successor guardian and appoint the applicant as the ward's guardian if the applicant is not disqualified and after considering the requirements of Section 676 or 677 of this code, as applicable.

(i) If the court sets aside the appointment of the successor guardian under this section, the court may require the successor guardian to prepare and file, under oath, an accounting of the estate and to detail the disposition the successor has made of the estate property.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 50, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 217, § 15, eff. Sept. 1, 2001. Subsec. (a) amended by Acts 2005, 79th Leg., ch. 5, § 1, eff. April 27, 2005; Subsecs. (a) and (c) amended by Acts 2005, 79th Leg., ch. 127, § 1, eff. Sept. 1, 2005; Subsec. (a) amended by Acts 2005, 79th Leg., ch. 200, § 5, eff. Sept. 1, 2005; Subsecs. (c) and (f) amended by Acts 2007, 80th Leg., ch. 614, § 15, eff. Sept. 1, 2007; Subsec. (c-1) added by Acts 2009, 81st Leg., ch. 509, § 2, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Subsec. (a-1) added by Acts 2011, 82nd Leg., ch. 1218, § 1, eff. Sept. 1, 2011. Amended by Acts 2011, 82nd Leg., ch. 599, § 11, eff. Sept. 1, 2011.

§ 762. Reinstatement After Removal

(a) Not later than the 30th day after the date the court signs the order of removal, a guardian who is removed under Section 761(a)(6) or (7) of this code may file an application with the court for a hearing to determine whether the guardian should be reinstated.

(b) On the filing of an application for a hearing under this section, the court clerk shall issue a notice stating that the application for reinstatement was filed, the name of the ward, and the name of the applicant. The clerk shall issue the notice to the applicant, the ward, a person interested in the welfare of the ward, or the ward's estate, and, if applicable, a person who has control of the care and custody of the ward. The notice must cite all persons interested in the estate or welfare of the ward to appear at the time and place stated in the notice if they wish to contest the application.

(c) The court shall hold a hearing on an application for reinstatement under this section as soon as practicable after the application is filed, but not later than the 60th day after the date the court signed the order of removal. If, at the conclusion of the hearing, the court is satisfied by a preponderance of the evidence that the applicant did not engage in the conduct that directly led to the applicant's removal, the court shall set aside an order appointing a successor guardian, if

any, and shall enter an order reinstating the applicant as guardian of the ward or estate.

(d) If the court sets aside the appointment of a successor guardian under this section, the court may require the successor guardian to prepare and file, under oath, an accounting of the estate and to detail the disposition the successor has made of the property of the estate.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 549, § 15, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1218, § 2, eff. Sept. 1, 2011.

§ 763. Additional Powers of Successor Guardian

In addition, a successor guardian may make himself, and may be made, a party to a suit prosecuted by or against the predecessor of the successor guardian. The successor guardian may settle with the predecessor and receive and receipt for all the portion of the estate as remains in the hands of the successor guardian. The successor guardian may bring suit on the bond or bonds of the predecessor in the guardian's own name and capacity for all the estate that came into the hands of the predecessor and has not been accounted for by the predecessor.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 764. Subsequent Guardians Succeed to Prior Rights and Duties

Whenever a guardian shall accept and qualify after letters of guardianship are granted on the estate, the guardian shall, in like manner, succeed to the previous guardian, and the guardian shall administer the estate in like manner as if the administration by the guardian were a continuation of the former one.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 765. Successors' Return of Inventory, Appraisement, and List of Claims

A successor guardian who has qualified to succeed a prior guardian shall make and return to the court an inventory, appraisement, and list of claims of the estate, not later than the 30th day after the date the successor guardian qualifies as guardian, in the same manner as is required of an original appointee. The successor guardian shall in like manner as is required of an original appointee return additional inventories, appraisements, and lists of claims. In all orders appointing a successor guardian, the court shall appoint an appraiser as in original appointments on the application of any person interested in the estate.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 549, § 16,

eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart E. General Duties and Powers of Guardians

§ 767. Powers and Duties of Guardians of the Person

(a) The guardian of the person is entitled to take charge of the person of the ward, and the duties of the guardian correspond with the rights of the guardian. A guardian of the person has:

(1) the right to have physical possession of the ward and to establish the ward's legal domicile;

(2) the duty to provide care, supervision and protection for the ward;

(3) the duty to provide the ward with clothing, food, medical care, and shelter;

(4) the power to consent to medical, psychiatric, and surgical treatment other than the inpatient psychiatric commitment of the ward; and

(5) on application to and order of the court, the power to establish a trust in accordance with 42 U.S.C. Section 1396p(d)(4)(B), as amended, and direct that the income of the ward as defined by that section be paid directly to the trust, solely for the purpose of the ward's eligibility for medical assistance under Chapter 32, Human Resources Code.

(b) Notwithstanding Subsection (a)(4) of this section, a guardian of the person of a ward has the power to personally transport the ward or to direct the ward's transport by emergency medical services or other means to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 549, § 17, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 692, § 2, eff. Sept. 1, 2003. Subsec. (a) amended by Acts 2005, 79th Leg., ch. 268, § 3.17, eff. Sept. 1, 2005. Subsec. (b) amended by Acts 2009, 81st Leg., ch. 930, § 7, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 768. General Powers and Duties of Guardian of the Estate

The guardian of the estate of a ward is entitled to the possession and management of all property belonging to the ward, to collect all debts, rentals, or claims that are due to the ward, to enforce all obligations in favor of the ward, and to bring and defend suits by or against the ward; but, in the management of the estate, the guardian is governed by the provisions of this chapter. It is the duty of the guardian of the estate to take care of and manage the estate as a prudent person would manage the person's

own property except as otherwise provided by this chapter. The guardian of the estate shall account for all rents, profits, and revenues that the estate would have produced by such prudent management.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 549, §18, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 769. Summary of Powers of Guardian of Person and Estate

The guardian of both the person of and estate of a ward has all the rights and powers and shall perform all the duties of the guardian of the person and of the guardian of the estate.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 549, § 18, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 770. Care of Ward; Commitment

(a) The guardian of an adult may expend funds of the guardianship as provided by court order to care for and maintain the incapacitated person. The guardian may apply for residential care and services provided by a public or private facility on behalf of an incapacitated person who has decision-making ability if the person agrees to be placed in the facility. The guardian shall report the condition of the person to the court at regular intervals at least annually, unless the court orders more frequent reports. If the person is receiving residential care in a public or private residential care facility, the guardian shall include in any report to the court a statement as to the necessity for continued care in the facility.

(b) Except as provided by Subsection (c) or (d) of this section, a guardian may not voluntarily admit an incapacitated person to a public or private in-patient psychiatric facility or to a residential facility operated by the Texas Department of Mental Health and Mental Retardation for care and treatment. If care and treatment in a psychiatric or a residential facility are necessary, the person or the person's guardian may

(1) apply for services under Section 593.027 or 593.028, Health and Safety Code;

(2) apply to a court to commit the person under Subtitle D, Title 7, Health and Safety Code (Persons with Mental Retardation Act),¹ Subtitle C, Title 7, Health and Safety Code (Texas Mental Health Code),² or Chapter 462, Health and Safety Code; or

(3) transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Subchapters A and C, Chapter 573, Health and Safety Code.

(c) A guardian of a person younger than 18 years of age may voluntarily admit the ward to a public or private inpatient psychiatric facility for care and treatment.

(d) A guardian of a person may voluntarily admit an incapacitated person to a residential care facility for emergency care or respite care under Section 593.027 or 593.028, Health and Safety Code; or

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 692, § 3, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 26, eff. Sept. 1, 2011.

§ 770A. Administration of Medication

(a) In this section, "psychoactive medication" has the meaning assigned by Section 574.101, Health and Safety Code.

(b) If a person under a protective custody order as provided by Subchapter B, Chapter 574, Health and Safety Code, is a ward who is not a minor, the guardian of the person of the ward may consent to the administration of psychoactive medication as prescribed by the ward's treating physician regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

Added by Acts 2003, 78th Leg., ch. 692, § 4, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart F. Specific Duties and Powers of Guardians

§ 771. Guardian of Estate: Possession of Personal Property and Records

The guardian of an estate, immediately after receiving letters of guardianship, shall collect and take into possession the personal property, record books, title papers, and other business papers of the ward and shall deliver the personal property, books, or papers, of the ward to a person who is legally entitled to that property when the guardianship has been closed or a successor guardian has received letters.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 772. Collection of Claims and Recovery of Property

Every guardian of an estate shall use ordinary diligence to collect all claims and debts due the ward and to recover possession of all property of the ward to which the ward has claim or title, if there is a reasonable prospect of collecting the claims or of recovering the property. If the guardian wilfully neglects to use ordinary diligence, the guardian and the sureties on the guardian's bond shall be liable, at the suit of any person interested in the estate, for the use of

¹ Health & Safety Code § 591.001 et seq.

² Health & Safety Code § 571.001 et seq.

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the estate, for the amount of the claims or for the value of the property that has been lost due to the guardian's neglect.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 51, eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 773. Suit by Guardian of Estate

A guardian of a ward's estate appointed in this state may institute suits for the recovery of personal property, debts, or damages and suits for title to or possession of land or for any right attached to or growing out of the same or for injury or damage done. Judgment in those cases shall be conclusive but may be set aside by any person interested for fraud or collusion on the part of the guardian.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 52, eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 774. Exercise of Power with or Without Court Order

(a) On application, and if authorized by an order, the guardian of the estate may renew or extend any obligation owed by or to the ward. On written application to the court and when a guardian of the estate deems it is in the best interest of the estate, the guardian may, if authorized by an order of the court:

- (1) purchase or exchange property;
- (2) take a claim or property for the use and benefit of the estate in payment of a debt due or owing to the estate;
- (3) compound a bad or doubtful debt due or owing to the estate;
- (4) make a compromise or a settlement in relation to property or a claim in dispute or litigation;
- (5) compromise or pay in full any secured claim that has been allowed and approved as required by law against the estate by conveying to the holder of the secured claim the real estate or personalty securing the claim, in full payment, liquidation, and satisfaction of the claim, and in consideration of cancellation of a note, deed of trust, mortgage, chattel mortgage, or other evidence of a lien that secures the payment of the claim;
- (6) abandon worthless or burdensome property and the administration of that property. Abandoned real or personal property may be foreclosed on by a secured party, trustee, or mortgagee without further order of the court;
- (7) purchase a prepaid funeral benefits contract; and
- (8) establish a trust in accordance with 42 U.S.C. Section 1396p(d)(4)(B), as amended, and direct that the income of the ward as defined by that section be paid directly to the trust, solely for the

purpose of the ward's eligibility for medical assistance under Chapter 32, Human Resources Code.

(b) The guardian of the estate of a person, without application to or order of the court, may exercise the following powers provided, however, that a guardian may apply and obtain an order if doubtful of the propriety of the exercise of any such power:

- (1) release a lien on payment at maturity of the debt secured by the lien;
- (2) vote stocks by limited or general proxy;
- (3) pay calls and assessments;
- (4) insure the estate against liability in appropriate cases;
- (5) insure property of the estate against fire, theft, and other hazards; and
- (6) pay taxes, court costs, and bond premiums.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (a) amended by Acts 1997, 75th Leg., ch. 77, § 6, eff. Sept. 1, 1997: Subsec. (a) amended by Acts 2001, 77th Leg., ch. 305, § 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 549, § 19, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 775. Possession of Property Held in Common Ownership

If the ward holds or owns any property in common, or as part owner with another person, the guardian of the estate is entitled to possession of the property of the ward held or owned in common with a part owner in the same manner as another owner in common or joint owner would be entitled.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 776. Sums Allowable for Education and Maintenance of Ward

(a) Subject to Section 777 of this code, if a monthly allowance for the ward was not ordered in the court's order appointing a guardian, the guardian of the estate shall file an application with the court requesting a monthly allowance to be expended from the income and corpus of the ward's estate for the education and maintenance of the ward and the maintenance of the ward's property.

(a-1) The guardian must file the application requesting the monthly allowance not later than the 30th day after the date on which the guardian qualifies as guardian or the date specified by the court, whichever is later. The application must clearly separate amounts requested for education and maintenance of the ward from amounts requested for maintenance of the ward's property.

(a-2) In determining the amount of the monthly allowance for the ward and the ward's property, the court shall consider the condition of the estate and the income and corpus of the estate necessary to pay the

reasonably anticipated regular education and maintenance expenses of the ward and maintenance expenses of the ward's property. The court's order setting a monthly allowance must specify the types of expenditures the guardian may make on a monthly basis for the ward or the ward's property. An order setting a monthly allowance does not affect the guardian's duty to account for expenditures of the allowance in the annual account required by Section 741 of this code.

(a-3) When different persons have the guardianship of the person and estate of a ward, the court's order setting a monthly allowance must specify the amount, if any, set by the court for the education and maintenance of the ward that the guardian of the estate shall pay and the amount, if any, the guardian of the estate shall pay to the guardian of the person at a time specified by the court, for the education and maintenance of the ward. If the guardian of the estate fails to pay to the guardian of the person the monthly allowance set by the court, the guardian of the estate shall be compelled to make the payment by court order after the guardian is duly cited to appear.

(b) When a guardian has in good faith expended funds from the income and corpus of the estate of the ward for support and maintenance of the ward and the expenditures exceed the monthly allowance authorized by the court, the guardian shall file a motion with the court requesting approval of the expenditures. The court may approve the excess expenditures if:

- (1) the expenditures were made when it was not convenient or possible for the guardian to first secure court approval;
- (2) the proof is clear and convincing that the expenditures were reasonable and proper;
- (3) the court would have granted authority in advance to make the expenditures; and
- (4) the ward received the benefits of the expenditures.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (b) amended by Acts 1995, 74th Leg., ch. 1039, § 53, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 549, § 20, eff. Sept. 1, 2003. Subsec. (a-3) amended by Acts 2005, 79th Leg., ch. 200, § 6, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 776A. Sums Allowable for Education and Maintenance of Ward's Spouse or Dependent

(a) Subject to Section 777 of this code and on application to the court, the court may order the guardian of the estate of a ward to expend funds from the ward's estate for the education and maintenance of the ward's spouse or dependent.

(b) In determining whether to order the expenditure of funds from a ward's estate for the ward's spouse or dependent, as appropriate, in accordance with this section, the court shall consider:

- (1) the circumstances of the ward, the ward's spouse, and the ward's dependents;

(2) the ability and duty of the ward's spouse to support himself or herself and the ward's dependent;

(3) the size of the ward's estate;

(4) a beneficial interest the ward or the ward's spouse or dependent has in a trust; and

(5) an existing estate plan, including a trust or will, that provides a benefit to the ward's spouse or dependent.

(c) A person who makes an application to the court under this section shall mail notice of the application by certified mail to all interested persons.

Added by Acts 1997, 75th Leg., ch. 77, § 7, eff. Sept. 1, 1997. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 777. Sums Allowed Parents for Education and Maintenance of Minor Ward

(a) Except as provided by Subsection (b) of this section, a parent who is the guardian of the person of a ward who is 17 years of age or younger may not use the income or the corpus from the ward's estate for the ward's support, education, or maintenance.

(b) A court with proper jurisdiction may authorize the guardian of the person to spend the income or the corpus from the ward's estate to support, educate, or maintain the ward if the guardian presents clear and convincing evidence to the court that the ward's parents are unable without unreasonable hardship to pay for all of the expenses related to the ward's support.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 778. Title of Wards Not to Be Disputed

A guardian or the heirs, executors, administrators, or assigns of a guardian may not dispute the right of the ward to any property that came into the possession of the guardian as guardian of the ward, except property that is recovered from the guardian or property on which there is a personal action pending.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 779. Operation of Farm, Ranch, Factory, or Other Business

If the ward owns a farm, ranch, factory, or other business and if the farm, ranch, factory, or other business is not required to be sold at once for the payment of debts or other lawful purposes, the guardian of the estate on order of the court shall carry on the operation of the farm, ranch, factory, or other business, or cause the same to be done, or rent the same, as shall appear to be for the best interests of the estate. In deciding, the court shall consider the condition of the estate and the necessity that may exist for the future sale of the property or business for the payment of a debt, claim, or other lawful expenditure and may not extend

the time of renting any of the property beyond what appears consistent with the maintenance and education of a ward or the settlement of the estate of the ward.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 780. Administration of Partnership Interest by Guardian

If the ward was a partner in a general partnership and the articles of partnership provide that, on the incapacity of a partner, the guardian of the estate of the partner is entitled to the place of the incapacitated partner in the firm, the guardian who contracts to come into the partnership shall, to the extent allowed by law, be liable to a third person only to the extent of the incapacitated partner's capital in the partnership and the assets of the estate of the partner that are held by the guardian. This section does not exonerate a guardian from liability for the negligence of the guardian.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 781. Borrowing Money

(a) The guardian may mortgage or pledge any real or personal property of a guardianship estate by deed of trust or otherwise as security for an indebtedness, under court order, when necessary for any of the following purposes:

(1) for the payment of any ad valorem, income, gift, or transfer taxes due from a ward, regardless of whether the taxes are assessed by a state, a political subdivision of the state, the federal government, or a foreign country;

(2) for the payment of any expenses of administration, including sums necessary for the operation of a business, farm, or ranch owned by the estate;

(3) for the payment of any claims allowed and approved, or established by suit, against the ward or the estate of the ward;

(4) to renew and extend a valid, existing lien;

(5) to make improvements or repairs to the real estate of the ward if:

(A) the real estate of the ward is not revenue producing but could be made revenue producing by certain improvements and repairs; or

(B) the revenue from the real estate could be increased by making improvements or repairs to the real estate;

(6) court-authorized borrowing of money that the court finds to be in the best interests of the ward for the purchase of a residence for the ward or a dependent of the ward; and

(7) if the guardianship is kept open after the death of the ward, funeral expenses of the ward and expenses of the ward's last illness.

(a-1) The guardian of the estate may also receive an extension of credit on the ward's behalf that is secured, wholly or partly, by a lien on real property that is the homestead of the ward, under court order, when necessary to:

(1) make improvements or repairs to the homestead; or

(2) pay for education or medical expenses of the ward.

(a-2) Proceeds of a home equity loan described by Subsection (a-1) of this section may be used only for the purposes authorized under Subsection (a-1) of this section and to pay the outstanding balance of the loan.

(b) When it is necessary to borrow money for any of the purposes authorized under Subsection (a) or (a-1) of this section, or to create or extend a lien on property of the estate as security, a sworn application for the authority to borrow money shall be filed with the court, stating fully and in detail the circumstances that the guardian of the estate believes make necessary the granting of the authority. On the filing of an application under this subsection, the clerk shall issue and cause to be posted a citation to all interested persons, stating the nature of the application and requiring the interested persons to appear and show cause why the application should not be granted.

(c) If the court is satisfied by the evidence adduced at the hearing on the application that it is in the interest of the ward or the ward's estate to borrow money under Subsection (b) of this section, or to extend and renew an existing lien, the court shall issue an order to that effect, setting out the terms and conditions of the authority granted. The term of the loan or renewal shall be for the length of time that the court determines to be for the best interests of the ward or the ward's estate. If a new lien is created on the property of a guardianship estate, the court may require that the guardian's general bond be increased, or that an additional bond be given, for the protection of the guardianship estate and its creditors, as for the sale of real property belonging to the estate.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (a-1), (a-2) added by Acts 2005, 79th Leg., ch. 1204, § 1, eff. Sept. 1, 2005. Subsec. (b) amended by Acts 2005, 79th Leg., ch. 1204, § 1, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 782. Powers, Duties, and Obligations of Guardian of Person Entitled to Government Funds

(a) A guardian of the person for whom it is necessary to have a guardian appointed to receive funds from a governmental source has the power to administer only the funds received from the governmental source, all earnings, interest, or profits derived from the funds, and all property acquired with the funds. The guardian has the power to receive the funds and pay out the expenses of administering the guardianship and the expenses for the support, maintenance, or education of the ward or the ward's dependents. Expenditures for the

support, maintenance, or education of the ward or the ward's dependents may not exceed \$12,000 during any 12-month period without the court's approval.

(b) All acts performed before September 1, 1993, by guardians of the estate of a person for whom it is necessary to have a guardian appointed to receive and disburse funds that are due the person from a governmental source are validated if the acts are performed in conformance with orders of a court that has venue with respect to the support, maintenance, and education of the ward or the ward's dependents and the investment of surplus funds of the ward under this chapter and if the validity of the act is not an issue in a probate proceeding or civil lawsuit that is pending on September 1, 1993.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 54, eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart G. Claims Procedures

§ 783. Notice by Guardian of Appointment

(a) Within one month after receiving letters, personal representatives of estates shall send to the comptroller of public accounts by certified or registered mail if the ward remitted or should have remitted taxes administered by the comptroller of public accounts and publish in some newspaper, printed in the county where the letters were issued, if there be one, a notice requiring all persons having a claim against the estate being administered to present the claim within the time prescribed by law. The notice must include the time of issuance of letters held by the representative, the address to which a claim may be presented, and an instruction of the representative's choice that a claim be addressed in care of the representative, in care of the representative's attorney, or in care of "Representative, Estate of _____" (naming the estate).

(b) A copy of the printed notice, with the affidavit of the publisher, duly sworn to and subscribed before a proper officer, to the effect that the notice was published as provided in this chapter for the service of citation or notice by publication, shall be filed in the court in which the cause is pending.

(c) When no newspaper is printed in the county, the notice shall be posted and the return made and filed as required by this chapter.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (a) amended by Acts 1997, 75th Leg., ch. 77, § 8, eff. Sept. 1, 1997. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 784. Notice to Holders of Recorded Claims

(a) Within four months after receiving letters, the guardian of an estate shall give notice of the issuance of the letters to each and every person having a claim for money against the estate of a ward if the claim is

secured by a deed of trust, mortgage, or vendor's, mechanic's or other contractor's lien on real estate belonging to the estate.

(b) Within four months after receiving letters, the guardian of an estate shall give notice of the issuance of the letters to each person having an outstanding claim for money against the estate of a ward if the guardian has actual knowledge of the claim.

(c) The notice stating the original grant of letter shall be given by mailing the notice by certified mail or registered letter, with return receipt requested, addressed to the record holder of the indebtedness or claim at the last known post office address of the record holder.

(d) A copy of each notice required by Subsection (a) of this section, with the return receipt and an affidavit of the representative, stating that the notice was mailed as required by law, giving the name of the person to whom the notice was mailed, if not shown on the notice or receipt, shall be filed in the court from which letters were issued.

(e) In the notice required by Subsection (b) of this section, the guardian of the estate may expressly state in the notice that the unsecured creditor must present a claim not later than the 120th day after the date on which the unsecured creditor receives the notice or the claim is barred, if the claim is not barred by the general statutes of limitation. The notice under this subsection must include:

(1) the address to which claims may be presented; and

(2) an instruction that the claim be filed with the clerk of the court issuing the letters of guardianship.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (c) added by Acts 2001, 77th Leg., ch. 1174, § 6, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 785. One Notice Sufficient; Penalty for Failure to Give Notice

(a) If the notice required by Section 784 of this code has been given by a former representative, or by one when several representatives are acting, the notice given by the former representative or co-representative is sufficient and need not be repeated by any successor or co-representative.

(b) If the guardian fails to give the notice required in other sections of this chapter or to cause the notices to be given, the guardian and the sureties on the bond of the guardian shall be liable for any damage that any person suffers because of the neglect, unless it appears that the person had notice otherwise.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 786. Claims Against Wards

(a) A claim may be presented to the guardian of the estate at any time when the estate is not closed and

when suit on the claim has not been barred by the general statutes of limitation. A claim of an unsecured creditor for money that is not presented within the time prescribed by the notice of presentment permitted by Section 784(e) of this code is barred.

(b) A claim against a ward on which a suit is barred by a general statute of limitation applicable to the claim may not be allowed by a guardian. If allowed by the guardian and the court is satisfied that limitation has run, the claim shall be disapproved.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (a) amended by Acts 2001, 77th Leg., ch. 1174, § 7, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 787. Tolling of General Statutes of Limitation

The general statutes of limitation are tolled:

(1) by filing a claim that is legally allowed and approved; or

(2) by bringing a suit on a rejected and disapproved claim not later than the 90th day after the date of rejection or disapproval.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 788. Claims Must Be Authenticated

Except as provided by Section 792 of this code, with respect to the payment of an unauthenticated claim by a guardian, a guardian of the estate may not allow and the court may not approve a claim for money against the estate, unless the claim is supported by an affidavit that the claim is just and that all legal offsets, payments, and credits known to the affiant have been allowed. If the claim is not founded on a written instrument or account, the affidavit must also state the facts on which the claim is founded. A photostatic copy of an exhibit or voucher necessary to prove a claim under this section may be offered with and attached to the claim instead of the original.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2005, 79th Leg., ch. 200, § 7, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 789. When Defects of Form are Waived

Any defect of form or claim of insufficiency of exhibits or vouchers presented is deemed waived by the guardian unless written objection to the form, exhibit, or voucher is made not later than the 30th day after the date of presentment of the claim and is filed with the county clerk.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 790. Evidence Concerning Lost or Destroyed Claims

If evidence of a claim is lost or destroyed, the claimant or a representative of the claimant may make affidavit to the fact of the loss or destruction, stating the amount, date, and nature of the claim and when due, that the claim is just, that all legal offsets, payments, and credits known to the affiant have been allowed, and that the claimant is still the owner of the claim. The claim must be proved by disinterested testimony taken in open court, or by oral or written deposition, before the claim is approved. If the claim is allowed or approved without the affidavit or if the claim is approved without satisfactory proof, the allowance or approval is void.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 791. Authentication of Claim by Others Than Individual Owners

The cashier, treasurer, or managing official of a corporation shall make the affidavit required to authenticate a claim of the corporation. When an affidavit is made by an officer of a corporation, or by an executor, administrator, guardian, trustee, assignee, agent, or attorney, it is sufficient to state in the affidavit that the person making the affidavit has made diligent inquiry and examination and that the person believes that the claim is just and that all legal offsets, payments, and credits made known to the person making the affidavit have been allowed.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 792. Guardian's Payment of Unauthenticated Claims

A guardian may pay an unauthenticated claim against the estate of the guardian's ward that the guardian believes to be just, but the guardian and the sureties on the bond of the guardian shall be liable for the amount of any payment of the claim if the court finds that the claim is not just.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 793. Method of Handling Secured Claims

(a) When a secured claim against a ward is presented, the claimant shall specify in the claim, in addition to all other matters required to be specified in claims:

(1) whether the claim shall be allowed and approved as a matured secured claim to be paid in due course of administration, in which event it shall be so paid if allowed and approved; or

(2) whether the claim shall be allowed, approved, and fixed as a preferred debt and lien

against the specific property securing the indebtedness and paid according to the terms of the contract that secured the lien, in which event it shall be so allowed and approved if it is a valid lien; provided, however, the guardian may pay the claim prior to maturity if it is in the best interests of the estate to do so.

(b) If a secured claim is not presented within the time provided by law, it shall be treated as a claim to be paid in accordance with Subsection (a)(2) of this section.

(c) When an indebtedness has been allowed and approved under Subsection (a)(2) of this section, no further claim shall be made against other assets of the estate because of the indebtedness, but the claim remains a preferred lien against the property securing the claim, and the property remains security for the debt in any distribution or sale of the property before final maturity and payment of the debt.

(d) If property that secures a claim allowed, approved, and fixed under Subsection (a)(2) of this section is not sold or distributed not later than the 12th month after the date letters of guardianship are granted, the guardian of the estate shall promptly pay all maturities that have accrued on the debt according to the terms of the maturities and shall perform all the terms of any contract securing the maturities. If the guardian defaults in the payment or performance, the court, on motion of the claim holder, shall require the sale of the property subject to the unmaturing part of the debt and apply the proceeds of the sale to the liquidation of the maturities or, at the option of the claim holder, a motion may be made in a like manner to require the sale of the property free of the lien and to apply the proceeds to the payment of the whole debt.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 794. Claims Providing for Attorney's Fees

If the instrument that evidences or supports a claim provides for attorney's fees, the claimant may include as a part of the claim the portion of the fee that the claimant has paid or contracted to pay to an attorney to prepare, present, and collect the claim.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 795. Depositing Claims With Clerk

A claim may also be presented by depositing the claim, with vouchers and necessary exhibits and affidavit attached to the claim, with the clerk. The clerk, on receiving the claim, shall advise the guardian of the estate or the guardian's attorney by letter mailed to the last known address of the guardian of the deposit of the claim. If the guardian fails to act on the claim within 30 days after it is filed, the claim is presumed to be rejected. Failure of the clerk to give notice as required

under this section does not affect the validity of the presentment or the presumption of rejection of the claim because not acted on within the 30-day period.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 796. Memorandum of Allowance or Rejection of Claim

When a duly authenticated claim against a guardianship estate is presented to the guardian or filed with the clerk as provided by this subpart, the guardian shall, not later than the 30th day after the date the claim is presented or filed, endorse or annex to the claim a memorandum signed by the guardian stating the time of presentation or filing of the claim and that the guardian allows or rejects the claim, or what portion of the claim the guardian allows or rejects.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 797. Failure to Endorse or Annex Memorandum

The failure of a guardian of an estate to endorse on or annex to a claim presented to the guardian, or the failure of a guardian to allow or reject the claim or portion of the claim within 30 days after the claim was presented constitutes a rejection of the claim. If the claim is later established by suit, the costs shall be taxed against the guardian, individually, or the guardian may be removed as in other cases of removal on the written complaint of any person interested in the claim, after personal service of citation, hearing, and proof.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 798. Claims Entered in Docket

After a claim against a ward's estate has been presented to and allowed by the guardian, either in whole or in part, the claim shall be filed with the county clerk of the proper county who shall enter it on the claim docket.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 799. Contest of Claims, Action by Court, and Appeals

(a) Any person interested in a ward, at any time before the court has acted on a claim, may appear and object in writing to the approval of the claim, or any part of the claim. The parties are entitled to process for witnesses, and the court shall hear proof and render judgment as in ordinary suits.

(b) The court shall either approve in whole or in part or reject a claim that has been allowed and entered on the claim docket for a period of 10 days and shall at the same time classify the claim.

(c) Although a claim may be properly authenticated and allowed, if the court is not satisfied that it is just, the court shall examine the claimant and the guardian under oath and hear other evidence necessary to determine the issue. If after the examination and hearing the court is not convinced that the claim is just, the court shall disapprove the claim.

(d) When the court has acted on a claim, the court shall endorse on or annex to the claim a written memorandum dated and signed officially that states the exact action taken by the court on the claim, whether the court approved or disapproved the claim or approved in part or rejected in part the claim, and that states the classification of the claim. An order under this subsection has the force and effect of a final judgment.

(e) When a claimant or any person interested in a ward is dissatisfied with the action of the court on a claim, the claimant or person interested may appeal the action to the courts of appeals, as from other judgments of the county court in probate matters.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 800. Suit on Rejected Claim

When a claim or a part of a claim has been rejected by the guardian, the claimant shall institute suit on the claim in the court of original probate jurisdiction in which the guardianship is pending or in any other court of proper jurisdiction not later than the 90th day after the date of the rejection of the claim or the claim is barred. When a rejected claim is sued on, the endorsement made on or annexed to the claim is taken to be true without further proof, unless denied under oath. When a rejected claim or part of a claim has been established by suit, no execution shall issue but the judgment shall be certified not later than the 30th day after the date of rendition if the judgment is from a court other than the court of original probate jurisdiction, filed in the court in which the cause is pending entered on the claim docket, classified by the court, and handled as if originally allowed and approved in due course of administration.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 801. Presentment of Claims a Prerequisite for Judgment

(a) A judgment may not be rendered in favor of a claimant on any claim for money that has not been legally presented to the guardian of the estate of the ward and rejected by the guardian or by the court, in whole or in part.

(b) Subsection (a) does not apply to a claim for delinquent ad valorem taxes against the estate of a ward that is being administered in probate in a county other than the county in which the taxes were imposed.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1481, § 38, eff. Sept. 1, 1999. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 802. Costs of Suit With Respect to Claims

All costs incurred in the probate court with respect to claims are taxed as follows:

- (1) if allowed and approved, the guardianship estate shall pay the costs;
- (2) if allowed, but disapproved, the claimant shall pay the costs;
- (3) if rejected, but established by suit, the guardianship estate shall pay the costs;
- (4) if rejected, but not established by suit, the claimant shall pay the costs; or
- (5) in suits to establish a claim after rejection in part, if the claimant fails to recover judgment for a greater amount than was allowed or approved, the claimant shall pay all costs.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 803. Claims by Guardians

(a) A claim that a guardian of the person or estate held against the ward at the time of the appointment of the guardian, or that has since accrued, shall be verified by affidavit as required in other cases and presented to the clerk of the court in which the guardianship is pending. The clerk shall enter the claim on the claim docket, after which it shall take the same course as other claims.

(b) When a claim by a guardian has been filed with the court within the required time, the claim shall be entered on the claim docket and acted on by the court in the same manner as in other cases. When the claim has been acted on by the court, an appeal from the judgment of the court may be taken as in other cases.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 804. Claims Not to Be Paid Unless Approved

Except as provided for payment at the risk of a guardian of an unauthenticated claim, a claim for money against the estate of a ward or any part of a claim may not be paid until it has been approved by the court or established by the judgment of a court of competent jurisdiction.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 805. Order of Payment of Claims

(a) The guardian shall pay a claim against the estate of the guardian's ward that has been allowed and approved or established by suit, as soon as practicable,

in the following order, except as provided by Subsection (b) of this section:

(1) expenses for the care, maintenance, and education of the ward or the ward's dependents;

(2) funeral expenses of the ward and expenses of the ward's last illness, if the guardianship is kept open after the death of the ward as provided under this chapter, except that any claim against the estate of a ward that has been allowed and approved or established by suit before the death of the ward shall be paid before the funeral expenses and expenses of the last illness;

(3) expenses of administration; and

(4) other claims against the ward or the ward's estate.

(b) If the estate is insolvent, the guardian shall give first priority to the payment of a claim relating to the administration of the guardianship. The guardian shall pay other claims against the ward's estate in the order prescribed by Subsection (a) of this section.

(c) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by the applicable statute of limitations and on due proof procure an order for its allowance and payment from the estate.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1403, § 5, eff. Sept. 1, 1997. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 806. Deficiency of Assets

When there is a deficiency of assets to pay all claims of the same class, the claims in the same class shall be paid pro rata, as directed by the court, and in the order directed. A guardian may not be allowed to pay any claims, whether the estate is solvent or insolvent, except with the pro rata amount of the funds of the guardianship estate that have come to hand.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 807. Guardian Not to Purchase Claims

A guardian may not purchase for the guardian's own use or for any purposes whatsoever a claim against the guardianship the guardian represents. On written complaint by a person interested in the guardianship estate and satisfactory proof of violation of this provision, the court after citation and hearing shall enter its order cancelling the claim and no part of the claim shall be paid out of the guardianship. The judge may remove the guardian for a violation of this section.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 808. Proceeds of Sale of Mortgaged Property

When a guardian has on hand the proceeds of a sale that has been made for the satisfaction of a mortgage or

other lien and the proceeds, or any part of the proceeds, are not required for the payment of any debts against the estate that have a preference over the mortgage or other lien, the guardian shall pay the proceeds to a holder of the mortgage or other lien. If the guardian fails to pay the proceeds as required by this section, the holder, on proof of the mortgage or other lien, may obtain an order from the court directing the payment to be made.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 809. Liability for Nonpayment of Claims

(a) If a guardian of an estate fails to pay on demand any money ordered by the court to be paid to any person, except to the state treasury, when there are funds of the guardianship estate available, the person or claimant entitled to the payment, on affidavit of the demand and failure to pay, is authorized to have execution issued against the property of the guardianship for the amount due, with interest and costs.

(b) On return of the execution not satisfied, or merely on the affidavit of demand and failure to pay, the court may cite the guardian and the sureties on the bond of the guardian to show cause why the guardian or the sureties should not be held liable for the debt, interest, costs, or damages. On return of citation duly served, if good cause to the contrary is not shown, the court shall render judgment against the guardian and sureties that are cited under this subsection in favor of the holder of the claim for the unpaid amount ordered to be paid or established by suit, with interest and costs, and for damages on the amount neglected to be paid, at the rate of five percent per month for each month or fraction of a month that the payment was neglected to be paid after demand was made for payment. The damages may be collected in any court of competent jurisdiction.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart H. Sales

§ 811. Court Must Order Sales

Except as provided by this subpart, the sale of any property of the ward may not be made without an order of court authorizing the sale. The court may order property sold for cash or on credit, at public auction or privately, as it may consider most to the advantage of the estate, except when otherwise specifically provided in this chapter.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 812. Certain Personal Property to Be Sold

(a) The guardian of an estate, after approval of inventory and appraisal, shall promptly apply for an order of the court to sell at public auction or privately, for cash or on credit not exceeding six months, all of the estate that is liable to perish, waste, or deteriorate in value or that will be an expense or disadvantage to the estate if kept. Property exempt from forced sale, a specific legacy, or personal property necessary to carry on a farm, ranch, factory, or any other business that it is thought best to operate, may not be included in a sale under this section.

(b) In determining whether to order the sale of an asset under Subsection (a) of this section, the court shall consider:

(1) the guardian's duty to take care of and manage the estate as a person of ordinary prudence, discretion, and intelligence would exercise in the management of the person's own affairs; and

(2) whether the asset constitutes an asset that a trustee is authorized to invest under Chapter 117 or Subchapter F, Chapter 113, Property Code.¹

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1103, § 15, eff. Jan. 1, 2004. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 813. Sales of Other Personal Property

On application by the guardian of the estate or by any interested person, the court may order the sale of any personal property of the estate not required to be sold by Section 812 of this code, including growing or harvested crops or livestock but not including exempt property, if the court finds that the sale of the property would be in the best interests of the ward or the ward's estate in order to pay expenses of the care, maintenance, and education of the ward or the ward's dependents, expenses of administration, allowances, or claims against the ward or the ward's estate, and funeral expenses of the ward and expenses of the ward's last illness, if the guardianship is kept open after the death of the ward, from the proceeds of the sale of the property. Insofar as possible, applications and orders for the sale of personal property must conform to the requirements set forth under this chapter for applications and orders for the sale of real estate.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 814. Special Provisions Pertaining to Livestock

(a) When the guardian of an estate has in the guardian's possession any livestock that the guardian deems necessary or to the advantage of the estate to sell, the guardian may, in addition to any other method provided by law for the sale of personal property, obtain

authority from the court in which the estate is pending to sell the livestock through a bonded livestock commission merchant or a bonded livestock auction commission merchant.

(b) On written and sworn application by the guardian or by any person interested in the estate that describes the livestock sought to be sold and that sets out the reasons why it is deemed necessary or to the advantage of the estate that the application be granted, the court may authorize the sale. The court shall consider the application and may hear evidence for or against the application, with or without notice, as the facts warrant.

(c) If the application is granted, the court shall enter its order to that effect and shall authorize delivery of the livestock to any bonded livestock commission merchant or bonded livestock auction commission merchant for sale in the regular course of business. The commission merchant shall be paid the merchant's usual and customary charges, not to exceed five percent of the sale price, for the sale of the livestock. A report of the sale, supported by a verified copy of the merchant's account of sale, shall be made promptly by the guardian to the court, but no order of confirmation by the court is required to pass title to the purchaser of the livestock.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 549, § 21, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 815. Sales of Personal Property at Public Auction

All sales of personal property at public auction shall be made after notice has been issued by the guardian of the estate and posted as in case of posting for original proceedings in probate, unless the court shall otherwise direct.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 816. Sales of Personal Property on Credit

No more than six months' credit may be allowed when personal property is sold at public auction, based on the date of the sale. The purchaser shall be required to give his note for the amount due, with good and solvent personal security, before delivery of the property can be made to the purchaser, but security may be waived if delivery is not to be made until the note, with interest, has been paid.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 817. Sale of Mortgaged Property

On the filing of a written application, a creditor who holds a claim that is secured by a valid mortgage or other lien and that has been allowed and approved or established by suit may obtain from the court in which the guardianship is pending an order that the property,

¹ Property Code §113.171 et seq.

or so much of the property as necessary to satisfy the creditor's claim, shall be sold. On the filing of the application, the clerk shall issue citation requiring the guardian of the estate to appear and show cause why an application filed under this section should not be granted. If it appears to the court that it would be advisable to discharge the lien out of the general assets of the estate or that it be refinanced, the court may so order. Otherwise, the court shall grant the application and order that the property be sold at public or private sale, as the court considers best, as in ordinary cases of sales of real estate.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 818. Sales of Personal Property Reported; Decree Vests Title

All sales of personal property shall be reported to the court. The laws regulating the confirmation or disapproval of sales of real estate apply to sales of personal property, but no conveyance shall be necessary. The decree confirming the sale of personal property shall vest the right and title of the estate of the ward in the purchaser who has complied with the terms of the sale and shall be prima facie evidence that all requirements of the law in making the sale have been met. The guardian of an estate may, on request, issue a bill of sale without warranty to the purchaser as evidence of title. The expense of the bill of sale if requested is to be borne by the purchaser.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 819. Selection of Real Property Sold for Payment of Debts

Real property of the ward that is selected to be sold for the payment of expenses or claims shall be that property that the court deems most advantageous to the guardianship to be sold.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 820. Application for Sale of Real Estate

An application may be made to the court for an order to sell real property of the estate when it appears necessary or advisable in order to:

- (1) pay expenses of administration, allowances, and claims against the ward or the ward's estate, and to pay funeral expenses of the ward and expenses of the ward's last illness, if the guardianship is kept open after the death of the ward;
- (2) make up the deficiency when the income of a ward's estate, the personal property of the ward's estate, and the proceeds of previous sales, are insufficient to pay for the education and

maintenance of the ward or to pay debts against the estate;

(3) dispose of property of the ward's estate that consists in whole or in part of an undivided interest in real estate when it is deemed in the best interests of the estate to sell the interest;

(4) dispose of real estate of a ward, any part of which is nonproductive or does not produce sufficient revenue to make a fair return on the value of the real estate, when the improvement of the real estate with a view to making it productive is not deemed advantageous or advisable and it appears that the sale of the real estate and the investment of the money derived from the sale of the real estate would be in the best interests of the estate; or

(5) conserve the estate of a ward by selling mineral interest or royalties on minerals in place owned by a ward.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 821. Contents of Application for Sale of Real Estate

An application for the sale of real estate shall be in writing, must describe the real estate or an interest in or part of the real estate sought to be sold, and shall be accompanied by an exhibit, verified by affidavit that shows fully and in detail:

- (1) the condition of the estate;
- (2) the charges and claims that have been approved or established by suit, or that have been rejected and may be established later;
- (3) the amount of each claim that has been approved or established by suit, or that has been rejected but may be established later;
- (4) the property of the estate remaining on hand liable for the payment of those claims; and
- (5) any other facts that show the necessity or advisability of the sale.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 822 [repealed]. Setting of Hearing on Application

Repealed by Acts 2007, 80th Leg., ch. 614, § 33, eff. Sept. 1, 2007.

§ 823. Citation on Application

On the filing of an application for the sale of real estate under Section 820 of this code and exhibit, the clerk shall issue a citation to all persons interested in the guardianship that describes the land or interest or part of the land or interest sought to be sold and that informs the persons of the right under Section 824 of this code to file an opposition to the sale during the period prescribed by the court as shown in the citation, if they so elect. Service of citation shall be by posting.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2007, 80th Leg., ch. 614, § 16, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 824. Opposition to Application

When an application for an order of sale is made, a person interested in the guardianship may, during the period provided in the citation issued under Section 823 of this code, file the person's opposition to the sale, in writing, or may make application for the sale of other property of the estate.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2007, 80th Leg., ch. 614, § 17, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 824A. Hearing on Application and Any Opposition

(a) The clerk of a court in which an application for an order of sale is filed shall immediately call to the attention of the judge any opposition to the sale that is filed during the period provided in the citation issued under Section 823 of this code. The court shall hold a hearing on an application if an opposition to the sale is filed during the period provided in the citation.

(b) A hearing on an application for an order of sale is not required under this section if no opposition to the application is filed during the period provided in the citation. The court, in its discretion, may determine that a hearing is necessary on the application even if no opposition was filed during that period.

(c) If the court orders a hearing under Subsection (a) or (b) of this section, the court shall designate in writing a date and time for hearing the application and any opposition, together with the evidence pertaining to the application and opposition. The clerk shall issue a notice to the applicant and to each person who files an opposition to the sale, if applicable, of the date and time of the hearing.

(d) The judge may, by entries on the docket, continue a hearing held under this section from time to time until the judge is satisfied concerning the application.

Added by Acts 2007, 80th Leg., ch. 614, § 18, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 825. Order of Sale

If satisfied that the sale of the property of the guardianship described in the application made under Section 820 of this code is necessary or advisable, the court shall order the sale to be made. Otherwise, the court may deny the application and, if the court deems best, may order the sale of other property the sale of which would be more advantageous to the estate. An order for the sale of real estate must specify:

(1) the property to be sold, giving a description that will identify the property;

(2) whether the property is to be sold at public auction or at private sale, and, if at public auction, the time and place of the sale;

(3) the necessity or advisability of the sale and its purpose;

(4) except in cases in which no general bond is required, that, having examined the general bond of the representative of the estate, the court finds it to be sufficient as required by law, or finds the bond to be insufficient and specifies the necessary or increased bond;

(5) that the sale shall be made and the report returned in accordance with law; and

(6) the terms of the sale.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2007, 80th Leg., ch. 614, § 19, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 826. Procedure When Guardian Neglects to Apply for Sale

When the guardian of an estate neglects to apply for an order to sell sufficient property to pay the charges and claims against the estate that have been allowed and approved or established by suit, an interested person, on written application, may cause the guardian to be cited to appear and make a full exhibit of the condition of the estate, and show cause why a sale of the property should not be ordered. On hearing an application made under this section, if the court is satisfied that a sale of the property is necessary or advisable in order to satisfy the claims, it shall enter an order of sale as provided by Section 825 of this code.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 827. Permissible Terms of Sale of Real Estate

(a) The real estate may be sold for cash, or for part cash and part credit, or the equity in land securing an indebtedness may be sold subject to the indebtedness, or with an assumption of the indebtedness, at public or private sale, as appears to the court to be in the best interests of the estate. When real estate is sold partly on credit, the cash payment may not be less than one-fifth of the purchase price, and the purchaser shall execute a note for the deferred payments payable in monthly, quarterly, semiannual or annual installments, of the amounts as appear to the court to be for the best interests of the guardianship, to bear interest from date at a rate of not less than four percent per annum, payable as provided in the note. Default in the payment of principal or interest, or any part of the payment when due, at the election of the holder of the note, matures the whole debt. The note shall be secured by vendor's lien retained in the deed and in the note on the property sold and shall be further secured by deed of trust on the property sold, with the usual provisions for foreclosure

and sale on failure to make the payments provided in the deed and the note.

(b) When an estate owning real estate by virtue of foreclosure of a vendor's lien or mortgage belonging to the estate either by judicial sale or by a foreclosure suit, by sale under deed of trust, or by acceptance of a deed in cancellation of a lien or mortgage owned by the estate, and it appears to the court that an application to redeem the property foreclosed on has been made by the former owner of the real estate to any corporation or agency created by any act of the Congress of the United States or of this state in connection with legislation for the relief of owners of mortgaged or encumbered homes, farms, ranches, or other real estate and that it would be in the best interests of the estate to own bonds of one of the above named federal or state corporations or agencies instead of the real estate, then on proper application and proof, the court may dispense with the provisions of credit sales as provided by Subsection (a) of this section, and may order reconveyance of the property to the former mortgage debtor, or former owner, reserving vendor's lien notes for the total amount of the indebtedness due or for the total amount of bonds that the corporation or agency above named is under its rules and regulations allowed to advance. On obtaining the order, it shall be proper for the guardian to endorse and assign the notes so obtained over to any one of the corporations or agencies above named in exchange for bonds of that corporation or agency.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 828. Public Sale of Real Estate

(a) Except as otherwise provided by this chapter, all public sales of real estate shall be advertised by the guardian of the estate by a notice published in the county in which the estate is pending, as provided by this chapter for publication of notices or citations. A reference in the notice shall be made to the order of sale, the time, place, and the required terms of sale, and a brief description of the property to be sold. A reference made under this section does not have to contain field notes, but if the real estate consists of rural property, the name of the original survey, the number of acres, its locality in the county, and the name by which the land is generally known must be contained in the reference.

(b) All public sales of real estate shall be made at public auction to the highest bidder.

(c) All public sales of real estate shall be made in the county in which the guardianship proceedings are pending, at the courthouse door of the county, or at another place in the county where sales of real estate are specifically authorized to be made, on the first Tuesday of the month after publication of notice has been completed, between the hours of 10 a.m. and 4 p.m. If deemed advisable by the court, the court may order the sale to be made in the county in which the land is

located, in which event notice shall be published both in that county and in the county in which the proceedings are pending.

(d) If a sale is not completed on the day advertised, the sale may be continued from day to day by making an oral public announcement of the continuance at the conclusion of the sale each day. The continued sale is to be made within the same hours as prescribed by Subsection (c) of this section. If sales are so continued, the fact shall be shown in the report of sale made to the court.

(e) When a person who bids on property of a guardianship estate offered for sale at public auction fails to comply with the terms of sale, the property shall be readvertised and sold without any further order. The person who defaults shall be liable to pay to the guardian of the estate, for the benefit of the estate, 10 percent of the amount of the person's bid and any deficiency in price on the second sale. The guardian shall recover the amounts by suit in any court in the county in which the sale was made that has jurisdiction over the amount claimed.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 829. Private Sale of Real Estate

All private sales of real estate shall be made in the manner the court directs in its order of sale, and no further advertising, notice, or citation concerning the sale shall be required unless the court shall direct otherwise.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 830. Sales of Easements and Rights of Way

The guardian may sell and convey easements and rights of way on, under, and over the land of a guardianship estate that is being administered under orders of a court, regardless of whether the proceeds of the sale are required for payment of charges or claims against the estate, or for other lawful purposes. The procedure for the sale is the same as provided by law for a sale of real property of wards at private sale.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 831. Guardian Purchasing Property of the Estate

(a) Except as provided by Subsection (b) or (c) of this section, the guardian of an estate may not purchase, directly or indirectly, any property of the estate sold by the guardian, or by any co-representative of a guardian.

(b) A guardian may purchase property from the estate in compliance with the terms of a written executory contract signed by the ward before the ward became incapacitated, including a contract for deed,

earnest money contract, buy/sell agreement, or stock purchase or redemption agreement.

(c) A guardian of an estate may purchase property from the estate on the court's determination that the sale is in the best interest of the estate. In the case of an application filed by the guardian of the estate of a ward, the court shall appoint an attorney ad litem to represent the ward with respect to the sale. The court may require notice for a sale made under this subsection.

(d) If a purchase is made in violation of this section, a person interested in the estate may file a written complaint with the court in which the guardianship proceedings are pending. On service of citation on the guardian and after hearing and proof, the court shall declare the sale void, set aside the sale, and order that the property be reconveyed to the estate. All costs of the sale, protest, and suit, if found necessary, shall be adjudged against the guardian.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (c) amended by Acts 2005, 79th Leg., ch. 200, § 8, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 832. Report of Sale

A sale of real property of an estate shall be reported to the court that orders the sale not later than the 30th day after the date the sale is made. A report must be in writing, sworn to, filed with the clerk, and noted on the probate docket. A report made under this section must contain:

- (1) the date of the order of sale;
- (2) a description of the property sold;
- (3) the time and place of sale;
- (4) the name of the purchaser;
- (5) the amount for which each parcel of property or interest in the parcel of property was sold;
- (6) the terms of the sale, and whether the sale was private or made at a public auction; and
- (7) whether the purchaser is ready to comply with the order of sale.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 833. Bond on Sale of Real Estate

If the guardian of the estate is not required by this chapter to furnish a general bond, the court may confirm the sale if the court finds the sale is satisfactory and in accordance with law. Otherwise, before a sale of real estate is confirmed, the court shall determine whether the general bond of the guardian is sufficient to protect the estate after the proceeds of the sale are received. If the court finds the bond is sufficient, the court may confirm the sale. If the general bond is found by the court to be insufficient, the court may not confirm the sale until the general bond is increased to the amount required by the court, or an additional bond is given and approved by the court. The increase in the

amount of the bond, or the additional bond, shall be equal to the amount for which the real estate is sold in addition to any additional sum the court finds necessary and sets for the protection of the estate. If the real estate sold is encumbered by a lien to secure a claim against the estate, is sold to the owner or holder of the secured claim, and is in full payment, liquidation, and satisfaction of the claim, an increased general bond or additional bond may not be required except for the amount of cash actually paid to the guardian of the estate in excess of the amount necessary to pay, liquidate, and satisfy the claim in full.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 834. Action of Court on Report of Sale

After the expiration of five days from the date a report of sale is filed under Section 832 of this code, the court shall inquire into the manner in which the sale was made, hear evidence in support of or against the report, and determine the sufficiency or insufficiency of the guardian's general bond, if any has been required and given. If the court is satisfied that the sale was for a fair price, was properly made, and conforms with the law and the court has approved any increased or additional bond that may have been found necessary to protect the estate, the court shall enter a decree confirming the sale showing conformity with other provisions of this chapter relating to the sale and authorizing the conveyance of the property to be made by the guardian of the estate on compliance by the purchaser with the terms of the sale, detailing those terms. If the court is not satisfied that the sale was for a fair price, was properly made, and conforms with the law, the court shall issue an order that sets the sale aside and order a new sale to be made, if necessary. The action of the court in confirming or disapproving a report of sale has the force and effect of a final judgment. Any person interested in the guardianship estate or in the sale has the right to have the decrees reviewed as in other final judgments in probate proceedings.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 835. Deed Conveys Title to Real Estate

When real estate is sold, the conveyance of real estate shall be by proper deed that refers to and identifies the decree of the court that confirmed the sale. The deed shall vest in the purchaser all right, title, and interest of the estate to the property and shall be prima facie evidence that the sale has met all applicable requirements of the law.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 836. Delivery of Deed, Vendor's Lien, and Deed of Trust Lien

After a sale is confirmed by the court and one purchaser has complied with the terms of sale, the guardian of the estate shall execute and deliver to the purchaser a proper deed conveying the property. If the sale is made partly on credit, the vendor's lien securing a purchase money note shall be expressly retained in the deed and may not be waived. Before actual delivery of the deed to the purchaser, the purchaser shall execute and deliver to the guardian of the estate a vendor's lien note, with or without personal sureties as the court has ordered and a deed of trust or mortgage on the property as further security for the payment of the note. On completion of the transaction, the guardian shall promptly file and record in the appropriate records in the county where the land is located the deed of trust or mortgage.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 837. Penalty for Neglect

If the guardian of an estate neglects to comply with Section 836 of this code or fails to file the deed of trust securing the lien in the proper county, the guardian, after complaint and citation, may be removed. The guardian and the sureties on the bond of the guardian shall be held liable for the use of the estate and for all damages resulting from the neglect of the guardian. Damages under this section may be recovered in a court of competent jurisdiction.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart I. Hiring and Renting

§ 839. Hiring or Renting Without Order of Court

The guardian of an estate, without court order, may rent any real property of the estate or hire out any personal property of the estate for one year or less, either at public auction or privately, as may be deemed in the best interests of the estate.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 840. Liability of Guardian

If property of the guardianship estate is hired or rented without court order, on the sworn complaint of any person interested in the estate, the guardian of the estate shall be required to account to the estate for the reasonable value of the hire or rent of the property to be ascertained by the court on satisfactory evidence.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 841. Order to Hire or Rent

A guardian of an estate may file a written application with the court setting forth the property sought to be hired or rented. If the proposed rental period is one year or more, the guardian of the estate shall file a written application with the court setting forth the property sought to be hired or rented. If the court finds that it would be in the interests of the estate, the court shall grant the application and issue an order that describes the property to be hired or rented and states whether the hiring or renting shall be at public auction or privately, whether for cash or on credit, and, if on credit, the extent of the credit and the period for which the property may be rented. If the property is to be hired or rented at public auction, the court shall prescribe whether notice shall be published or posted.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 842. Procedure in Case of Neglect to Rent Property

A person interested in a guardianship may file a written and sworn complaint in a court in which the estate is pending and cause the guardian of the estate to be cited to appear and show cause why the guardian did not hire or rent any property of the estate. The court, on hearing the complaint, shall make an order that is in the best interests of the estate.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 843. Property Hired or Rented on Credit

When property is hired or rented on credit, possession of the property may not be delivered until the hirer or renter has executed and delivered to the guardian of the estate a note with good personal security for the amount of the hire or rental. If the property that is hired or rented is delivered without the receipt of the security required under this section, the guardian and the sureties on the bond of the guardian shall be liable for the full amount of the hire or rental. This section does not apply to a hire or rental that is paid in installments in advance of the period of time to which they relate.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 844. Property Hired or Rented Returned in Good Condition

All property that is hired or rented, with or without a court order, shall be returned to the possession of the guardianship in as good a condition, reasonable wear and tear excepted, as when the property was hired or rented. It shall be the duty and responsibility of the guardian of the estate to see that the property is returned as provided by this section, to report to the court any

loss, damage, or destruction of property that is hired or rented under this chapter, and to ask for authority to take action as is necessary. If the guardian fails to act as required by this section, the guardian and the sureties on the bond of the guardian shall be liable to the guardianship for any loss or damage suffered through the fault of the guardian to act as required under this section.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 845. Report of Hiring or Renting

(a) When any property of the guardianship estate with an appraised value of \$3,000 or more has been hired or rented, the guardian of the estate, not later than the 30th day after the date of the hire or rental, shall file with the court a sworn and written report that states:

- (1) the property involved and its appraised value;
- (2) the date of hiring or renting, and whether at public auction or privately;
- (3) the name of the person who hired or rented the property;
- (4) the amount of the hiring or rental; and
- (5) whether the hiring or rental was for cash or on credit, and, if on credit, the length of time, the terms, and the security taken for the hiring or rental.

(b) When the value of the property involved is less than \$3,000, the hiring or renting of the property may be reported in the next annual or final account that is to be filed as required by law.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 846. Court Action on Report

After five days from the time the report of the hiring or rental is filed, the court shall examine the report and shall approve and confirm the hiring or rental by court order if the court finds the hire or rental just and reasonable. If the court disapproves the hiring or rental, the guardianship may not be bound and the court may order another offering of the property for hire or rent in the same manner and subject to the same rules provided in this chapter for property for hire or rent. If the report has been approved by the court and it later appears that, due to the fault of the guardian of the estate, the property has not been hired or rented for its reasonable value, the court shall cause the guardian of the estate and the sureties on the bond of the guardian to appear and show cause why the reasonable value of the hire or rental of the property should not be adjudged against the guardian or sureties.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart J. Mineral Leases, Pooling or Unitization Agreements, and Other Matters Relating to Mineral Properties

§ 847. Mineral Leases After Public Notice

(a) In this subpart:

(1) “Land” or “interest in land” includes minerals or any interest in any of the minerals in place.

(2) “Mineral development” includes exploration, by geophysical or by any other means, drilling, mining, developing, and operating, and producing and saving oil, other liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, sulphur, metals, and all other minerals, solid or otherwise.

(3) “Property” includes land, minerals in place, whether solid, liquid, or gaseous, as well as an interest of any kind in the property, including royalty, owned by the estate.

(b) A guardian acting solely under an order of a court, may be authorized by the court in which the guardianship proceeding is pending to make, execute, and deliver leases, with or without unitization clauses or pooling provisions, that provide for the exploration for, and development and production of, oil, other liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase), metals, and other solid minerals, and other minerals, or any of those minerals in place, belonging to the estate.

(c) All leases authorized by Subsection (b) of this section, with or without pooling provisions or utilization clauses, shall be made and entered into pursuant to and in conformity with Subsections (d)-(m) of this section.

(d) The guardian of the estate shall file a written application with the court seeking authority to lease property of the estate for mineral exploration and development, with or without pooling provisions or unitization clauses. The name of any proposed lessee or the terms, provisions, or form of any desired lease do not need to be set out or suggested in the application. The application shall:

(1) describe the property fully enough by reference to the amount of acreage, the survey name or number, abstract number, or other description that adequately identifies the property and its location in the county in which the property is located;

(2) specify the interest thought to be owned by the estate if less than the whole, but asking for authority to include all interest owned by the estate if that is the intention; and

(3) set out the reasons why the particular property of the estate should be leased.

(e) When an application to lease is filed, under this section, the county clerk shall immediately call the filing of the application to the attention of the court. The

judge shall promptly make and enter a brief order designating the time and place for the hearing of the application. If the hearing does not take place at the time originally designated by the court or by timely order of continuance duly entered, the hearing shall be automatically continued without further notice to the same hour or time the following day, except Sundays and holidays on which the county courthouse is officially closed to business, and from day to day until the application is finally acted on and disposed of by order of the court. No notice of the automatic continuance shall be required.

(f) The guardian shall give written notice directed to all persons interested in the estate of the time designated by the judge for the hearing on the application to lease. The notice must be dated, state the date on which the application was filed, describe briefly the property sought to be leased, specify the fractional interest sought to be leased if less than the entire interest in the tract identified, and state the time and place designated by the judge for the hearing. Exclusive of the date of notice and of the date set for hearing, the guardian shall give at least 10 days' notice by publishing in one issue of a newspaper of general circulation in the county in which the proceeding is pending or by posting if there is no newspaper in the county. Posting under this section may be done at the guardian's instance. The date of notice when published shall be the date the newspaper bears.

(g) A court order authorizing any acts to be performed pursuant to the application is null and void in the absence of:

- (1) a written order originally designating a time and place for hearing;
- (2) a notice issued by the guardian of the estate in compliance with the order; and
- (3) proof of publication or posting of the notice as required.

(h) At the time and place designated for the hearing, or at any time to which the hearing has been continued as provided by this section, the judge shall hear the application and require proof as to the necessity or advisability of leasing for mineral development the property described in the application and in the notice. If the judge is satisfied that the application is in due form, that notice has been duly given in the manner and for the time required by law, that the proof of necessity or advisability of leasing is sufficient, and that the application should be granted, the judge shall enter an order so finding and authorizing the making of one or more leases, with or without pooling provisions or unitization clauses (with or without cash consideration if deemed by the court to be in the best interest of the estate) that affects and covers the property or portions of the property described in the application. The order that authorizes the leasing must also set out the following mandatory contents:

- (1) the name of the lessee;
- (2) the actual cash consideration, if any, to be paid by the lessee;

(3) a finding that the guardian is exempt by law from giving bond if that is a fact, and if the guardian is required to give a bond, then a finding as to whether or not the guardian's general bond on file is sufficient to protect the personal property on hand, inclusive of any cash bonus to be paid; but if the court finds the general bond is insufficient to meet these requirements, the order shall show the amount of increased or additional bond required to cover the deficiency;

(4) a complete exhibit copy, either written or printed, of each lease authorized to be made, either set out in, attached to, incorporated by reference in, or made a part of the order.

(i) An exhibit copy must show the name of the lessee, the date of the lease, an adequate description of the property being leased, the delay rental, if any, to be paid to defer commencement of operations, and all other terms and provisions authorized. If no date of the lease appears in the exhibit copy or in the court's order, then the date of the court's order is considered for all purposes as the date of the authorized lease. If the name and address of a depository bank for receiving rental is not shown in the exhibit copy, the name or address of the depository bank may be inserted or caused to be inserted in the lease by the estate's guardian at the time of its execution or at any other time agreeable to the lessee, his successors, or assigns.

(j) On the hearing of an application for authority to lease, if the court grants the authority to lease, the guardian of the estate is fully authorized to make, not later than the 30th day after the date of the judge's order, unless an extension is granted by the court on a sworn application showing good cause, the lease as evidenced by the true exhibit copies in accordance with the order. Unless the guardian is not required to give a general bond, a lease for which a cash consideration is required, though ordered, executed, and delivered, is not valid unless the order authorizing the lease actually makes a finding with respect to the general bond. If the general bond has been found insufficient, the lease is not valid until the bond has been increased or an additional bond given with the sureties required by law as required by the court order, has been approved by the judge, and has been filed with the clerk of the court in which the proceeding is pending. If two or more leases on different lands are authorized by the same order, the general bond shall be increased or additional bonds given to cover all. It is not necessary for the judge to make any order confirming the leases.

(k) Every lease when executed and delivered in compliance with the rules set out in this section shall be valid and binding on the property or interest owned by the estate and covered by the lease for the full duration of the term as provided in the lease and is subject only to its terms and conditions even though the primary term extends beyond the date when the estate is closed in accordance with law. In order for a lease to be valid and binding on the property or interest owned by the estate under this section, the authorized primary term in

the lease may not exceed five years, subject to terms and provisions of the lease extending it beyond the primary term by paying production, by bona fide drilling or reworking operations, whether in or on the same or additional well or wells with no cessation of operations of more than 60 consecutive days before production has been restored or obtained, or by the provisions of the lease relating to a shut-in gas well.

(l) As to any existing valid mineral lease executed and delivered in compliance with this chapter before September 1, 1993, a provision of the lease continuing the lease in force after its five-year primary term by a shut-in gas well is validated, unless the validity of the provision is an issue in a lawsuit pending in this state on September 1, 1993.

(m) Any oil, gas, and mineral lease executed by a guardian under this chapter may be amended by an instrument that provides that a shut-in gas well on the land covered by the lease or on land pooled with all or some part of the land covered by the lease shall continue the lease in force after its five-year primary term. The instrument shall be executed by the guardian, with court approval, and on the terms and conditions as may be prescribed in the instrument.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 848. Mineral Leases at Private Sale

(a) Notwithstanding the mandatory requirements for setting a time and place for hearing of an application to lease under Section 847 of this code and the issuance, service, and return of notice, the court may authorize the making of oil, gas, and mineral leases at private sale without public notice or advertising if, in the opinion of the court, sufficient facts are set out in the application to show that it would be more advantageous to the estate that a lease be made privately and without compliance with the mandatory requirements under Section 847 of this code. Leases authorized under this section may include pooling provisions or unitization clauses as in other cases.

(b) At any time after the expiration of five days and before the expiration of the 10th day after the date of filing and without an order setting the time and place of hearing, the court shall hear the application to lease at a private sale. The court shall inquire into the manner in which the proposed lease has been or will be made and shall hear evidence for or against the application. If the court is satisfied that the lease has been or will be made for a fair and sufficient consideration and on fair terms and has been or will be properly made in conformity with the law, the court shall enter an order authorizing the execution of the lease without the necessity of advertising, notice, or citation. An order entered under this subsection must comply in all other respects with the requirements essential to the validity of mineral leases set out in this chapter as if advertising or notice were required. An order that confirms a lease made at a

private sale does not need to be issued. A lease made at a private sale is not valid until the increased or additional bond required by the court, if any, has been approved by the court and filed with the clerk of the court.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 849. Pooling or Unitization of Royalty or Minerals

(a) When an existing lease on property owned by the estate does not adequately provide for pooling or unitization, the court may authorize the commitment of royalty or mineral interests in oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, and other minerals or any one or more of them owned by the estate being administered to agreements that provide for the operation of areas as a pool or unit for the exploration, development, and production of all those minerals, if the court finds that the pool or unit to which the agreement relates will be operated in such a manner as to protect correlative rights, or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject thereto, and that it is in the best interests of the estate to execute the agreement. Any agreement so authorized to be executed may provide that:

(1) operations incident to the drilling of or production from a well on any portion of a pool or unit are deemed for all purposes to be the conduct of operations on or production from each separately owned tract in the pool or unit;

(2) any lease covering any part of the area committed to a pool or unit shall continue in force in its entirety as long as oil, gas, or other mineral subject to the agreement is produced in paying quantities from any part of the pooled or unitized area, as long as operations are conducted as provided in the lease on any part of the pooled or unitized area, or as long as there is a shut-in gas well on any part of the pooled or unitized area if the presence of the shut-in gas well is a ground for continuation of the lease on the terms of the lease;

(3) the production allocated by the agreement to each tract included in a pool or unit shall, when produced, be deemed for all purposes to have been produced from the tract by a well drilled on the tract;

(4) the royalties provided for on production from any tract or portion of a tract within the pool or unit shall be paid only on that portion of the production allocated to the tract in accordance with the agreement;

(5) the dry gas, before or after extraction of hydrocarbons, may be returned to a formation underlying any lands or leases committed to the

agreement, and that no royalties are required to be paid on the gas so returned; and

(6) gas obtained from other sources or another tract of land may be injected into a formation underlying any land or lease committed to the agreement, and that no royalties are required to be paid on the gas so injected when same is produced from the unit.

(b) Pooling or unitization, when not adequately provided for by an existing lease on property owned by the estate, may be authorized by the court in which the proceeding is pending pursuant to and in conformity with Subsections (c)-(g) of this section.

(c) The guardian of the estate shall file with the county clerk of the county in which the guardianship proceeding is pending the guardian's written application for authority to enter into a pooling or unitization agreement supplementing, amending, or otherwise relating to, any existing lease covering property owned by the estate, or to commit royalties or other interest in minerals, whether subject to lease or not, to a pooling or unitization agreement. The application must also describe the property sufficiently as required in the original application to lease, describe briefly the lease to which the interest of the estate is subject, and set out the reasons the proposed agreement concerning the property should be made. A true copy of the proposed agreement shall be attached to the application and by reference made a part of the application, but the agreement may not be recorded in the judge's guardianship docket. The clerk shall immediately, after the application is filed, call it to the attention of the judge.

(d) Notice of the filing of the application by advertising, citation, or otherwise is not required.

(e) The judge may hold a hearing on the application at a time that is agreeable to the parties to the proposed agreement. The judge shall hear proof and be satisfied as to whether it is in the best interests of the estate that the proposed agreement be authorized. The hearing may be continued from day to day and from time to time as the court finds to be necessary.

(f) If the court finds that the pool or unit to which the agreement relates will be operated in such a manner as to protect correlative rights or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject to the pool or unit, that it is in the best interests of the estate that the agreement be executed, and that the agreement conforms substantially with the permissible provisions of Subsection (a) of this section, the court shall enter an order setting out the findings made by the court and authorizing execution of the agreement, with or without payment of cash consideration according to the agreement. If cash consideration is to be paid for the agreement, the court shall make a finding as to the necessity of increased or additional bond as a finding is made in the making of leases on payment of the cash bonus for the lease. The

agreement is not valid until the increased or additional bond required by the court, if any, has been approved by the judge and filed with the clerk. If the date is not stipulated in the agreement, the date of the court's order shall be the effective date of the agreement.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (c) amended by Acts 2009, 81st Leg., ch. 602, § 17, eff. June 19, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 850. Special Ancillary Instruments Executed Without Court Order

As to any valid mineral lease or pooling or unitization agreement, executed on behalf of the estate before September 1, 1993, pursuant to provisions, or by a former owner of land, minerals, or royalty affected by the lease, pooling, or unitization agreement, the guardian of the estate that is being administered, without further order of the court and without consideration, may execute division orders, transfer orders, instruments of correction, instruments designating depository banks for the reception of delay rentals or shut-in gas well royalty to accrue or become payable under the terms of the lease, or similar instruments pertaining to the lease or agreement and the property covered by the lease or agreement.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 851. Procedure when Guardian of Estate Neglects to Apply for Authority

When the guardian of an estate neglects to apply for authority to subject property of the estate to a lease for mineral development, pooling, or unitization, or authority to commit royalty or other interest in minerals to pooling or unitization, any person interested in the estate, on written application filed with the county clerk, may cause the guardian to be cited to show cause why it is not in the best interests of the estate for the lease to be made or an agreement to be entered into. The clerk shall immediately call the filing of the application under this section to the attention of the judge of the court in which the guardianship proceeding is pending. The judge shall set a time and place for a hearing on the application. The guardian of the estate shall be cited to appear and show cause why the execution of the lease or agreement should not be ordered. On hearing and if satisfied from the proof that it would be in the best interests of the estate, the court shall enter an order requiring the guardian to file the guardian's application to subject the property of the estate to a lease for mineral development, with or without pooling or unitization provisions, or to commit royalty or other minerals to unitization, as the case may be. The procedures prescribed with respect to original application to lease or with respect to original application for authority to commit royalty or minerals to pooling or unitization shall be followed.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 852. Validation of Certain Leases and Pooling or Unitization Agreements Based on Previous Statutes

All leases on the oil, gas, or other minerals existing on September 1, 1993, belonging to the estates of minors or other incapacitated persons and all agreements with respect to the pooling or unitization of oil, gas, or other minerals or any interest in oil, gas, or other minerals with like properties of others that have been authorized by the court having venue, executed, and delivered by a guardian or other fiduciary of the estate of a minor or incapacitated person in substantial conformity to the rules set forth in statutes on execution or delivery providing for only seven days' notice in some instances and for a brief order designating a time and place for hearing, are validated insofar as the period of notice or absence of an order setting a time and place for hearing is concerned, unless the length of time of the notice or the absence of the order is an issue in a lease or pooling or unitization agreement that is involved in a lawsuit pending on September 1, 1993.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart K. Partition of Ward's Estate in Realty

§ 853. Partition of Ward's Interest in Realty

(a) If a ward owns an interest in real estate in common with another part owner or one or more part owners, and if, in the opinion of the guardian of the estate, it is in the best interests of the ward's estate to partition the real estate, the guardian may agree on a partition with the other part owners subject to the approval of the court in which the guardianship proceeding is pending.

(b) When a guardian has reached an agreement with the other part owners on how to partition the real estate, the guardian shall file with the court an application to have the agreement approved. The application filed by the guardian under this subsection shall describe the land that is to be divided and shall state why it is in the best interests of the ward's estate to partition the real estate and shall show that the proposed partition agreement is fair and just to the ward's estate.

(c) When the application required by Subsection (b) of this section is filed, the county clerk shall immediately call the filing of the application to the attention of the judge of the court in which the guardianship proceeding is pending. The judge shall designate a day to hear the application. The application must remain on file at least 10 days before any orders are made, and the judge may continue the hearing from

time to time until the judge is satisfied concerning the application.

(d) If the judge is satisfied that the proposed partition of the real estate is in the best interests of the ward's estate, the court shall enter an order approving the partition and directing the guardian to execute the necessary agreement for the purpose of carrying the order and partition into effect.

(e) When a guardian has executed an agreement or will execute an agreement to partition any land in which the ward has an interest without court approval as provided by this section, the guardian shall file with the court in which the guardianship proceedings are pending an application for the approval and ratification of the partition agreement. The application must refer to the agreement in such a manner that the court can fully understand the nature of the partition and the land being divided. The application must state that, in the opinion of the guardian, the agreement is fair and just to the ward's estate and is in the best interests of the estate. When the application is filed, a hearing shall be held on the application as provided by Subsection (c) of this section. If the court is of the opinion that the partition is fairly made and that the partition is in the best interests of the ward's estate, the court shall enter an order ratifying and approving the partition agreement. When the partition is ratified and approved, the partition shall be effective and binding as if originally executed after a court order.

(f) If the guardian of the estate of a ward is of the opinion that it is in the best interests of the ward's estate that any real estate that the ward owns in common with others should be partitioned, the guardian may bring a suit in the court in which the guardianship proceeding is pending against the other part owner or part owners for the partition of the real estate. The court, if after hearing the suit is satisfied that the necessity for the partition of the real estate exists, may enter an order partitioning the real estate to the owner of the real estate.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart L. Investments and Loans of Estates of Wards

§ 854. Guardian Required to Keep Estate Invested Under Certain Circumstances

(a) The guardian of the estate is not required to invest funds that are immediately necessary for the education, support, and maintenance of the ward or others the ward supports, if any, as provided by this chapter. The guardian of the estate shall invest any other funds and assets available for investment unless the court orders otherwise under this subpart.

(b) The court may, on its own motion or on written request of a person interested in the guardianship, cite the guardian to appear and show cause why the estate is

not invested or not properly invested. At any time after giving notice to all parties, the court may conduct a hearing to protect the estate, except that the court may not hold a final hearing on whether the estate is properly invested until the 31st day after the date the guardian was originally cited to appear under this subsection. On the hearing of the court's motion or a request made under this section, the court shall render an order the court considers to be in the best interests of the ward.

(c) The court may appoint a guardian ad litem for the limited purpose of representing the ward's best interests with respect to the investment of the ward's property at a hearing under this section.

Added by Acts 2003, 78th Leg., ch. 549, § 22, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 855. Standard for Management and Investments

(a) In acquiring, investing, reinvesting, exchanging, retaining, selling, supervising, and managing a ward's estate, a guardian of the estate shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, considering the probable income from as well as the probable increase in value and the safety of their capital. The guardian shall also consider all other relevant factors, including:

- (1) the anticipated costs of supporting the ward;
- (2) the ward's age, education, current income, ability to earn additional income, net worth, and liabilities;
- (3) the nature of the ward's estate; and
- (4) any other resources reasonably available to the ward.

(a-1) In determining whether a guardian has exercised the standard of investment required by this section with respect to an investment decision, the court shall, absent fraud or gross negligence, take into consideration the investment of all the assets of the estate over which the guardian has management or control, rather than taking into consideration the prudence of only a single investment made by the guardian.

(b) A guardian of the estate is considered to have exercised the standard required by this section with respect to investing the ward's estate if the guardian invests in the following:

- (1) bonds or other obligations of the United States;
- (2) tax-supported bonds of this state;
- (3) except as limited by Subsections (c) and (d) of this section, tax-supported bonds of a county, district, political subdivision, or incorporated city or town in this state;
- (4) shares or share accounts of a state savings and loan association or savings bank with its main office or a branch office in this state if the payment

of the shares or share accounts is insured by the Federal Deposit Insurance Corporation;

(5) the shares or share accounts of a federal savings and loan association or savings bank with its main office or a branch office in this state if the payment of the shares or share accounts is insured by the Federal Deposit Insurance Corporation;

(6) collateral bonds of companies incorporated under the laws of this state, having a paid-in capital of \$1,000,000 or more, when the bonds are a direct obligation of the company that issues the bonds and are specifically secured by first mortgage real estate notes or other securities pledged with a trustee; or

(7) interest-bearing time deposits that may be withdrawn on or before one year after demand in a bank that does business in this state where the payment of the time deposits is insured by the Federal Deposit Insurance Corporation.

(c) The bonds of a county, district, or subdivision may be purchased only if the net funded debt of the county, district, or subdivision that issues the bonds does not exceed 10 percent of the assessed value of taxable property in the county, district, or subdivision.

(d) The bonds of a city or town may be purchased only if the net funded debt of the city or town does not exceed 10 percent of the assessed value of taxable property in the city or town less that part of the debt incurred for acquisition or improvement of revenue-producing utilities, the revenues of which are not pledged to support other obligations of the city or town.

(e) The limitations in Subsections (c) and (d) of this section do not apply to bonds issued for road purposes in this state under Section 52, Article III, of the Texas Constitution that are supported by a tax unlimited as to rate or amount.

(f) In this section, "net funded debt" means the total funded debt less sinking funds on hand.

(g) The court may modify or eliminate the guardian's duty to keep the estate invested or the standard required by this section with regard to investments of estate assets on a showing by clear and convincing evidence that the modification or elimination is in the best interests of the ward and the ward's estate.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (b) amended by Acts 1999, 76th Leg., ch. 344, § 6.007, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 549, §§ 23 & 24, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 855A. Retention of Assets

(a) A guardian of the estate may retain without court approval until the first anniversary of the date of receipt any property received into the guardianship estate at its inception or added to the estate by gift, devise, inheritance, mutation, or increase, without regard to diversification of investments and without liability for any depreciation or loss resulting from the

retention. The guardian shall care for and manage the retained assets as a person of ordinary prudence, discretion, and intelligence would in caring for and managing the person's own affairs.

(b) On application and a hearing, the court may render an order authorizing the guardian to continue retaining the property after the period prescribed by Subsection (a) of this section if the retention is an element of the guardian's investment plan as provided by this subpart.

Added by Acts 2003, 78th Leg., ch. 549, § 25, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 855B. Procedure for Making Investments or Retaining Estate Assets

(a) Not later than the 180th day after the date on which the guardian of the estate qualified as guardian or another date specified by the court, the guardian shall:

(1) have estate assets invested according to Section 855(b) of this code; or

(2) file a written application with the court for an order:

(A) authorizing the guardian to:

(i) develop and implement an investment plan for estate assets;

(ii) invest in or sell securities under an investment plan developed under Subparagraph (i) of this paragraph;

(iii) declare that one or more estate assets must be retained, despite being underproductive with respect to income or overall return; or

(iv) loan estate funds, invest in real estate or make other investments, or purchase a life, term, or endowment insurance policy or an annuity contract; or

(B) modifying or eliminating the guardian's duty to invest the estate.

(a-1) The court may approve an investment plan under Subsection (a)(2) of this section without a hearing.

(b) If the court determines that the action requested in the application is in the best interests of the ward and the ward's estate, the court shall render an order granting the authority requested in the application or an order modifying or eliminating the guardian's duty to keep the estate invested. An order under this subsection must state in reasonably specific terms:

(1) the nature of the investment, investment plan, or other action requested in the application and authorized by the court, including, if applicable, the authority to invest in and sell securities in accordance with the objectives of the investment plan;

(2) when an investment must be reviewed and reconsidered by the guardian; and

(3) whether the guardian must report the guardian's review and recommendations to the

court.

(c) The fact that an account or other asset is the subject of a specific or general gift under a ward's will, if any, or that a ward has funds, securities, or other property held with a right of survivorship does not prevent:

(1) a guardian of the estate from taking possession and control of the asset or closing the account; or

(2) the court from authorizing an action or modifying or eliminating a duty with respect to the possession, control, or investment of the account or other asset.

(d) The procedure prescribed by this section does not apply if a different procedure is prescribed for an investment or sale by a guardian. A guardian is not required to follow the procedure prescribed by this section with respect to an investment or sale that is specifically authorized by other law.

(e) A citation or notice is not necessary to invest in or sell securities under an investment plan authorized by the court under Subsection (b)(1) of this section.

Added by Acts 2003, 78th Leg., ch. 549, § 25, eff. Sept. 1, 2003. Subsecs. (a),(b) amended by Acts 2005, 79th Leg., ch. 200, § 9, eff. Sept. 1, 2005. Subsec. (e) added by Acts 2005, 79th Leg., ch. 200, § 9, eff. Sept. 1, 2005. Subsec. (a) & (b) amended by and subsec. (a-1) added by Acts 2007, 80th Leg., ch. 614, § 20, eff. Sept. 1, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 856. Other Investments

(a) If a guardian of an estate deems it is in the best interests of the ward the guardian is appointed to represent to invest on behalf of the ward in the Texas tomorrow constitutional trust fund established by Subchapter F, Chapter 54, Education Code, or to invest in or sell any property or security in which a trustee is authorized to invest by either Chapter 117 or Subchapter F, Chapter 113, of the Texas Trust Code (Subtitle B, Title 9, Property Code), and the investment or sale is not expressly permitted by other sections of this chapter, the guardian may file a written application in the court in which the guardianship is pending that asks for an order authorizing the guardian to make the desired investment or sale and states the reason why the guardian is of the opinion that the investment or sale would be beneficial to the ward. A citation or notice is not necessary under this subsection unless ordered by the court.

(b), (c) Repealed by Acts 2003, 78th Leg., ch. 549, § 35.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 434, § 1, eff. Sept. 1, 1997; Subsec. (a) amended by Acts 2003, 78th Leg., ch. 1103, § 16, eff. Jan. 1, 2004; Subsecs. (b), (c) repealed by Acts 2003, 78th Leg., ch. 549, § 35, eff. Sept. 1, 2003.

§ 857. Investment in or Continued Investment in Life Insurance or Annuities

(a) In this section, “life insurance company” means a stock or mutual legal reserve life insurance company that maintains the full legal reserves required under the laws of this state and that is licensed by the State Board of Insurance to transact the business of life insurance in this state.

(b) The guardian of the estate may invest in life, term, or endowment insurance policies, or in annuity contracts, or both, issued by a life insurance company or administered by the Veterans Administration, subject to conditions and limitations in this section.

(c) The guardian shall first apply to the court for an order that authorizes the guardian to make the investment. The application filed under this subsection must include a report that shows:

(1) in detail the financial condition of the estate at the time the application is made;

(2) the name and address of the life insurance company from which the policy or annuity contract is to be purchased and that the company is licensed by the State Board of Insurance to transact that business in this state on the date the application is filed, or that the policy or contract is administered by the Veterans Administration;

(3) a statement of the face amount and plan of the policy of insurance sought to be purchased and of the amount, frequency, and duration of the annuity payments to be provided by the annuity contract sought to be purchased;

(4) a statement of the amount, frequency, and duration of the premiums required by the policy or annuity contract; and

(5) a statement of the cash value of the policy or annuity contract at its anniversary nearest the 21st birthday of the ward, assuming that all premiums to the anniversary are paid and that there is no indebtedness against the policy or contract incurred in accordance with its terms.

(d) An insurance policy must be issued on the life of the ward, or the father, mother, spouse, child, brother, sister, grandfather, or grandmother of the ward or a person in whose life the ward may have an insurable interest.

(e) Only the ward, the ward’s estate, or the father, mother, spouse, child, brother, sister, grandfather, or grandmother of the ward may be a beneficiary of the insurance policy and of the death benefit of the annuity contract, and the ward must be the annuitant in the annuity contract.

(f) The control of the policy or the annuity contract and of the incidents of ownership in the policy or annuity contract is vested in the guardian during the life and disability of the ward.

(g) The policy or annuity contract may not be amended or changed during the life and disability of the ward except on application to and order of the court.

(h) If a life, term, or endowment insurance policy or a contract of annuity is owned by the ward when a proceeding for the appointment of a guardian is begun, and it is made to appear that the company issuing the policy or contract of annuity is a life insurance company as defined by this section or the policy or contract is administered by the Veterans Administration, the policy or contract may be continued in full force and effect. All future premiums may be paid out of surplus funds of the ward’s estate. The guardian shall apply to the court for an order to continue the policy or contract, or both, according to the existing terms of the policy or contract or to modify the policy or contract to fit any new developments affecting the welfare of the ward. Before any application filed under this subsection is granted, the guardian shall file a report in the court that shows in detail the financial condition of the ward’s estate at the time the application is filed.

(i) The court, if satisfied by the application and the evidence adduced at the hearing that it is in the interests of the ward to grant the application, shall enter an order granting the application.

(j) A right, benefit, or interest that accrues under an insurance or annuity contract that comes under the provisions of this section shall become the exclusive property of the ward when the ward’s disability is terminated.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 549, § 26, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 858. Loans and Security for Loans

(a) If, at any time, the guardian of the estate has on hand money belonging to the ward in an amount that provides a return that is more than is necessary for the education, support, and maintenance of the ward and others the ward supports, if applicable, the guardian may lend the money for a reasonable rate of interest. The guardian shall take the note of the borrower for the money that is loaned, secured by a mortgage with a power of sale on unencumbered real estate located in this state worth at least twice the amount of the note, or by collateral notes secured by vendor’s lien notes, as collateral, or the guardian may purchase vendor’s lien notes if at least one-half has been paid in cash or its equivalent on the land for which the notes were given.

(b) A guardian of the estate is considered to have obtained a reasonable rate of interest for a loan for purposes of Subsection (a) of this section if the rate of interest is at least equal to 120 percent of the applicable short-term, midterm, or long-term interest rate under Section 7520, Internal Revenue Code of 1986, as amended, for the month during which the loan was made.

(c) Except as provided by this subsection, a guardian of the estate who loans estate money with the court’s approval on security approved by the court is not personally liable if the borrower is unable to repay

the money and the security fails. If the guardian committed fraud or was negligent in making or managing the loan, including in collecting on the loan, the guardian and the guardian's surety are liable for the loss sustained by the guardianship estate as a result of the fraud or negligence.

(d) Except as provided by Subsection (e) of this section, a guardian of the estate who lends estate money may not pay or transfer any money to consummate the loan until the guardian:

(1) submits to an attorney for examination all bonds, notes, mortgages, abstracts, and other documents relating to the loan; and

(2) receives a written opinion from the attorney stating that the documents under Subdivision (1) of this subsection are regular and that the title to relevant bonds, notes, or real estate is clear.

(e) A guardian of the estate may obtain a mortgagee's title insurance policy on any real estate loan in lieu of an abstract and attorney's opinion under Subsection (d) of this section.

(f) The borrower shall pay attorney's fees for any legal services required by this section.

(g) Not later than the 30th day after the date the guardian of the estate loans money from the estate, the guardian shall file with the court a written report, accompanied by an affidavit, stating fully the facts related to the loan. This subsection does not apply to a loan made in accordance with a court order.

(h) This section does not apply to an investment in a debenture, bond, or other publicly traded debt security.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 549, § 27, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 860. Guardian's Investments in Real Estate

(a) The guardian of the estate may invest estate assets in real estate if:

(1) the guardian believes that the investment is in the best interests of the ward;

(2) there are on hand sufficient additional assets to provide a return sufficient to provide for:

(A) the education, support, and maintenance of the ward and others the ward supports, if applicable; and

(B) the maintenance, insurance, and taxes on the real estate in which the guardian wishes to invest;

(3) the guardian files a written application with the court requesting a court order authorizing the guardian to make the desired investment and stating the reasons why the guardian is of the opinion that the investment would be for the benefit of the ward; and

(4) the court renders an order authorizing the investment as provided by this section.

(b) When an application is filed by the guardian under this section, the judge's attention shall be called

to the application, and the judge shall make investigation as necessary to obtain all the facts concerning the investment. The judge may not render an opinion or make an order on the application until 10 days from the date of the filing of the application have expired. On the hearing of the application, if the court is satisfied that the investment benefits the ward, the court shall issue an order that authorizes the guardian to make the investment. The order shall specify the investment to be made and contain other directions the court thinks are advisable.

(c) When a contract is made for the investment of money in real estate under court order, the guardian shall report the contract in writing to the courts. The court shall inquire fully into the contract. If satisfied that the investment will benefit the estate of the ward and that the title of the real estate is valid and unencumbered, the court may approve the contract and authorize the guardian to pay over the money in performance of the contract. The guardian may not pay any money on the contract until the contract is approved by court order to that effect.

(d) When the money of the ward has been invested in real estate, the title to the real estate shall be made to the ward. The guardian shall inventory, appraise, manage, and account for the real estate as other real estate of the ward.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 549, § 28, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 861. Opinion of Attorney With Respect to Loans

When the guardian of the estate of a ward lends the money of the ward, the guardian may not pay over or transfer any money in consummation of the loan until the guardian has submitted to a reputable attorney for examination all bonds, notes, mortgages, documents, abstracts, and other papers pertaining to the loan and the guardian has received a written opinion from the attorney that all papers pertaining to the loan are regular and that the title to the bonds, notes, or real estate is good. The attorney's fee shall be paid by the borrower. The guardian may obtain a mortgagee's title insurance policy on any real estate loan instead of an abstract and attorney's opinion.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 55, eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 862. Report of Loans

Not later than the 30th day after the date money belonging to a ward's estate is lent, the guardian of the ward's estate shall report to the court in writing, verified by affidavit, stating fully the facts of the loan, unless the loan was made pursuant to a court order.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 56,

eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 863. Liability of Guardian and Guardian's Surety

(a) In addition to any other remedy authorized by law, if the guardian of the estate fails to invest or lend estate assets in the manner provided by this subpart, the guardian and the guardian's surety are liable for the principal and the greater of:

(1) the highest legal rate of interest on the principal during the period the guardian failed to invest or lend the assets; or

(2) the overall return that would have been made on the principal if the principal were invested in the manner provided by this subpart.

(b) In addition to the liability under Subsection (a) of this section, the guardian and the guardian's surety are liable for attorney's fees, litigation expenses, and costs related to a proceeding brought to enforce this.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 549, § 29, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart M. Tax-Motivated, Charitable, and Other Gifts

Heading amended by Acts 2011, 82nd Leg., ch. 1085, § 27, eff. Sept. 1, 2011.

§ 865. Power to Make Certain Gifts and Transfers

(a) On application of the guardian of the estate or any interested person and after the posting of notice, the court, after hearing, may enter an order that authorizes the guardian to apply the principal or income of the ward's estate that is not required for the support of the ward or the ward's family during the ward's lifetime toward the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the ward's estate, or to transfer a portion of the ward's estate as necessary to qualify the ward for government benefits and only to the extent allowed by applicable state or federal laws, including rules, regarding those benefits, on a showing that the ward will probably remain incapacitated during the ward's lifetime. On the ward's behalf, the court may authorize the guardian to make gifts or transfers described by this subsection, outright or in trust, of the ward's property to or for the benefit of:

(1) an organization to which charitable contributions may be made under the Internal Revenue Code and in which it is shown the ward would reasonably have an interest;

(2) the ward's spouse, descendant, or other person related to the ward by blood or marriage who are identifiable at the time of the order;

(3) a devisee under the ward's last validly executed will, trust, or other beneficial instrument if the instrument exists; and

(4) a person serving as guardian of the ward if the person is eligible under either Subdivision (2) or (3) of this subsection.

(b) The person making an application to the court under this section shall outline the proposed estate or other transfer plan and set forth all the benefits that are to be derived from the plan. The application must indicate that the planned disposition is consistent with the ward's intentions if the ward's intentions can be ascertained. If the ward's intentions cannot be ascertained, the ward will be presumed to favor reduction in the incidence of the various forms of taxation, the qualification for government benefits, and the partial distribution of the ward's estate as provided by this section.

(c) The court may appoint a guardian ad litem for the ward or any interested party at any stage of the proceedings if it is deemed advisable for the protection of the ward or the interested party.

(d) A subsequent modification of an approved plan may be made by similar application to the court.

(e) A person who makes an application to the court under this section shall mail notice of the application by certified mail to:

(1) all devisees under a will, trust, or other beneficial instrument relating to the ward's estate;

(2) the ward's spouse;

(3) the ward's dependents; and

(4) any other person as directed by the court.

(f) In an order entered under Subsection (a) of this section, the court may authorize the guardian to make gifts as provided by Subsection (a) of this section on an annual or other periodic basis without subsequent application to or order of the court if the court finds it to be in the best interest of the ward and the ward's estate. The court, on the court's own motion or on the motion of a person interested in the welfare of the ward, may modify or set aside an order entered under this subsection if the court finds that the ward's financial condition has changed in such a manner that authorizing the guardian to make gifts of the estate on a continuing basis is no longer in the best interest of the ward and the ward's estate.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (a) amended by and Subsec. (e) added by Acts 1997, 75th Leg., ch. 77, § 9, eff. Sept. 1, 1997. Subsec. (f) added by Acts 2005, 79th Leg., ch. 256, § 1, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 28-29, eff. Sept. 1, 2011.

§ 865A. Inspection of Certain Instrument for Estate Planning Purposes

(a) On the filing of an application under Section 865 of this code, the guardian of the ward's estate may apply to the court for an order to seek an in camera inspection of a true copy of a will, codicil, trust, or other estate planning instrument of the ward as a means of obtaining access to the instrument for purposes of

establishing an estate plan under Section 865 of this code.

(b) An application filed under this section must:

- (1) be sworn to by the guardian;
- (2) list all of the instruments requested for inspection; and

(3) state one or more reasons supporting the necessity to inspect each requested instrument for the purpose described by Subsection (a) of this section.

(c) A person who files an application under this section shall send a copy of the application to:

- (1) each person who has custody of an instrument listed in the application;
- (2) the ward's spouse;
- (3) the ward's dependents;
- (4) all devisees under a will, trust, or other beneficial instrument relating to the ward's estate; and
- (5) any other person as directed by the court.

(d) Notice required by Subsection (c) of this section must be delivered by certified mail to a person described by Subsection (c)(2), (3), (4), or (5) of this section and by registered or certified mail to a person described by Subsection (c)(1) of this section. After the 10th day after the date on which the applicant complies with the notice requirement, the applicant may request that a hearing be held on the application. Notice of the date, time, and place of the hearing must be given by the applicant to each person described by Subsection (c)(1) of this section when the court sets a date for a hearing on the application.

(e) After the conclusion of a hearing on the application and on a finding that there is good cause for an in camera inspection of a requested instrument, the court shall direct the person that has custody of the requested will, codicil, trust, or other estate planning instrument to deliver a true copy of the instrument to the court for in camera inspection only. After conducting an in camera review of the instrument, the court, if good cause exists, shall release all or part of the instrument to the applicant only for the purpose described by Subsection (a) of this section.

(f) The court may appoint a guardian ad litem for the ward or an interested party at any stage of the proceedings if it is considered advisable for the protection of the ward or the interested party.

(g) An attorney does not violate the attorney-client privilege solely by complying with a court order to release an instrument subject to this section. Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this subsection.

Added by Acts 2001, 77th Leg., ch. 217, § 16, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 866. Contributions

(a) The guardian of the estate may at any time file the guardian's sworn application in writing with the county clerk requesting an order from the court in which the guardianship is pending authorizing the guardian to contribute from the income of the ward's estate a specific amount of money as stated in the application, to one or more:

(1) designated corporations, trusts, or community chests, funds, or foundations, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes; or

(2) designated nonprofit federal, state, county, or municipal projects operated exclusively for public health or welfare.

(b) When an application is filed under this section, the county clerk shall immediately call the filing of the application to the attention of the judge of the court. The judge, by written order filed with the clerk, shall designate a day to hear the application. The application shall remain on file at least 10 days before the hearing is held. The judge may postpone or continue the hearing from time to time until the judge is satisfied concerning the application.

(c) On the conclusion of a hearing under this section, the court may enter an order authorizing the guardian to make a contribution from the income of the ward's estate to a particular donee designated in the application and order if the court is satisfied and finds from the evidence that:

(1) the amount of the proposed contribution stated in the application will probably not exceed 20 percent of the net income of the ward's estate for the current calendar year;

(2) the net income of the ward's estate for the current calendar year exceeds, or probably will exceed, \$25,000;

(3) the full amount of the contribution, if made, will probably be deductible from the ward's gross income in determining the net income of the ward under applicable federal income tax laws and rules;

(4) the condition of the ward's estate justifies a contribution in the proposed amount; and

(5) the proposed contribution is reasonable in amount and is for a worthy cause.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart N. Management Trusts

§ 867. Creation of Management Trust

(a) In this section, "financial institution" means a financial institution, as defined by Section 201.101, Finance Code, that has trust powers and exists and does business under the laws of this or another state or the United States.

(a-1) The following persons may apply for the creation of a trust under this section:

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- (1) the guardian of the estate of a ward;
- (2) the guardian of the person of a ward;
- (3) the guardian of both the person of and estate of a ward;

(4) an attorney ad litem or guardian ad litem appointed to represent a ward or the ward's interests;

(5) a person interested in the welfare of an alleged incapacitated person who does not have a guardian;

(6) an attorney ad litem or guardian ad litem appointed to represent an alleged incapacitated person who does not have a guardian; or

(7) a person who has only a physical disability.

(b) On application by an appropriate person as provided by Subsection (a-1) of this section and subject to Subsection (b-1) of this section, if applicable, the court with jurisdiction over the proceedings may enter an order that creates a trust for the management of the funds of the person with respect to whom the application is filed if the court finds that the creation of the trust is in the person's best interests.

(b-1) On application by an appropriate person as provided by Subsection (a-1) of this section and regardless of whether an application for guardianship has been filed on the alleged incapacitated person's behalf, a proper court exercising probate jurisdiction may enter an order that creates a trust for the management of the estate of an alleged incapacitated person who does not have a guardian if the court, after a hearing, finds that:

(1) the person is an incapacitated person; and

(2) the creation of the trust is in the incapacitated person's best interests.

(b-2) If a proceeding for the appointment of a guardian for an alleged incapacitated person is pending, an application for the creation of a trust for the alleged incapacitated person under Subsection (b-1) of this section must be filed in the same court in which the guardianship proceeding is pending.

(b-3) The court shall conduct a hearing to determine incapacity under Subsection (b-1) of this section using the same procedures and evidentiary standards as required in a hearing for the appointment of a guardian for a proposed ward. The court shall appoint an attorney ad litem and, if necessary, may appoint a guardian ad litem, to represent the interests of the alleged incapacitated person in the proceeding.

(b-4) If, after a hearing, the court finds that a person for whom an application is filed under Subsection (b-1) of this section is an incapacitated person but that it is not in the incapacitated person's best interests to have the court create a management trust for the person's estate, the court may appoint a guardian of the person or estate, or both, for the incapacitated person without the necessity of instituting a separate proceeding for that purpose.

(b-5) Except as provided by Subsections (c) and (d) of this section, the court shall appoint a financial

institution to serve as trustee of a trust created under this section.

(c) Subject to Subsection (d) of this section, if the court finds that it is in the best interests of the person for whom a trust is created under this section, the court may appoint a person or entity that meets the requirements of Subsection (e) of this section to serve as trustee of the trust instead of appointing a financial institution to serve in that capacity.

(d) If the value of the trust's principal is more than \$150,000, the court may appoint a person or entity other than a financial institution in accordance with Subsection (c) of this section to serve as trustee of the trust only if the court, in addition to the finding required by that subsection, finds that the applicant for the creation of the trust, after the exercise of due diligence, has been unable to find a financial institution in the geographic area willing to serve as trustee.

(e) The following are eligible for appointment as trustee under Subsection (c) or (d) of this section:

(1) an individual, including an individual who is certified as a private professional guardian;

(2) a nonprofit corporation qualified to serve as a guardian; and

(3) a guardianship program.

(f) If a trust is created for a person, the order shall direct any person or entity holding property belonging to the person for whom the trust is created or to which that person is entitled to deliver all or part of the property to a person or corporate fiduciary appointed by the court as trustee of the trust. The order shall include terms, conditions, and limitations placed on the trust. The court may maintain the trust under the same cause number as the guardianship proceeding, if the person for whom the trust is created is a ward or proposed ward.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 57, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1375, § 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 994, § 1, eff. Sept. 1, 2001. Subsecs. (b), (c), (d), (f) amended by Acts 2005, 79th Leg., ch. 1238, § 1, eff. Sept. 1, 2005. Subsecs. (a-1), (b-1)–(b-5) added by Acts 2005, 79th Leg., ch. 1238, § 1, eff. Sept. 1, 2005. Subsec. (b-1) amended by Acts 2007, 80th Leg., ch. 281, § 1, eff. Sept. 1, 2007. Subsecs. (b-3), (c), (d), (e) amended by Acts 2009, 81st Leg., ch. 930, § 8, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 30, eff. Sept. 1, 2011.

§ 867A. Venue

If a proceeding for the appointment of a guardian for the alleged incapacitated person is not pending on the date the application is filed, venue for a proceeding to create a trust for an alleged incapacitated person under Section 867(b-1) of this code must be determined in the same manner as venue for a proceeding for the

appointment of a guardian is determined under Section 610 of this code.

Added by Acts 2005, 79th Leg., ch 1238, § 2 eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 868. Terms of Management Trust

(a) Except as provided by Subsection (d) of this section, a trust created under Section 867 of this code must provide that:

(1) the ward, incapacitated person, or person who has only a physical disability is the sole beneficiary of the trust;

(2) the trustee may disburse an amount of the trust's principal or income as the trustee determines is necessary to expend for the health, education, support, or maintenance of the person for whom the trust is created;

(3) the income of the trust that the trustee does not disburse under Subdivision (2) of this subsection must be added to the principal of the trust;

(4) if the trustee is a corporate fiduciary, the trustee serves without giving a bond; and

(5) the trustee, subject to the court's approval, is entitled to receive reasonable compensation for services that the trustee provided to the person for whom the trust is created as the person's trustee that is:

(A) to be paid from the trust's income, principal, or both; and

(B) determined, paid, reduced, and eliminated in the same manner as compensation of a guardian under Section 665 of this code.

(b) The trust may provide that a trustee make a distribution, payment, use, or application of trust funds for the health, education, support, or maintenance of the person for whom the trust is created or of another person whom the person for whom the trust is created is legally obligated to support, as necessary and without the intervention of a guardian or other representative of the ward or of a representative of the incapacitated person or person who has only a physical disability, to:

(1) the ward's guardian;

(2) a person who has physical custody of the person for whom the trust is created or another person whom the person for whom the trust is created is legally obligated to support; or

(3) a person providing a good or service to the person for whom the trust is created or another person whom the person for whom the trust is created is legally obligated to support.

(c) A provision in a trust created under Section 867 that relieves a trustee from a duty, responsibility, or liability imposed by this subpart or Subtitle B, Title 9, Property Code, is enforceable only if:

(1) the provision is limited to specific facts and circumstances unique to the property of that trust and is not applicable generally to the trust; and

(2) the court creating or modifying the trust makes a specific finding that there is clear and convincing evidence that the inclusion of the provision is in the best interests of the beneficiary of the trust.

(d) When creating or modifying a trust, the court may omit or modify terms required by Subsection (a)(1) or (2) of this section only if the court determines that the omission or modification:

(1) is necessary and appropriate for the person for whom the trust is created to be eligible to receive public benefits or assistance under a state or federal program that is not otherwise available to the person; and

(2) is in the best interests of the person for whom the trust is created.

(e) The court may include additional provisions in a trust created or modified under this section if the court determines an addition does not conflict with Subsection (a) and, if appropriate, Subsection (d) of this section.

(f) If the trustee determines that it is in the best interest of the ward or incapacitated person, the trustee may invest funds of the trust in the Texas tomorrow fund established by Subchapter F, Chapter 54, Education Code.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (b) amended by Acts 1995, 74th Leg., ch. 1039, § 58, eff. Sept. 1, 1995. Subsec. (c) added by Acts 1995, 74th Leg., ch. 1039, § 59, eff. Sept. 1, 1995; Subsecs. (a), (b) amended by Acts 1997, 75th Leg., ch. 1375, § 2, eff. Sept. 1, 1997; Subsec. (c) repealed by Acts 1997, 75th Leg., ch. 1375, § 6, eff. Sept. 1, 1997; Subsecs. (d), (e) added by Acts 1997, 75th Leg., ch. 1375, § 2, eff. Sept. 1, 1997; Subsec. (f) added by Acts 1999, 76th Leg., ch. 94, § 2, eff. May 17, 1999; Subsec. (a) amended by Acts 2001, 77th Leg., ch. 994, § 2, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1154, § 4, eff. Sept. 1, 2003. Subsecs. (a), (b), (d), (f) amended by Acts 2005, 79th Leg., ch 1238, § 3, eff. Sept. 1, 2005. Subsec. (a) amended by Acts 2009, 81st Leg., ch. 930, § 9, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 31, eff. Sept. 1, 2011.

§ 868A. Discharge of Guardian of Estate and Continuation of Trust

On or at any time after the creation of a trust under this subpart, the court may discharge the guardian of the ward's estate if the court determines that the discharge is in the ward's best interests.

Added by Acts 1997, 75th Leg., ch. 1375, § 3, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 549, § 30, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 868B. Bond Requirement for Certain Trustees

The court shall require a person, other than a corporate fiduciary, serving as trustee to file with the county clerk a bond in an amount equal to the value of the trust's principal and projected annual income and with the conditions the court determines are necessary.

Added by Acts 2001, 77th Leg., ch. 994, § 3, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 868C. Transfer of Management Trust Property to Pooled Trust

(a) If the court determines that it is in the best interests of the person for whom a trust is created under Section 867 of this code, the court may order the transfer of all property in the trust to a subaccount of a pooled trust established in accordance with Subpart I, Part 5, of this chapter. The transfer of property from the management trust to the subaccount of the pooled trust shall be treated as a continuation of the management trust and may not be treated as the establishment of a new trust for purposes of 42 U.S.C. Section 1396p(d)(4)(A) or (C) or otherwise for purposes of the management trust beneficiary's eligibility for medical assistance under Chapter 32, Human Resources Code.

(b) The court may not allow termination of the management trust created under Section 867 of this code from which property is transferred under this section until all of the property in the management trust has been transferred to the subaccount of the pooled trust.

Added by Acts 2009, 81st Leg., ch. 930, § 10, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 32, eff. Sept. 1, 2011.

§ 869. Trust Amendment, Modification, or Revocation

(a) The court may amend, modify, or revoke the trust at any time before the date of the trust's termination.

(b) The following may not revoke the trust:

- (1) the ward for whom the trust is created or the guardian of the ward's estate;
- (2) the incapacitated person for whom the trust is created; or
- (3) the person who has only a physical disability for whom the trust is created.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (b) amended by Acts 2005, 79th Leg., ch. 1238, § 4, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 33, eff. Sept. 1, 2011.

§ 869A. Successor Trustee

The court may appoint a successor trustee if the trustee resigns, becomes ineligible, or is removed.

Added by Acts 1995, 74th Leg., ch. 1039, § 60, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 994, § 4, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 869B. Applicability of Texas Trust Code

(a) A trust created under Section 867 of this code is subject to Subtitle B, Title 9, Property Code.

(b) To the extent of a conflict between Subtitle B, Title 9, Property Code, and a provision of this subpart or of the trust, the provision of the subpart or trust controls.

Added by Acts 1997, 75th Leg., ch. 1375, § 3, eff. Sept. 1, 1997. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 869C. Jurisdiction Over Trust Matters

A court that creates a trust under Section 867 of this code has the same jurisdiction to hear matters relating to the trust as the court has with respect to guardianship and other matters covered by this chapter.

Added by Acts 1997, 75th Leg., ch. 1375, § 3, eff. Sept. 1, 1997. Amended by Acts 2005, 79th Leg., ch. 1238, § 5, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 870. Termination of Trust

(a) If the person for whom a trust is created under Section 867 of this code is a minor, the trust terminates:

- (1) on the person's death or the person's 18th birthday, whichever is earlier; or
- (2) on the date provided by court order, which may not be later than the person's 25th birthday.

(b) If the person for whom a trust is created under Section 867 of this code is not a minor, the trust terminates:

- (1) according to the terms of the trust;
- (2) on the date the court determines that continuing the trust is no longer in the person's best interests, subject to Section 868C(b) of this code; or
- (3) on the person's death [of the ward or incapacitated person].

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (b) amended by Acts 1995, 74th Leg., ch. 1039, § 61, eff. Sept. 1, 1995; amended by Acts 1997, 75th Leg., ch. 1375, § 4, eff. Sept. 1, 1997. Subsecs. (a), (b) amended by Acts 2005, 79th Leg., ch. 1238, § 6, eff. Sept. 1, 2005. Subsec. (b) amended by Acts 2009, 81st Leg., ch. 930, § 11, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 34, eff. Sept. 1, 2011.

§ 870A. Initial Accounting by Certain Trustees Required

(a) This section applies only to a trustee of a trust created under Section 867 of this code for a person for whom a guardianship proceeding is pending on the date the trust is created.

(b) Not later than the 30th day after the date a trustee to which this section applies receives property into the trust, the trustee shall file with the court in which the guardianship proceeding is pending 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.

Added by Acts 2011, 82nd Leg., ch. 1085, § 35, eff. Sept. 1, 2011.

§ 871. Annual Accounting

(a) Except as provided by Subsection (d) of this section, the trustee shall prepare and file with the court an annual accounting of transactions in the trust in the same manner and form that is required of a guardian under this chapter.

(b) If a trust has been created under this section for a ward, the trustee shall provide a copy of the annual account to the guardian of the ward's estate or person.

(c) The annual account is subject to court review and approval in the same manner that is required of an annual account prepared by a guardian under this chapter.

(d) The court may not require a trustee of a trust created for a person who has only a physical disability to prepare and file with the court the annual accounting as described by Subsection (a) of this section.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (b) amended by Acts 2005, 79th Leg., ch. 1238, § 7, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 36, eff. Sept. 1, 2011.

§ 872. Liability

The guardian of the person or of the estate of the ward or the surety on the bond of the guardian is not liable for an act or omission of the trustee.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 62, eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 873. Distribution of Trust Property

(a) Unless otherwise provided by the court and except as provided by Subsection (b) of this section, the trustee shall:

(1) prepare a final account in the same form and manner that is required of a guardian under Section 749 of this code; and

(2) on court approval, distribute the principal or any undistributed income of the trust:

(A) to the ward or incapacitated person when the trust terminates on its own terms;

(B) to the successor trustee on appointment of a successor trustee; or

(C) to the representative of the deceased ward's or incapacitated person's estate on the ward's or incapacitated person's death.

(b) The court may not require a trustee of a trust created for a person who has only a physical disability to prepare and file with the court a final account as described by Subsection (a)(1) of this section. The trustee shall distribute the principal and any undistributed income of the trust in the manner provided by Subsection (a)(2) of this section for a trust the beneficiary of which is a ward or incapacitated person.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1039, § 63, eff. Sept. 1, 1995. Amended by Acts 2005, 79th Leg., ch. 1238, § 8, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 37, eff. Sept. 1, 2011.

Part 5. Special Proceedings and Orders

Subpart A. Temporary Guardianships

§ 874. Presumption of Incapacitation

The person for whom a temporary guardian is appointed under Section 875 of this code may not be presumed to be incapacitated.

Added by Acts 2005, 79th Leg., ch. 200, § 10, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 875. Temporary Guardian—Procedure

(a) If a court is presented with substantial evidence that a person may be a minor or other incapacitated person, and the court has probable cause to believe that the person or person's estate, or both, requires the immediate appointment of a guardian, the court shall appoint a temporary guardian with limited powers as the circumstances of the case require.

(b) The person retains all rights and powers that are not specifically granted to the person's temporary guardian by court order.

(c) A sworn, written application for the appointment of a temporary guardian shall be filed before the court appoints a temporary guardian. The application must state:

(1) the name and address of the person who is the subject of the guardianship proceeding;

(2) the danger to the person or property alleged to be imminent;

(3) the type of appointment and the particular protection and assistance being requested;

(4) the facts and reasons supporting the allegations and requests;

(5) the name, address, and qualification of the proposed temporary guardian;

(6) the name, address, and interest of the applicant; and

(7) if applicable, that the proposed temporary guardian is a private professional guardian who is

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certified under Subchapter C, Chapter 111, Government Code, and has complied with the requirements of Section 697 of this code.

(d) On the filing of an application for temporary guardianship, the court shall appoint an attorney to represent the proposed ward in all guardianship proceedings in which independent counsel has not been retained by or on behalf of the proposed ward.

(e) On the filing of an application for temporary guardianship, the clerk shall issue notice that shall be served on the respondent, the respondent's appointed attorney, and the proposed temporary guardian named in the application, if that person is not the applicant. The notice must describe the rights of the parties and the date, time, place, purpose, and possible consequences of a hearing on the application. A copy of the application must be attached to the notice.

(f)(1) A hearing shall be held not later than the 10th day after the date of the filing of the application for temporary guardianship unless the hearing date is postponed as provided by Subdivision (2) of this subsection. At a hearing under this section, the respondent has the right to:

- (A) receive prior notice;
- (B) have representation by counsel;
- (C) be present;
- (D) present evidence and confront and cross-examine witnesses; and
- (E) a closed hearing if requested by the respondent or the respondent's attorney.

(2) The respondent or the respondent's attorney may consent to postpone the hearing on the application for temporary guardianship for a period not to exceed 30 days after the date of the filing of the application.

(3) Every application for temporary guardianship takes precedence over all matters except older matters of the same character.

(4) Immediately after an application for temporary guardianship is filed, the court shall issue an order that sets a certain date for hearing on the application for temporary guardianship.

(5) On one day's notice to the party who filed the application for temporary guardianship, the respondent or the respondent's attorney may appear and move for the dismissal of the application for temporary guardianship. If a motion is made for dismissal of the application for temporary guardianship, the court shall hear and determine the motion as expeditiously as the ends of justice require.

(6) If the applicant is not the proposed temporary guardian, a temporary guardianship may not be granted before a hearing on the application required by Subdivision (1) of this subsection unless the proposed temporary guardian appears in court.

(g) If at the conclusion of the hearing required by Subsection (f)(1) of this section the court determines that the applicant has established that there is

substantial evidence that the person is a minor or other incapacitated person, that there is imminent danger that the physical health or safety of the respondent will be seriously impaired, or that the respondent's estate will be seriously damaged or dissipated unless immediate action is taken, the court shall appoint a temporary guardian by written order. The court shall assign to the temporary guardian only those powers and duties that are necessary to protect the respondent against the imminent danger shown. The court shall set bond according to Subpart B, Part 3, of this chapter. The reasons for the temporary guardianship and the powers and duties of the temporary guardian must be described in the order of appointment.

(h) Except as provided by Subsection (k) of this section, a temporary guardianship may not remain in effect for more than 60 days.

(i) If the court appoints a temporary guardian after the hearing required by Subsection (F)(1) of this section, all court costs, including attorney's fees, may be assessed as provided in Section 665A, 665B, or 669 of this code.

(j) The court may not customarily or ordinarily appoint the Department of Aging and Disability Services as a temporary guardian under this section. The appointment of the department as a temporary guardian under this section should be made only as a last resort.

(k) If an application for a temporary guardianship, for the conversion of a temporary guardianship to a permanent guardianship, or for a permanent guardianship is challenged or contested, the court, on the court's own motion or on the motion of any interested party, may appoint a temporary guardian or grant a temporary restraining order under Rule 680, Texas Rules of Civil Procedure, or both, without issuing additional citation if the court finds that the appointment or the issuance of the order is necessary to protect the proposed ward or the proposed ward's estate.

(l) A temporary guardian appointed under Subsection (k) of this section must qualify in the same form and manner required of a guardian under this code. The term of the temporary guardian expires at the conclusion of the hearing challenging or contesting the application or on the date a permanent guardian the court appoints for the proposed ward qualifies to serve as the ward's guardian.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsecs. (c), (i) amended by Acts 1995, 74th Leg., ch. 1039, § 64, eff. Sept. 1, 1995; Subsec. (j) amended by Acts 1995, 74th Leg., ch. 76, § 8.074, eff. Sept. 1, 1995; Subsecs. (j), (k) amended by Acts 1995, 74th Leg., ch. 1039, § 64, eff. Sept. 1, 1995; Subsecs. (e), (f) amended by Acts 1999, 76th Leg., ch. 997, § 2, eff. Sept. 1, 1999; Subsec. (c) amended by Acts 2001, 77th Leg., ch. 217, § 17, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 277, § 1, eff. Sept. 1, 2003. Subsecs. (c), (j) amended by Acts 2005, 79th Leg., ch. 268, § 3.18, eff.

Sept. 1, 2005. Subsec. (k) amended by Acts 2009, 81st Leg., ch. 930, § 12, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 876. Authority of Temporary Guardian

When the temporary guardian files the oath and bond required under this chapter, the court order appointing the temporary guardian takes effect without the necessity for issuance of letters of guardianship. The clerk shall note compliance with oath and bond requirements by the appointed guardian on a certificate attached to the order. The order shall be evidence of the temporary guardian's authority to act within the scope of the powers and duties set forth in the order. The clerk may not issue certified copies of the order until the oath and bond requirements are satisfied.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 877. Powers of Temporary Guardian

All the provisions of this chapter relating to the guardianship of persons and estates of incapacitated persons apply to a temporary guardianship of the persons and estates of incapacitated persons, insofar as the same may be made applicable.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 878. Accounting

At the expiration of a temporary appointment, the appointee shall file with the clerk of the court a sworn list of all property of the estate that has come into the hands of the appointee, a return of all sales made by the appointee, and a full exhibit and account of all of the appointee's acts as temporary appointee.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 879. Closing Temporary Guardianship

The court shall act on the list, return, exhibit, and account filed under Section 878 of this code. Whenever temporary letters expire or cease to be effective for any reason, the court shall immediately enter an order requiring the temporary appointee to deliver the estate remaining in the temporary appointee's possession to the person who is legally entitled to the possession of the estate. The temporary appointee shall be discharged and the sureties on the bond of the temporary appointee shall be released as to future liability on proof that the appointee delivered the property as required by this section.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart B. Guardianships for Nonresidents

§ 881. Nonresident Guardian

(a) A nonresident of this state may be appointed and qualified as guardian or coguardian of a nonresident ward's estate located in this state in the same manner provided by this code for the appointment and qualification of a resident as guardian of the estate of an incapacitated person if:

(1) a court of competent jurisdiction in the geographical jurisdiction in which the nonresident resides appointed the nonresident guardian;

(2) the nonresident is qualified as guardian or as a fiduciary legal representative by whatever name known in the foreign jurisdiction of the property or estate of the ward located in the jurisdiction of the foreign court; and

(3) with the written application for appointment in the county court of any county in this state in which all or part of the ward's estate is located, the nonresident files a complete transcript of the proceedings from the records of the court in which the nonresident applicant was appointed, showing the applicant's appointment and qualification as the guardian or fiduciary legal representative of the ward's property or estate.

(b) The transcript required by Subsection (a) of this section must be certified to and attested by the clerk of the foreign court or the officer of the court charged by law with custody of the court records, under the court seal, if any. The certificate of the judge, chief justice, or presiding magistrate, as applicable, of the foreign court must be attached to the transcript, certifying that the attestation of the transcript by the clerk or legal custodian of the court records is in correct form.

(c) If the nonresident applicant meets the requirements of this section, without the necessity of any notice or citation, the court shall enter an order appointing the nonresident. After the nonresident applicant qualifies in the manner required of resident guardians and files with the court a power of attorney appointing a resident agent to accept service of process in all actions or proceedings with respect to the estate, the clerk shall issue the letters of guardianship to the nonresident guardian.

(d) After qualification, the nonresident guardian shall file an inventory and appraisal of the estate of the ward in this state subject to the jurisdiction of the court, as in ordinary cases, and is subject to all applicable provisions of this code with respect to the handling and settlement of estates by resident guardians.

(e) A resident guardian who has any of the estate of a ward may be ordered by the court to deliver the estate to a duly qualified and acting guardian of the ward.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993; Subsec. (e) added by Acts 1995, 74th Leg., ch. 1039, § 65, eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 881A. Nonresident Guardian's Removal of Ward's Property from State

A nonresident guardian, regardless of whether the nonresident guardian is qualified under this code, may remove personal property of the ward out of the state if:

(1) the removal does not conflict with the tenure of the property or the terms and limitations of the guardianship under which the property is held; and

(2) all debts known to exist against the estate in this state are paid or secured by bond payable to and approved by the judge of the court in which guardianship proceedings are pending in this state.

Added by Acts 1995, 74th Leg., ch. 1039, § 66, eff. Sept. 1, 1995. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 882. Nonresident as Ward

Guardianship of the estate of a nonresident incapacitated person who owns property in this state may be granted, if necessary, in the same manner as for the property of a resident of this state. A court in the county in which the principal estate of the ward is located has jurisdiction to appoint a guardian. The court shall take all actions and make all necessary orders with respect to the estate of the ward for the maintenance, support, care, or education of the ward, out of the proceeds of the ward's estate, in the same manner as if the ward were a resident of this state and was sent abroad by the court for education or treatment. If a qualified nonresident guardian of the estate later qualifies in this state under Section 881 of this code, the court shall close the resident guardianship.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart C. Incapacitated Spouse and Community Property

§ 883. Incapacitated Spouse

(a) Except as provided by Subsection (c) of this section, when a husband or wife is judicially declared to be incapacitated:

(1) the other spouse, in the capacity of surviving partner of the marital partnership, acquires full power to manage, control, and dispose of the entire community estate as community administrator, including the part of the community estate that the incapacitated spouse legally has the power to manage in the absence of the incapacity, without an administration; and

(2) if the incapacitated spouse owns separate property, the court shall appoint the other spouse or another person or entity, in the order of precedence established under Section 677 of this code, as guardian of the estate to administer only the separate property of the incapacitated spouse.

(b) The spouse who is not incapacitated is presumed to be suitable and qualified to serve as community administrator. The qualification of a guardian of the estate of the separate property of an incapacitated spouse as required under Subsection (a) of this section does not deprive the competent spouse of the right to manage, control, and dispose of the entire community estate as provided in this chapter.

(c) If a spouse who is not incapacitated is removed as community administrator or if the court finds that the spouse who is not incapacitated would be disqualified to serve as guardian under Section 681 of this code or is not suitable to serve as community administrator for any other reason, the court:

(1) shall appoint a guardian of the estate for the incapacitated spouse if the court:

(A) has not appointed a guardian of the estate under Subsection (a)(2) of this section; or

(B) has appointed the spouse who is not incapacitated as guardian of the estate under Subsection (a)(2) of this section;

(2) after taking into consideration the financial circumstances of the spouses and any other relevant factors, may order the spouse who is not incapacitated to deliver to the guardian of the estate of the incapacitated spouse a portion, not to exceed one-half, of the community property that is subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code; and

(3) shall authorize the guardian of the estate of the incapacitated spouse to administer:

(A) any separate property of the incapacitated spouse;

(B) any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code;

(C) any community property delivered to the guardian of the estate under Subdivision (2) of this subsection; and

(D) any income earned on property described in this subsection.

(d) On a person's removal as community administrator or on qualification of a guardian of the estate of the person's incapacitated spouse under Subsection (c) of this section, as appropriate, a spouse who is not incapacitated shall continue to administer:

(1) the person's own separate property;

(2) any community property that is subject to the person's sole management, control, and disposition under Section 3.102, Family Code;

(3) any community property subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code, unless the person is required to deliver a portion of that community property to the guardian of the estate of the person's incapacitated spouse under Subsection (c)(2) of this section, in which event, the person shall continue to administer only the portion of the community property remaining after delivery; and

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(4) any income earned on property described in this subsection the person is authorized to administer.

(e) The duties and obligations between spouses, including the duty to support the other spouse, and the rights of any creditor of either spouse are not affected by the manner in which community property is administered under this section.

(f) This section does not partition community property between an incapacitated spouse and a spouse who is not incapacitated.

(g) If the court renders an order directing the guardian of the estate of the incapacitated spouse to administer certain community property as provided by Subsection (c) of this section, the community property administered by the guardian is considered the incapacitated spouse's community property, subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code. If the court renders an order directing the spouse who is not incapacitated to administer certain community property as provided by Subsection (d) of this section, the community property administered by the spouse who is not incapacitated is considered that spouse's community property, subject to that spouse's sole management, control, and disposition under Section 3.102, Family Code.

(h) An order described by Subsection (g) of this section does not affect the enforceability of a creditor's claim existing on the date the court renders the order.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 217, § 18, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 549, § 31, eff. Sept. 1, 2003. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 883A. Recovery of Capacity

The special powers of management, control, and disposition vested in the community administrator by this chapter shall terminate when the decree of a court of competent jurisdiction finds that the mental capacity of the incapacitated spouse has been recovered.

Added by Acts 1995, 74th Leg., ch. 1039, § 67, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 217, § 19, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 883B. Accounting, Inventory, and Appraisalment by Community Administrator

(a) On its own motion or on the motion of an interested person for good cause shown, the court may order a community administrator to file a verified, full, and detailed inventory and appraisalment of:

(1) any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code;

(2) any community property subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code; and

(3) any income earned on property described in this subsection.

(b) At any time after the expiration of 15 months after the date that a community administrator's spouse is judicially declared to be incapacitated, the court, on its own motion or on the motion of an interested person for good cause shown, may order the community administrator to prepare and file an accounting of:

(1) any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code;

(2) any community property subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code; and

(3) any income earned on property described in this subsection.

(c) An inventory and appraisalment ordered under Subsection (a) of this section must:

(1) be prepared in the same form and manner that is required of a guardian under Section 729 of this code; and

(2) be filed not later than the 90th day after the date on which the order is issued.

(d) An accounting ordered under Subsection (b) of this section must:

(1) be prepared in the same form and manner that is required of a guardian under Section 741 of this code, except that the requirement that an accounting be filed annually with the county clerk does not apply; and

(2) be filed not later than the 60th day after the date on which the order is issued.

(e) After an initial accounting has been filed by a community administrator under this section, the court, on the motion of an interested person for good cause shown may order the community administrator to file subsequent periodic accountings at intervals of not less than 12 months.

Added by Acts 2001, 77th Leg., ch. 217, § 20, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 883C. Removal of Community Administrator

(a) A court, on its own motion or on the motion of an interested person and after the community administrator has been cited by personal service to answer at a time and place specified in the notice, may remove a community administrator if:

(1) the community administrator fails to comply with a court order for an inventory and appraisalment, accounting, or subsequent accounting under Section 883B of this code;

(2) sufficient grounds appear to support belief that the community administrator has misapplied or embezzled, or that the community administrator is

about to misapply or embezzle, all or any part of the property committed to the care of the community administrator;

(3) the community administrator is proved to have been guilty of gross misconduct or gross mismanagement in the performance of duties as community administrator; or

(4) the community administrator becomes an incapacitated person, is sentenced to the penitentiary, or for any other reason becomes legally incapacitated from properly performing the community administrator's fiduciary duties.

(b) The order of removal must state the cause of removal and shall direct by order the disposition of the assets remaining in the name or under the control of the removed community administrator.

(c) A community administrator who defends an action for the removal of the community administrator in good faith, regardless of whether successful, is entitled to recover from the incapacitated spouse's part of the community estate the community administrator's necessary expenses and disbursements in the removal proceedings, including reasonable attorney's fees.

Added by Acts 2001, 77th Leg., ch. 217, § 20, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 883D. Appointment of Attorney ad Litem for Incapacitated Spouse

(a) The court shall appoint an attorney ad litem to represent the interests of an incapacitated spouse in a proceeding to remove a community administrator or other proceeding brought under this subpart.

(b) The attorney ad litem may demand from the community administrator an accounting or inventory and appraisal of the incapacitated spouse's part of the community estate being managed by the community administrator.

(c) A community administrator shall comply with a demand made under this section not later than the 60th day after the date on which the community administrator receives the demand.

(d) An accounting or inventory and appraisal returned under this section must be prepared in the form and manner required by the attorney ad litem, and the attorney ad litem may require the community administrator to file the accounting and inventory and appraisal with the court.

Added by Acts 2001, 77th Leg., ch. 217, § 20, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 884. Delivery to Spouse

A guardian of the estate of an incapacitated married person who, as guardian, is administering community property as part of the estate of the ward, shall deliver on demand the community property to the spouse who is not incapacitated if the spouse becomes community administrator under Section 883 of this code.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 217, § 21, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 884A. Lawsuit Information

A person whose spouse is judicially declared to be incapacitated and who acquires the power to manage, control, and dispose of the entire community estate under Section 883 of this code shall inform the court in writing of any suit filed by or on behalf of the person that:

(1) is a suit for dissolution of the marriage of the person and the person's incapacitated spouse; or

(2) names the incapacitated spouse as a defendant.

Added by Acts 2001, 77th Leg., ch. 217, § 22, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart D. Receivership for Minors and Other Incapacitated Persons

§ 885. Receivership

(a) When the estate of a minor or other incapacitated person or any portion of the estate of the minor or other incapacitated person appears in danger of injury, loss, or waste and in need of a guardianship or other representative and there is no guardian of the estate who is qualified in this state and a guardian is not needed, the county judge of the county in which the minor or other incapacitated person resides or in which the endangered estate is located shall enter an order, with or without application, appointing a suitable person as receiver to take charge of the estate. The court order shall require a receiver appointed under this section to give bond as in ordinary receiverships in an amount the judge deems necessary to protect the estate. The court order shall specify the duties and powers of the receiver as the judge deems necessary for the protection, conservation, and preservation of the estate. The clerk shall enter an order made under this section in the judge's guardianship docket. The person who is appointed as receiver shall make and submit a bond for the judge's approval and shall file the bond, when approved, with the clerk. The person who is appointed receiver shall proceed to take charge of the endangered estate pursuant to the powers and duties vested in the person by the order of appointment and subsequent orders made by the judge.

(b) During the pendency of the receivership, when the needs of the minor or other incapacitated person require the use of the income or corpus of the estate for the education, clothing, or subsistence of the minor or other incapacitated person, the judge, with or without application, shall enter an order in the judge's guardianship docket that appropriates an amount of income or corpus that is sufficient for that purpose. The

receiver shall use the amount appropriated by the court to pay a claim for the education, clothing, or subsistence of the minor or other incapacitated person that is presented to the judge for approval and ordered by the judge to be paid.

(c) During the pendency of the receivership, when the receiver has on hand an amount of money that belongs to the minor or other incapacitated person that is in excess of the amount needed for current necessities and expenses, the receiver, under direction of the judge, may invest, lend, or contribute the excess money or any portion of the money in the manner, for the security, and on the terms and conditions provided by this chapter for investments, loans, or contributions by guardians. The receiver shall report to the judge all transactions made under this subsection in the same manner that a report is required of a guardian under this chapter.

(d) All necessary expenses incurred by the receiver in administering the estate may be rendered monthly to the judge in the form of a sworn statement of account that includes a report of the receiver's acts, the condition of the estate, the status of the threatened danger to the estate, and the progress made toward abatement of the danger. If the judge is satisfied that the statement is correct and reasonable in all respects, the judge shall promptly enter an order approving the expenses and authorizing the receiver to be reimbursed from the funds of the estate in the receiver's hands. A receiver shall be compensated for services rendered in the receiver's official capacity in the same manner and amount as provided by this chapter for similar services rendered by guardians of estates.

(e) When the threatened danger has abated and the estate is no longer liable to injury, loss, or waste because there is no guardian or other representative of the estate, the receiver shall report to the judge, file with the clerk a full and final sworn account of all property of the estate the receiver received, had on hand when the receivership was pending, all sums paid out, all acts performed by the receiver with respect to the estate, and all property of the estate that remains in the receiver's hands on the date of the report. On the filing of the report, the clerk shall issue and cause to be posted a notice to all persons interested in the welfare of the minor or other incapacitated person and shall give personal notice to the person who has custody of the minor or other incapacitated person to appear before the judge at a time and place specified in the notice and contest the report and account if the person desires.

(f) If on hearing the receiver's report and account the judge is satisfied that the danger of injury, loss, or waste to the estate has abated and that the report and account are correct, the judge shall enter an order finding that the danger of injury, loss, or waste to the estate has abated and shall direct the receiver to deliver the estate to the person from whom the receiver took possession as receiver, to the person who has custody of the minor or other incapacitated person, or to another person as the judge may find is entitled to possession of

the estate. A person who receives the estate under this subsection shall execute and file with the clerk an appropriate receipt for the estate that is delivered to the person. The judge's order shall discharge the receivership and the sureties on the bond of the receiver. If the judge is not satisfied that the danger has abated, or if the judge is not satisfied with the receiver's report and account, the judge shall enter an order that continues the receivership in effect until the judge is satisfied that the danger has abated or is satisfied with the report and account.

(g) An order or a bond, report, account, or notice in a receivership proceeding must be recorded in the judge's guardianship docket.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsecs. (a), (b), (g) amended by Acts 2009, 81st Leg., ch. 602, § 18, eff. June 19, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart E. Payment of Claims without Guardianship

§ 887. Payment of Claims Without Guardianship and Administration of Terminated Guardianship Assets

(a) When a resident person who is a minor or other incapacitated person, or the former ward of a guardianship terminated under Subpart C, Part 4, of this code,¹ who are referred to in this section as "creditor," are without a legal guardian of the person's estate, and the person is entitled to money in an amount that is \$100,000 or less, the right to which is liquidated and is uncontested in any pending lawsuit, the debtor may pay the money to the county clerk of the county in which the creditor resides to the account of the creditor, giving the creditor's name, the creditor's social security identification number, the nature of the creditor's disability, and, if the creditor is a minor, the minor's age, and the creditor's post office address. The receipt for the money signed by the clerk is binding on the creditor as of the date of receipt and to the extent of the payment. The clerk, by letter mailed to the address given by the debtor, shall apprise the creditor of the fact that the deposit was made. On receipt of the payment by the clerk, the clerk shall call the receipt of the payment to the court's attention and shall invest the money as authorized under this chapter pursuant to court order in the name and for the account of the minor or other person entitled to the money. Any increase, dividend, or income from an investment made under this section shall be credited to the account of the minor or other person entitled to the investment. Any money that is deposited under the terms of this section that has not been paid out shall be subject to the provisions of this chapter not later than October 1, 1993.

¹ Probate Code, § 745 et seq.

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(b) Not later than March 1 of each calendar year, the clerk of the court shall make a written report to the court of the status of an investment made by the clerk under this section. The report must contain:

(1) the amount of the original investment or the amount of the investment at the last annual report, whichever is later;

(2) any increase, dividend, or income from such investment since the last annual report;

(3) the total amount of the investment and all increases, dividends, or income at the date of the report; and

(4) the name of the depository or the type of investment.

(c) The father or mother, or unestranged spouse, of the creditor, with priority being given to the spouse who resides in this state or if there is no spouse and both father and mother are dead or are nonresidents of this state, then the person who resides in this state who has actual custody of the creditor, as custodian and on filing with the clerk written application and bond approved by the county judge of the county, may withdraw the money from the clerk for the use and benefit of the creditor, the bond to be in double the amount of the money and to be payable to the judge or the judge's successors in office and to be conditioned that the custodian will use the money for the creditor's benefit under directions of the court and that the custodian, when legally called on to do so, will faithfully account to the creditor and the creditor's heirs or legal representatives for the money and any increase to the money on the removal of the disability to which the creditor is subject, or on the creditor's death, or the appointment of a guardian for the creditor. A fee or commission may not be allowed to the custodian for taking care of, handling, or expending the money withdrawn by the custodian.

(d) When the custodian has expended the money in accordance with directions of the court or has otherwise complied with the terms of the custodian's bond by accounting for the money and any increase in the money, the custodian shall file with the county clerk of the county the custodian's sworn report of the custodian's accounting. The filing of the custodian's report, when approved by the court, operates as a discharge of the person as custodian and of the person's sureties from all further liability under the bond. The court shall satisfy itself that the report is true and correct and may require proof as in other cases.

(e) When a nonresident minor, a nonresident person who is adjudged by a court of competent jurisdiction to be incapacitated, or the former ward of a guardianship terminated under Subpart C, Part 4, of this code who has no legal guardian qualified in this state is entitled to money in an amount that is not more than \$100,000 owing as a result of transactions within this state, the right to which is liquidated and is uncontested in any pending lawsuit in this state, the debtor in this state may pay the money to the guardian of the creditor who is duly qualified in the domiciliary jurisdiction or to the

county clerk of any county in this state in which real property owned by the nonresident person is located. If the person is not known to own any real property in any county in this state the debtor has the right to pay the money to the county clerk of the county of this state in which the debtor resides. In either case, the debtor's payment to the clerk is for the use and benefit and for the account of the nonresident creditor. The receipt for the payment signed by the clerk that recites the name of the creditor and the post office address of the creditor, if known, is binding on the creditor as of the date and to the extent of the payment. The clerk shall handle the money paid to the clerk by the debtor in the same manner as provided for cases of payments to the accounts of residents of this state under Subsections (a)-(d) of this section. All applicable provisions of Subsections (a)-(d) of this section apply to the handling and disposition of money or any increase, dividend, or income paid to the clerk for the use, benefit, and account of the nonresident creditor.

(f) If a person who is authorized to withdraw the money does not withdraw the money from the clerk as provided for in this section, the creditor, after termination of the creditor's disability, or the subsequent personal representative of the creditor or the creditor's heirs may withdraw, at any time and without special bond for the purpose, the money on simply exhibiting to the clerk an order of the county or probate court of the county where the money is held by the clerk that directs the clerk to deliver the money to the creditor, to the creditor's personal representative, or to the creditor's heirs named in the order. Before the court issues an order under this subsection, the person's identity and the person's credentials must be proved to the court's satisfaction.

(g) When it is made to appear to the judge of a county court, district court, or other court of this state, by an affidavit executed by the superintendent, business manager, or field representative of any eleemosynary institution of this state, that a certain inmate in the institution is a person who has a mental disability, an incapacitated person, or a person whose mental illness or mental incapacity, or both, renders the person incapable of caring for himself and of managing the person's own property and financial affairs, there is no known legal guardian appointed for the estate of the inmate, and there is on deposit in the court registry a certain sum of money that belongs to the inmate that does not exceed \$10,000, the court may order the disposition of the funds as provided by this subsection. The court, on satisfactory proof by affidavit or otherwise that the inmate is a person who has a mental disability, an incapacitated person, or a person whose mental illness or mental incapacity, or both, renders the inmate incapable of caring for the inmate's self and of managing the inmate's own property and financial affairs and is without a legally appointed guardian of the inmate's estate, may by order direct the clerk of the court to pay the money to the institution for the use and benefit of the inmate. The state institution to which the

payment is made may not be required to give bond or security for receiving the fund from the court registry, and the receipt from the state institution for the payment, or the canceled check or warrant by which the payment was made, shall be sufficient evidence of the disposition of the payment. The clerk of the court is relieved of further responsibility for the disposition. On receipt of the money, the institution shall deposit all of the amount of money received to the trust account of the inmate. The money deposited by the institution in the trust account is to be used by or for the personal use of the owner of the trust account under the rules or custom of the institution in the expenditure of the funds by the inmate or for the use and benefit of the inmate by the responsible officer of the institution. This subsection is cumulative of all other laws affecting the rights of a person who has a mental disability, an incapacitated person, or a person who has a mental illness and affecting money that belongs to the person as an inmate of a state eleemosynary institution. If the inmate dies leaving a balance in the inmate's trust account, the balance may be applied to the burial expenses of the inmate or applied to the care, support, and treatment account of the inmate at the eleemosynary institution. After the expenditure of all funds in the trust account or after the death of the inmate, the responsible officer shall furnish a statement of expenditures of the funds to the nearest relative who is entitled to receive the statement. A copy of the statement shall be filed with the court that first granted the order to dispose of the funds in accordance with the provisions of this chapter.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsecs. (a), (e) amended by Acts 1997, 75th Leg., ch. 295, § 1, eff. Sept. 1, 1997; Subsec. (a) amended by Acts 2001, 77th Leg., ch. 127, § 2, eff. Sept. 1, 2001; Subsec. (a) amended by Acts 2001, 77th Leg., ch. 1174, § 8, eff. Sept. 1, 2001; Subsec. (e) amended by Acts 2001, 77th Leg., ch. 127, § 2, eff. Sept. 1, 2001; Subsec. (e) amended by Acts 2001, 77th Leg., ch. 1174, § 8, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart F. Sale of Property of Minors and Certain Wards

§ 889. Sale of Property of a Minor by a Parent Without Guardianship

(a) When a minor has an interest in real or personal property and the net value of the interest does not exceed \$100,000, a natural or adoptive parent, or the managing conservator, of a minor who is not a ward may apply to the court for an order to sell the minor's interest in the property without being appointed guardian. A minor may not disaffirm a sale of property pursuant to a court order under this section.

(b) The parent shall apply to the court under oath for the sale of the property. Venue for the application under this section is the same as venue for an

application for the appointment of a guardian for a minor. The application must contain:

- (1) a legal description of the real property and a description that identifies the personal property;
- (2) the name of the minor and the minor's interest in the property;
- (3) the name of the purchaser;
- (4) a statement that the sale of the minor's interest in the property is for cash; and
- (5) a statement that all funds received by the parent shall be used for the use and benefit of the minor.

(c) On receipt of the application, the court shall set the application for hearing at a date not earlier than five days from the date of the filing of the application. If the court deems it necessary, the court may cause citation to be issued.

(d) At the time of the hearing of the application filed under this section, the court shall order the sale of the property if the court is satisfied from the evidence that the sale is in the best interests of the minor. The court may require an independent appraisal of the property to be sold to establish the minimum sale price.

(e) When the court enters the order of sale, the purchaser of the property shall pay the proceeds of the sale belonging to the minor into the court registry.

(f) Nothing in this section prevents the proceeds deposited in the registry from being withdrawn from the court registry under Section 887 of this code.

Added by Acts 1993, 73rd Leg., ch. 957, § 1, eff. Sept. 1, 1993. Subsec. (a) amended by Acts 1995, 74th Leg., ch. 1039, § 68, eff. Sept. 1, 1995; Subsec. (f) amended by Acts 1995, 74th Leg., ch. 1039, § 69, eff. Sept. 1, 1995; Subsec. (a) amended by Acts 1997, 75th Leg., ch. 295, § 2, eff. Sept. 1, 1997; Subsec. (a) amended by Acts 2001, 77th Leg., ch. 127, § 3, eff. Sept. 1, 2001; Subsec. (a) amended by Acts 2001, 77th Leg., ch. 1174, § 9, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 889A. Mortgage of Residential Homestead Interest of a Minor Without Guardianship

(a) In this section:

(1) "Home equity loan" means a loan made under Section 50(a)(6), Article XVI, Texas Constitution.

(2) "Residence homestead" has the meaning assigned by Section 11.13, Tax Code.

(b) When a minor has an interest in a residence homestead and the net value of the interest does not exceed \$100,000, a natural or adoptive parent, subject to Subsection (j) of this section, or the managing conservator, of a minor who is not a ward may apply to the court for an order authorizing the parent or managing conservator to receive, without being appointed guardian, an extension of credit on the minor's behalf that is secured, wholly or partly, by a lien on the homestead. Proceeds of the home equity

loan attributable to the minor's interest may be used only to:

- (1) make improvements to the homestead;
- (2) pay for education or medical expenses of the minor; or
- (3) pay the outstanding balance of the loan.

(c) The parent or managing conservator shall apply to the court under oath for the authority to encumber the residence homestead as provided by this section. Venue for the application is the same as venue for an application for the appointment of a guardian for a minor. The application must contain:

- (1) the name and address of the minor;
- (2) a legal description of the property constituting the homestead;
- (3) a description of the minor's ownership interest in the property constituting the homestead;
- (4) the name of the minor and the fair market value of the property constituting the homestead;
- (5) the amount of the home equity loan;
- (6) the purpose or purposes for which the home equity loan is being sought;
- (7) a detailed description of the proposed expenditure of the loan proceeds to be received by the parent or managing conservator on the minor's behalf; and
- (8) a statement that all loan proceeds received by the parent or managing conservator on the minor's behalf through a home equity loan authorized under this section shall be used in a manner that is for the minor's benefit.

(d) On receipt of the application, the court shall set the application for hearing at a date not earlier than the fifth day after the date the application is filed. If the court considers it necessary, the court may cause citation to be issued.

(e) Before the hearing, the parent or managing conservator shall file with the county clerk a surety bond in an amount at least equal to two times the amount of the proposed home equity loan. The bond must be:

- (1) payable to and approved by the court; and
- (2) conditioned on the parent or managing conservator:
 - (A) using the proceeds of the home equity loan attributable to the minor's interest solely for the purposes authorized by this section; and
 - (B) making payments on the minor's behalf toward the outstanding balance of the home equity loan.

(f) At the time of the hearing of the application filed under this section, the court, on approval of the bond required by Subsection (e) of this section, shall authorize the parent or managing conservator to receive the extension of credit sought in the application if the court is satisfied from a preponderance of the evidence that the encumbrance is for a purpose described by Subsection (b)(1) or (2) of this section and is in the minor's best interests.

(g) A parent or managing conservator executing a home equity loan on a minor's behalf under this section shall file an annual report with the court regarding the transaction. When the parent or managing conservator has expended the proceeds of a home equity loan authorized under this section, the parent or managing conservator, in addition, shall file with the county clerk a sworn report accounting for the proceeds.

(h) The court may not discharge the person's sureties from all further liability under the bond until the court:

- (1) has approved the filing of the parent's or managing conservator's reports required under Subsection (g) of this section;
- (2) finds that the parent or managing conservator used loan proceeds resulting from the minor's interest solely for the purposes authorized by this section; and
- (3) has been presented with satisfactory evidence that the home equity loan has been repaid and is no longer considered an outstanding obligation.

(i) After the first anniversary of the date a parent or managing conservator executes a home equity loan authorized under this section, the court may, on motion of the borrower, reduce the amount of the surety bond required under this section to an amount that is not less than the outstanding balance of the loan.

(j) A parent of a minor may file an application under this section only if the parent has a homestead interest in the property that is the subject of the application.

(k) A minor may not disaffirm a home equity loan authorized by the court under this section.

Added by Acts 2005, 79th Leg., ch 1204, § 2, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 890. Sale of Property of Ward Without Guardianship of the Estate

(a) This section applies only to a ward who has a guardian of the person but does not have a guardian of the estate.

(b) When a ward has an interest in real or personal property in an estate and the net value of the interest does not exceed \$100,000, the guardian may apply under oath to the court for an order to sell the ward's interest in the property without being appointed guardian of the estate. A ward may not disaffirm a sale of property pursuant to a court order under this section.

(c) Venue for an application under this section is the same as venue for an application for the appointment of a guardian for the ward. The application must contain the same information required by Section 859(b) of this code.

(d) On receipt of the application, the court shall set the application for hearing at a date not earlier than five days from the date of the filing of the application. If the

court considers it necessary, the court may cause citation to be issued.

(e) The procedures and evidentiary requirements for a hearing of an application filed under this section are the same as the procedures and evidentiary requirements for a hearing of an application filed under Section 889 of this code.

(f) When the court enters the order of sale, the purchaser of the property shall pay the proceeds of the sale belonging to the ward into the court registry.

(g) Nothing in this section prevents the proceeds deposited in the court registry from being withdrawn as prescribed by Section 887 of this code.

Added by Acts 1997, 75th Leg., ch. 295, § 4, eff. Sept. 1, 1997. Subsec. (b) amended by Acts 2001, 77th Leg., ch. 127, § 4, eff. Sept. 1, 2001; Subsec. (b) amended by Acts 2001, 77th Leg., ch. 1174, § 10, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 890A. Mortgage of Residential Homestead Interest of a Minor

(a) In this section:

(1) “Home equity loan” means a loan made under Section 50(a)(6), Article XVI, Texas Constitution.

(2) “Residence homestead” has the meaning assigned by Section 11.13, Tax Code.

(b) This section applies only to a minor ward who has a guardian of the person but does not have a guardian of the estate.

(c) When a minor ward has an interest in a residence homestead and the net value of the interest does not exceed \$100,000, the guardian of the person of the ward may apply to the court for an order authorizing the guardian to receive an extension of credit on the ward’s behalf that is secured, wholly or partly, by a lien on the homestead. Proceeds of the home equity loan attributable to the minor’s interest may be used only to:

- (1) make improvements to the homestead;
- (2) pay for the education or maintenance expenses of the ward; or
- (3) pay the outstanding balance of the loan.

(d) Venue for the application is the same as venue for an application for the appointment of a guardian for a ward. The application must contain the same information required by Section 889A of this code.

(e) On receipt of the application, the court shall set the application for hearing at a date not earlier than the fifth day after the date the application is filed. If the court considers it necessary, the court may cause citation to be issued.

(f) The guardian of the person, before the hearing, shall file a surety bond with the county clerk to the same extent and in the same manner as a parent or managing conservator of a minor is required to provide a surety bond under Section 889A of this code.

(g) The procedures and evidentiary requirements for a hearing of an application filed under this section are

the same as the procedures and evidentiary requirements for a hearing of an application filed under Section 889A of this code.

(h) At the time of the hearing of the application filed under this section, the court, on approval of a bond required by Subsection (f) of this section, shall authorize the guardian to receive the extension of credit sought in the application if the court is satisfied from a preponderance of the evidence that the encumbrance is for a purpose described by Subsection (c)(1) or (2) of this section and is in the ward’s best interests.

(i) A guardian of the person executing a home equity loan on a ward’s behalf must account for the transaction, including the expenditure of the loan proceeds, in the annual accounting required by Section 741 of this code.

(j) The court may not discharge a guardian’s sureties from all further liability under a bond required by this section or another provision of this code until the court:

(1) finds that the guardian used loan proceeds resulting from the ward’s interest solely for the purposes authorized by this section; and

(2) has been presented with satisfactory evidence that the home equity loan has been repaid and is no longer considered an outstanding obligation.

(k) A minor ward may not disaffirm a home equity loan authorized by the court under this section.

Added by Acts 2005, 79th Leg., ch. 1204, § 2, eff. Sept. 1, 2005. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart G. Interstate Guardianships

§ 891. Transfer of Guardianship to Foreign Jurisdiction

(a) A guardian of the person or estate of a ward may apply with the court that has jurisdiction over the guardianship to transfer the guardianship to a court in a foreign jurisdiction if the ward has moved permanently to the foreign jurisdiction.

(b) Notice of the application to transfer a guardianship under this section shall be served personally on the ward and shall be given to the foreign court to which the guardianship is to be transferred.

(c) On the court’s own motion or on the motion of the ward or any interested person, the court shall hold a hearing to consider the application to transfer the guardianship.

(d) The court shall transfer a guardianship to a foreign court if the court determines the transfer is in the best interests of the ward. The transfer of the guardianship must be made contingent on the acceptance of the guardianship in the foreign jurisdiction. To facilitate the orderly transfer of the guardianship, the court shall coordinate efforts with the appropriate foreign court.

Added by Acts 2001, 77th Leg., ch. 479, § 1, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 892. Receipt and Acceptance of Foreign Guardianship

(a) A guardian appointed by a foreign court to represent an incapacitated person who is residing in this state or intends to move to this state may file an application with a court in which the ward resides or intends to reside to have the guardianship transferred to the court. The application must have attached a certified copy of all papers of the guardianship filed and recorded in the foreign court.

(b) Notice of the application for receipt and acceptance of a foreign guardianship under this section shall be served personally on the ward and shall be given to the foreign court from which the guardianship is to be transferred.

(c) If an application for receipt and acceptance of a foreign guardianship is filed in two or more courts with jurisdiction, the proceeding shall be heard in the court with jurisdiction over the application filed on the earliest date if venue is otherwise proper in that court. A court that does not have venue to hear the application shall transfer the proceeding to the proper court.

(d) In reviewing an application for receipt and acceptance of a foreign guardianship, the court should determine:

(1) that the proposed guardianship is not a collateral attack on an existing or proposed guardianship in another jurisdiction in this or another state; and

(2) for a guardianship in which a court in one or more states may have jurisdiction, that the application has been filed in the court that is best suited to consider the matter.

(e) The court shall hold a hearing to:

(1) consider the application for receipt and acceptance of a foreign guardianship; and

(2) consider modifying the administrative procedures or requirements of the proposed transferred guardianship in accordance with local and state law.

(f) The court shall grant an application for receipt and acceptance of a foreign guardianship if the transfer of the guardianship from the foreign jurisdiction is in the best interests of the ward. In granting an application under this subsection, the court shall give full faith and credit to the provisions of the foreign guardianship order concerning the determination of the ward's incapacity and the rights, powers, and duties of the guardian.

(f-1) At the time of granting an application for receipt and acceptance of a foreign guardianship, the court may also modify the administrative procedures or requirements of the transferred guardianship in accordance with local and state law.

(g) The court shall coordinate efforts with the appropriate foreign court to facilitate the orderly transfer of the guardianship.

(h) The denial of an application for receipt and acceptance of a guardianship under this section does not affect the right of a guardian appointed by a foreign court to file an application to be appointed guardian of the incapacitated person under Section 682 of this code.

Added by Acts 2001, 77th Leg., ch. 479, § 1, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., 1st C.S., ch. 4, § 66.04, eff. Sept. 28, 2011. Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 4, § 66A.06, eff. Jan. 1, 2014.

§ 894. Guardianship Proceedings Filed in this State and in Foreign Jurisdiction

(a) A court in which a guardianship proceeding is filed and in which venue of the proceeding is proper may delay further action in the proceeding in that court if:

(1) another guardianship proceeding involving a matter at issue in the proceeding filed in the court is subsequently filed in a court in a foreign jurisdiction; and

(2) venue of the proceeding in the foreign court is proper.

(b) A court that delays further action in a guardianship proceeding under Subsection (a) of this section shall determine whether venue of the proceeding is more suitable in that court or in the foreign court. In making that determination, the court may consider:

(1) the interests of justice;

(2) the best interests of the ward or proposed ward; and

(3) the convenience of the parties; and

(4) the preference of the ward or proposed ward, if the ward or proposed ward is 12 years of age or older.

(c) A court that delays further action under Subsection (a) of this section may issue any order it considers necessary to protect the proposed ward or the proposed ward's estate.

(d) The court shall resume the guardianship proceeding if the court determines that venue is more suitable in that court. If the court determines that venue is more suitable in the foreign court, the court shall, with the consent of the foreign court, transfer the proceeding to the foreign court.

Added by Acts 2007, 80th Leg., ch. 606, § 1, eff. June 15, 2007. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., 1st C.S., ch. 4, § 66.06, eff. Sept. 28, 2011. Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 4, § 66A.06, eff. Jan. 1, 2014.

§ 895. Determination of Most Appropriate Forum for Certain Guardianship Proceedings

(a) If at any time a court of this state determines that it acquired jurisdiction of a proceeding for the appointment of a guardian of the person or estate, or both, of a ward or proposed ward because of unjustifiable conduct, the court may:

- (1) decline to exercise jurisdiction;
- (2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the ward or proposed ward or the protection of the ward's or proposed ward's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or
- (3) continue to exercise jurisdiction after considering:

(A) the extent to which the ward or proposed ward and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(B) whether the court of this state is a more appropriate forum than the court of any other state after considering the factors described by Section 894(b) of this code; and

(C) whether the court of any other state would have jurisdiction under the factual circumstances of the matter.

(b) If a court of this state determines that it acquired jurisdiction of a proceeding for the appointment of a guardian of the person or estate, or both, of a ward or proposed ward because a party seeking to invoke the court's jurisdiction engaged in unjustifiable conduct, the court may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by other law.

Amended by Acts 2011, 82nd Leg., 1st C.S., ch. 4, § 66.01, eff. Sept. 28, 2011. Added by Acts 2011, 82nd Leg., 1st C.S., ch. 4, § 66.07, eff. Sept. 28, 2011. Repealed by Acts 2011, 82nd Leg., 1st C.S., ch. 4, § 66A.06, eff. Jan. 1, 2014.

Subpart H. Contracts in Arts, Entertainment, Advertisement, and Sports

§ 901. Definitions

In this subpart:

(1) "Advertise" means to solicit or induce, through print or electronic media, including radio, television, computer, or direct mail, to purchase consumer goods or services.

(2) "Advertisement contract" means a contract under which a person is employed or agrees to advertise consumer goods or services.

(3) "Artist" means:

(A) an actor who performs in a motion picture, theatrical, radio, television, or other entertainment production;

(B) a musician or musical director;

(C) a director or producer of a motion picture, theatrical, radio, television, or other entertainment production;

(D) a writer;

(E) a cinematographer;

(F) a composer, lyricist, or arranger of musical compositions;

(G) a dancer or choreographer of musical productions;

(H) a model; or

(I) any other individual who renders analogous professional services in a motion picture, theatrical, radio, television, or other entertainment production.

(4) "Arts and entertainment contract" means a contract under which:

(A) an artist is employed or agrees to render services in a motion picture, theatrical, radio, television, or other entertainment production; or

(B) a person agrees to purchase, secure, sell, lease, license, or otherwise dispose of literary, musical, or dramatic tangible or intangible property or any rights in that property for use in the field of entertainment, including a motion picture, television, the production of phonograph records, or theater.

(5) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(6) "Sports contract" means a contract under which an athlete is employed or agrees to participate, compete, or engage in a sports or athletic activity at a professional or amateur sports event or athletic event.

Added by Acts 2001, 77th Leg., ch. 799, § 1, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 902. Construction

This subpart may not be construed to authorize the making of a contract that binds a minor beyond the seventh anniversary of the date of the contract.

Added by Acts 2001, 77th Leg., ch. 799, § 1, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 903. Approval of Certain Contracts of Minors; Not Voidable

(a) A court, on petition of the guardian of the estate of the minor, may enter an order approving for purposes of this subpart an arts and entertainment contract,

advertisement contract, or sports contract that is entered into by a minor. The court may approve the contract only after the guardian of the minor's estate provides to the other party to the contract notice of the petition and an opportunity to request a hearing in the manner provided by the court.

(b) The approval of a contract under this section extends to the contract as a whole and any of the terms and provisions of the contract, including any optional or conditional provision in the contract relating to the extension or termination of its term.

(c) A court may withhold approval of a contract under which part of the minor's net earnings under the contract will be set aside as provided by Section 904 of this code until the guardian of the minor's estate executes and files with the court written consent to the making of the order.

(d) An otherwise valid contract approved under this section may not be voidable solely on the ground that it was entered into by a person during the age of minority.

(e) Each parent of the minor is a necessary party to a proceeding brought under this section.

Added by Acts 2001, 77th Leg., ch. 799, § 1, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 904. Net Earnings of Minor; Set Aside and Preservation

(a) In this section, "net earnings" means the total amount to be received for the services of the minor under the contract less:

- (1) the sum required by law to be paid as taxes to any government or governmental agency;
- (2) a reasonable sum to be expended for the support, care, maintenance, education, and training of the minor;
- (3) fees and expenses paid in connection with procuring the contract or maintaining employment of the minor; and
- (4) attorney's fees for services rendered in connection with the contract or any other business of the minor.

(b) Notwithstanding any other law, the court may require in an order approving a contract under Section 903 of this code that a portion of the net earnings of the minor under the contract be set aside and preserved for the benefit of the minor in a trust created under Section 867 of this code or a similar trust created under the laws of another state. The amount to be set aside under this subsection must be a reasonable amount as determined by the court.

Added by Acts 2001, 77th Leg., ch. 799, § 1, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 905. Guardian Ad Litem

The court may appoint a guardian ad litem for a minor who has entered into an arts and entertainment contract, advertisement contract, or sports contract if the

court finds that appointment of the ad litem would be in the best interest of the minor.

Added by Acts 2001, 77th Leg., ch. 799, § 1, eff. Sept. 1, 2001. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

Subpart I. Establishment of Pooled Trust Subaccounts; Transfers

§ 910. Definitions

In this subpart:

(1) "Beneficiary" means a minor or other incapacitated person, an alleged incapacitated person, or a disabled person who is not an incapacitated person for whom a subaccount is established.

(2) "Medical assistance" means benefits and services under the medical assistance program administered under Chapter 32, Human Resources Code.

(3) "Pooled trust" means a trust that meets the requirements of 42 U.S.C. Section 1396p(d)(4)(c) for purposes of exempting the trust from the applicability of 42 U.S.C. Section 1396p(d) in determining the eligibility of a person who is disabled for medical assistance.

(4) "Subaccount" means an account in a pooled trust established solely for the benefit of a beneficiary.

Added by Acts 2009, 81st Leg., ch. 930, § 13, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 38, eff. Sept. 1, 2011.

§ 911. Application

The following persons may apply to the court for the establishment of a subaccount for the benefit of a minor or other incapacitated person, an alleged incapacitated person, or a disabled person who is not an incapacitated person:

- (1) the guardian of the incapacitated person;
- (2) a person who has filed an application for the appointment of a guardian for the alleged incapacitated person;
- (3) an attorney ad litem or guardian ad litem appointed to represent:
 - (A) the incapacitated person who is a ward or that person's interests; or
 - (B) the alleged incapacitated person who does not have a guardian; or
- (4) the disabled person.

Added by Acts 2009, 81st Leg., ch. 930, § 13, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1085, § 39, eff. Sept. 1, 2011.

§ 912. Appointment of Attorney Ad Litem

The court shall appoint an attorney ad litem for a person who is a minor or has a mental disability and who is the subject of an application under Section 911 of this code. The attorney ad litem is entitled to a reasonable fee and reimbursement of expenses to be paid from the person's property.

Added by Acts 2009, 81st Leg., ch. 930, § 13, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 913. Transfer

If the court finds that it is in the best interests of a person who is the subject of an application under Section 911 of this code, the court may order:

(1) the establishment of a subaccount of which the person is the beneficiary; and

(2) the transfer to the subaccount of any of the person's property on hand or accruing to the person.

Added by Acts 2009, 81st Leg., ch. 930, § 13, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 914. Terms of Subaccount

Unless the court orders otherwise, the terms governing the subaccount must provide that:

(1) the subaccount terminates on the earliest of the date of:

(A) the beneficiary's 18th birthday, if the beneficiary is not disabled on that date and was a minor at the time the subaccount was established;

(B) the beneficiary's death; or

(C) an order of the court terminating the subaccount; and

(2) on termination, any property remaining in the beneficiary's subaccount after making any required payments to satisfy the amounts of medical assistance reimbursement claims for medical assistance provided to the beneficiary under this state's medical assistance program and other states' medical assistance programs shall be distributed to:

(A) the beneficiary, if on the date of termination the beneficiary is living and is not incapacitated;

(B) the beneficiary's guardian, if on the date of termination the beneficiary is living and is incapacitated; or

(C) the personal representative of the beneficiary's estate, if the beneficiary is deceased on the date of termination.

Added by Acts 2009, 81st Leg., ch. 930, § 13, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 915. Jurisdiction Exclusive

Notwithstanding any other law, the court that orders the establishment of a subaccount for a beneficiary has exclusive jurisdiction of a subsequent proceeding or

action that relates to both the beneficiary and the subaccount, and the proceeding or action may only be brought in that court.

Added by Acts 2009, 81st Leg., ch. 930, § 13, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

§ 916. Fees and Accounting

(a) The manager or trustee of a pooled trust may:

(1) assess fees against a subaccount of that pooled trust established under this subpart in accordance with the manager's or trustee's standard fee structure; and

(2) pay those fees from the subaccount.

(b) If required by the court, the manager or trustee of the pooled trust shall file a copy of the annual report of account with the court clerk.

Added by Acts 2009, 81st Leg., ch. 930, § 13, eff. Sept. 1, 2009. Repealed by Acts 2011, 82nd Leg., ch. 823, § 3.02, eff. Jan. 1, 2014.

