VI.
ESTATES CODE

Statutes in Context
Estates Code

The 2009 Legislature began the process of codifying the current Probate Code into the new Estates Code. It is interesting to note that although called a "Code," the Probate Code was *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 codification process was supposed to be nonsubstantive. *See* Acts 2009, 81st Leg., ch. 680, § 11, eff. Jan. 1, 2014.

The portion of the Estates Code passed by the 2009 Legislature focused 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 fixed problems with the two initial recodifications as well as making substantive changes.

The entire Estates Code took effective on January 1, 2014.

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Chapter 1023. Venue

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Chapter 1051. Notices and Process in Guardianship Proceedings in General
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Chapter 1101. General Procedure to Appoint Guardian
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Chapter 1351. Sale of Property of Certain Incapacitated Persons
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TITLE 1. GENERAL PROVISIONS

Chapter 21. Purpose and Construction

§ 21.001. Purpose of Code
§ 21.002. Construction
§ 21.003. Statutory References
§ 21.004. Effect of Division of Law
§ 21.005. Applicability of Certain Laws
§ 21.006. Applicability to Probate Proceedings

§ 21.001. Purpose of Code

(a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Section 323.007, Government Code. The program contemplates a topic-

by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code, except Subtitle [~~Subtitles~~] X [~~and Y~~], Title 2, and Subtitles Y and Z, Title 3, is to make the law encompassed by this code, except Subtitle [~~Subtitles~~] X [~~and Y~~], Title 2, and Subtitles Y and Z, Title 3, more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

(c) The provisions of Subtitle [~~Subtitles~~] X [~~and Y~~], Title 2, and Subtitles Y and Z, Title 3, are transferred from the Texas Probate Code and redesignated as part of this code, but are not revised as part of the state's continuing statutory revision program.

New.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 823, § 2.01, eff. Jan. 1, 2014. Subsection (b) and (c) amended by Acts 2013, 83rd Leg., ch. 161, § 6.001, eff. Jan. 1, 2014.

§ 21.002. Construction

(a) Except as provided by this section, Section 22.027, or Section 1002.023, Chapter 311, Government Code (Code Construction Act), applies to the construction of a provision of this code.

(b) Chapter 311, Government Code (Code Construction Act), does not apply to the construction of a provision of Subtitle X [~~or Y~~], Title 2, or Subtitle Y or Z, Title 3.

New.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 823, § 2.02, eff. Jan. 1, 2014. Subsection (b) amended by Acts 2013, 83rd Leg., ch. 161, § 6.002, eff. Jan. 1, 2014.

§ 21.003. Statutory References

(a) A reference in a law other than in this code to a statute or a part of a statute revised by, or redesignated as part of, this code is considered to be a reference to the part of this code that revises that statute or part of that statute or contains the redesignated statute or part of the statute, as applicable.

(b) A reference in Subtitle X [~~or Y~~], Title 2, or Subtitle Y or Z, Title 3, to a chapter, a part, a subpart, a section, or any portion of a section "of this code" is a reference to the chapter, part, subpart, section, or portion of a section as redesignated in the Estates Code, except that:

(1) a reference in Subtitle X [~~or Y~~], Title 2, or Subtitle Y or Z, Title 3, to Chapter I is a reference to Chapter I, Estates Code, and to the revision of sections derived from Chapter I, Texas Probate Code, and any reenactments and amendments to those sections; and

(2) a reference in Subtitle X [~~or Y~~], Title 2, or Subtitle Y or Z, Title 3, to a chapter, part, subpart, section, or portion of a section that does not exist in the Estates Code is a reference to the revision or redesignation of the corresponding chapter, part, subpart, section, or portion of a section of the Texas Probate Code and any reenactments or amendments.

New.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (b)(1) and (2) amended by Acts 2011, 82nd Leg., ch. 823, § 2.03, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2013, 83rd, ch. 161, § 6.003, eff. Jan. 1, 2014.

§ 21.004. Effect of Division of Law

The division of this code into titles, subtitles, chapters, subchapters, parts, subparts, sections, subsections, subdivisions, paragraphs, and subparagraphs is for convenience and does not have any legal effect.

Derived from Probate Code § 2(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
Estates Code § 21.005

The 2011 Legislature amended Civil Practice & Remedies Code § 132.011 to permit the use of unsworn written affidavits made under penalty of perjury in lieu of written sworn affidavits. The 2013 Legislature added subsection (b) to Estates Code § 21.005 providing that this procedure is not applicable to self-proving affidavits on wills executed on or after January 1, 2014.

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§ 21.005. Applicability of Certain Laws

Notwithstanding Section 21.002(b) of this code and Section 311.002, Government Code:

(1) Section 311.032(c), Government Code, applies to Subtitle [~~Subtitles~~] X [~~and Y~~], Title 2, and Subtitles Y and Z, Title 3; and

(2) Sections 311.005(4) and 311.012(b) and (c), Government Code, apply to Subtitle [~~Subtitles~~] X [~~and Y~~], Title 2, and Subtitles Y and Z, Title 3.

(b) Chapter 132, Civil Practice and Remedies Code, does not apply to Subchapter C, Chapter 251.

New.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 823, § 2.04, eff. Jan. 1, 2014.Amended by Acts 2013, 83rd Leg., ch. 161, § 6.004, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 1, eff. Jan. 1, 2014.

§ 21.006. Applicability to Probate Proceedings

The procedure prescribed by Title 2 governs all probate proceedings.

Derived from Probate Code § 2(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 22. Definitions

§ 22.001. Applicability of Definitions
§ 22.002. Authorized Corporate Surety
§ 22.003. Charitable Organization
§ 22.004. Child
§ 22.005. Claims
§ 22.006. Corporate Fiduciary
§ 22.007. Court; County Court, Probate Court, and Statutory Probate Court
§ 22.008. Devise
§ 22.009. Devisee
§ 22.010. Distributee
§ 22.011. Docket
§ 22.012. Estate
§ 22.013. Exempt Property
§ 22.014. Governmental Agency of the State
§ 22.015. Heir
§ 22.016. Incapacitated Person
§ 22.017. Independent Executor
§ 22.018. Interested Person; Person Interested
§ 22.019. Judge
§ 22.020. Legacy
§ 22.021. Legatee
§ 22.022. Minor
§ 22.024. Mortgage; Lien
§ 22.025. Net Estate
§ 22.026. Next of Kin
§ 22.027. Person
§ 22.028. Personal Property
§ 22.029. Probate Matter; Probate Proceedings; Proceeding in Probate; Proceedings for Probate
§ 22.030. Real Property
§ 22.031. Representative; Personal Representative
§ 22.032. Surety
§ 22.033. Ward
§ 22.034. Will

Statutes in Context
Chapter 22.001

The definitions in Chapter 22 apply to the entire Estates Code except as otherwise provided by Title 3 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 § 22.008. Likewise, "legacy," which normally refers to a gift of money (personal property) in a will, is deemed to include gifts of real property as well by § 22.020.

"Heirs" include anyone who is entitled to property under intestate succession under § 22.015. 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 § 22.034 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 the Probate Code equivalent of § 22.004 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 Estates Code. The definitions do not necessarily apply when they are used in a will or other estate planning document.

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§ 22.001. Applicability of Definitions

(a) Except as provided by Subsection (b), the definition for a term provided by this chapter applies in this code unless a different meaning of the term is otherwise apparent from the context in which the term is used.

(b) If Title 3 [~~Chapter XIII~~] provides a definition for a term that is different from the definition provided by this chapter, the definition for the term provided by Title 3 [~~Chapter XIII~~] applies in that title [~~chapter~~].

Derived from Probate Code § 3.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2013, 83rd Leg., ch. 161, § 6.005, eff. Jan. 1, 2014.

§ 22.002. Authorized Corporate Surety

"Authorized corporate surety" means a domestic or foreign corporation authorized to engage in business in this state for the purpose of issuing surety, guaranty, or indemnity bonds that guarantee the fidelity of an executor or administrator.

Derived from Probate Code § 3(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.003. Charitable Organization

"Charitable organization" means:

(1) a nonprofit corporation, trust, community chest, fund, foundation, or other entity that is:

(A) exempt from federal income tax under Section 501(A), Internal Revenue Code of 1986, by being described by Section 501(c)(3) of that code; and

(B) organized and operated exclusively for:

(i) religious, charitable, scientific, educational, or literary purposes;

(ii) testing for public safety;

(iii) preventing cruelty to children or animals; or

(iv) promoting amateur sports competition; or

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

Derived from Probate Code § 3(kk).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.004. Child

(a) "Child" includes an adopted child, regardless of whether the adoption occurred through:

(1) an existing or former statutory procedure; or

(2) acts of estoppel.

(b) The term "child" does not include a child who does not have a presumed father unless a provision of this code expressly states that a child who does not have a presumed father is included.

Derived from Probate Code § 3(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.005. Claims

"Claims" includes:

(1) liabilities of a decedent that survive the decedent's death, including taxes, regardless of whether the liabilities arise in contract or tort or otherwise;

(2) funeral expenses;

(3) the expense of a tombstone;

(4) expenses of administration;

(5) estate and inheritance taxes; and

(6) debts due such estates.

Derived from Probate Code § 3(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.006. Corporate Fiduciary

"Corporate fiduciary" means a financial institution, as defined by Section 201.101, Finance Code, that:

(1) is existing or engaged in business under the laws of this state, another state, or the United States;

(2) has trust powers; and

(3) is authorized by law to act under the order or appointment of a court of record, without giving bond, as receiver, trustee, executor, administrator, or, although the financial institution does not have general depository powers, depository for any money paid into the court, or to become sole guarantor or surety in or on any bond required to be given under the laws of this state.

Derived from Probate Code § 3(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.007. Court; County Court, Probate Court, and Statutory Probate Court

(a) "Court" means and includes:

(1) a county court in the exercise of its probate jurisdiction;

(2) a court created by statute and authorized to exercise original probate jurisdiction; and

(3) a district court exercising original probate jurisdiction in a contested matter.

(b) The terms "county court" and "probate court" are synonymous and mean:

(1) a county court in the exercise of its probate jurisdiction;

(2) a court created by statute and authorized to exercise original probate jurisdiction; and

(3) a district court exercising probate jurisdiction in a contested matter.

(c) "Statutory probate court" means a court created by statute and designated as a statutory probate court under Chapter 25, Government Code. For purposes of this code, the term does not include a county court at law exercising probate jurisdiction unless the court is designated a statutory probate court under Chapter 25, Government Code.

Derived from Probate Code §§ 3(e), (g), (ii).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.008. Devise

"Devise":

(1) used as a noun, includes a testamentary disposition of real property, personal property, or both; and

(2) used as a verb, means to dispose of real property, personal property, or both, by will.

Derived from Probate Code § 3(h).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.009. Devisee

"Devisee" includes a legatee.

Derived from Probate Code § 3(i).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,

2014.

§ 22.010. Distributee

"Distributee" means a person who is entitled to a part of the estate of a decedent under a lawful will or the statutes of descent and distribution.

Derived from Probate Code § 3(j).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.011. Docket

"Docket" means the probate docket.

Derived from Probate Code § 3(k).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.012. Estate

"Estate" means a decedent's property, as that property:

(1) exists originally and as the property changes in form by sale, reinvestment, or otherwise;

(2) is augmented by any accretions and other additions to the property, including any property to be distributed to the decedent's representative by the trustee of a trust that terminates on the decedent's death, and substitutions for the property; and

(3) is diminished by any decreases in or distributions from the property.

Derived from Probate Code § 3(l).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.013. Exempt Property

"Exempt property" means the property in a decedent's estate that is exempt from execution or forced sale by the constitution or laws of this state, and any allowance paid instead of that property.

Derived from Probate Code § 3(m).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.014. Governmental Agency of the State

"Governmental agency of the state" means:

(1) a municipality;

(2) a county;

(3) a public school district;

(4) a special-purpose district or authority;

(5) 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;

(6) the legislature or a legislative agency;

(7) the supreme court, the court of criminal appeals, a court of appeals, or a district, county, or justice of the peace court;

(8) a judicial agency having statewide jurisdiction; and

(9) the State Bar of Texas.

Derived from Probate Code § 3(ll).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.015. Heir

"Heir" means a person who is entitled under the statutes of descent and distribution to a part of the estate of a decedent who dies intestate. The term includes the decedent's surviving spouse.

Derived from Probate Code § 3(o).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.016. Incapacitated Person

A person is "incapacitated" if the person:

(1) is a minor;

(2) is an adult who, because of a physical or mental condition, is substantially unable to:

(A) provide food, clothing, or shelter for himself or herself;

(B) care for the person's own physical health; or

(C) manage the person's own financial affairs; or

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

Derived from Probate Code § 3(p).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.017. Independent Executor

"Independent executor" means the personal representative of an estate under independent administration as provided by Chapter 401 and Section 402.001 [~~Section 145~~]. The term includes an independent administrator.

Derived from Probate Code § 3(q).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.006, eff. Jan. 1, 2014.

§ 22.018. Interested Person; Person Interested

"Interested person" or "person interested" means:

(1) an heir, devisee, spouse, creditor, or any other having a property right in or claim against an estate being administered; and

(2) anyone interested in the welfare of an incapacitated person, including a minor.

Derived from Probate Code § 3(r).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.019. Judge

"Judge" means the presiding judge of any court having original jurisdiction over probate proceedings, regardless of whether the court is:

(1) a county court in the exercise of its probate jurisdiction;

(2) a court created by statute and authorized to exercise probate jurisdiction; or

(3) a district court exercising probate jurisdiction in a contested matter.

Derived from Probate Code § 3(f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.020. Legacy

"Legacy" includes a gift or devise of real or personal property made by a will.

Derived from Probate Code § 3(s).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.021. Legatee

"Legatee" includes a person who is entitled to a legacy under a will.

Derived from Probate Code § 3(s).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.022. Minor

"Minor" means a person younger than 18 years of age who:

(1) has never been married; and

(2) has not had the disabilities of minority removed for general purposes.

Derived from Probate Code § 3(t).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.024. Mortgage; Lien

"Mortgage" and "lien" include:

(1) a deed of trust;

(2) a vendor's lien, a mechanic's, materialman's, or laborer's lien, an attachment or garnishment lien, and a federal or state tax lien;

(3) a chattel mortgage;

(4) a judgment; and

(5) a pledge by hypothecation.

Derived from Probate Code § 3(v).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.025. Net Estate

"Net estate" means a decedent's property excluding:

(1) homestead rights;

(2) exempt property;

(3) the family allowance; and

(4) an enforceable claim against the decedent's estate.

Derived from Probate Code § 3(w).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.026. Next of Kin

"Next of kin" includes:

(1) an adopted child or the adopted child's descendants; and

(2) the adoptive parent of the adopted child.

Derived from Probate Code § 3(jj).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.027. Person

(a) "Person" includes a natural person and a corporation.

(b) The definition of "person" assigned by Section 311.005, Government Code, does not apply to any provision in this code.

Derived from Probate Code § 3(x).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.028. Personal Property

"Personal property" includes an interest in:

(1) goods;

(2) money;

(3) a chose in action;

(4) an evidence of debt; and

(5) a real chattel.

Derived from Probate Code § 3(z).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.029. Probate Matter; Probate Proceedings; Proceeding in Probate; Proceedings for Probate

The terms "probate matter," "probate proceedings," "proceeding in probate," and "proceedings for probate" are synonymous and include a matter or proceeding relating to a decedent's estate.

Derived from Probate Code § 3(bb).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.030. Real Property

"Real property" includes estates and interests in land, whether corporeal or incorporeal or legal or equitable. The term does not include a real chattel.

Derived from Probate Code § 3(dd).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.031. Representative; Personal Representative

(a) "Representative" and "personal representative" include:

(1) an executor and independent executor;

(2) an administrator, independent administrator, and temporary administrator; and

(3) a successor to an executor or administrator listed in Subdivision (1) or (2).

(b) The inclusion of an independent executor in Subsection (a) may not be construed to subject an independent executor to the control of the courts in probate matters with respect to settlement of estates, except as expressly provided by law.

Derived from Probate Code § 3(aa).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.032. Surety

"Surety" includes a personal surety and a corporate surety.

Derived from Probate Code § 3(ee).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.033. Ward

"Ward" means a person for whom a guardian has been appointed.

Derived from Probate Code § 3(mm).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 22.034. Will

"Will" includes:

(1) a codicil; and

(2) a testamentary instrument that merely:

(A) appoints an executor or guardian;

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

(C) revokes another will.

Derived from Probate Code § 3(ff).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE A. SCOPE, JURISDICTION, VENUE, AND COURTS

Chapter 31. General Provisions

§ 31.001. Scope of "Probate Proceeding" for Purposes of Code

§ 31.002. Matters Related to Probate Proceeding

§ 31.001. Scope of "Probate Proceeding" for Purposes of Code

The term "probate proceeding," as used in this code, 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.

Derived from Probate Code § 3(bb).

Added by Acts 2009, 81st Leg., ch. 1351, § 13(a), eff. Jan. 1, 2014.

§ 31.002. 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);

(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); 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.

Derived from Probate Code § 4B.

Added by Acts 2009, 81st Leg., ch. 1351, § 13(a), eff. Jan. 1, 2014.

Chapter 32. Jurisdiction

§ 32.001. General Probate Court Jurisdiction; Appeals

§ 32.002. Original Jurisdiction for Probate Proceedings

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

§ 32.004. Jurisdiction of Contested Probate Proceeding in County with No Statutory Probate Court

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

§ 32.006. Jurisdiction of Statutory Probate Court with Respect to Trusts and Powers of Attorney

§ 32.007. Concurrent Jurisdiction with District Court

Statutes in Context
Chapter 32

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. § 32.002(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. § 32.002(b).

Third, if the county has a statutory probate court, all probate proceedings are filed with the statutory probate court. § 32.002(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 § 32.007 which includes all actions involving inter vivos and testamentary trusts or in which a trustee is a plaintiff or defendant. Section 32.006 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. § 32.003. 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 statutory probate court may, however, 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. § 32.004. 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. § 32.001(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.

§ 32.001. 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 31.002 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.

(d) [~~(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.

Derived from Probate Code § 4A.

Added by Acts 2009, 81st Leg., ch. 1351, § 13(a), eff. Jan. 1, 2014. Subsection (d) added by Acts 2013, 83rd Leg., ch. 1136, § 2, eff. Jan. 1, 2014.

§ 32.002. 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.

Derived from Probate Code § 4C.

Added by Acts 2009, 81st Leg., ch. 1351, § 13(a), eff. Jan. 1, 2014.

§ 32.003. 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) if the matter later becomes contested.

(d) Notwithstanding any other law, a transfer of a contested matter in a probate 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.

(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 subtitle. 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) 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 subtitle. 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.

Derived from Probate Code § 4D.

Added by Acts 2009, 81st Leg., ch. 1351, § 13(a), eff. Jan. 1, 2014. Subsec. (b-1) added by Acts 2011, 82nd Leg., ch. 1338, § 2.02, eff. Jan. 1, 2014. Subsecs. (e) and (g) amended by Acts 2011, 82nd Leg., ch. 1338, § 2.02, eff. Jan. 1, 2014.

§ 32.004. Jurisdiction of Contested 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.

Derived from Probate Code § 4E.

Added by Acts 2009, 81st Leg., ch. 1351, § 13(a), eff. Jan. 1, 2014.

§ 32.005. 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 32.007 or with the jurisdiction of any other court.

(b) This section shall be construed in conjunction and in harmony with Chapter 401 and Section 402.001 [~~Section 145~~] and all other sections of this title relating to independent executors, but may not be construed to expand the court's control over an independent executor.

Derived from Probate Code § 4F.

Added by Acts 2009, 81st Leg., ch. 1351, § 13(a), eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2013, 83rd Leg., ch. 161, § 6.007, eff. Jan. 1, 2014.

§ 32.006. 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 by or 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.

Derived from Probate Code § 4G

Added by Acts 2009, 81st Leg., ch. 1351, § 13(a), eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 3, eff. Jan. 1, 2014.

§ 32.007. 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.

Derived from Probate Code § 4H.

Added by Acts 2009, 81st Leg., ch. 1351, § 13(a), eff. Jan. 1, 2014. Subsec. (3) amended by Acts 2011, 82nd Leg., ch. 1338, § 2.03, eff. Jan. 1, 2014.

Chapter 33. Venue

Subchapter A. Venue for Certain Proceedings

§ 33.001. Probate of Wills and Granting of Letters Testamentary and of Administration.

§ 33.002. Action Related to Probate Proceeding in Statutory Probate Court.

§ 33.003. Certain Actions Involving Personal Representative.

§ 33.004. Heirship Proceedings.

§ 33.005. Certain Actions Involving Breach of Fiduciary Duty.

Subchapter B. Determination of Venue

§ 33.051. Commencement of Proceeding.

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§ 33.101. Transfer to Other County in Which Venue is Proper.

§ 33.102. Transfer for Want of Venue.

§ 33.103. Transfer for Convenience.

§ 33.104. Validation of Previous Proceedings.

Subchapter A. Venue for Certain Proceedings

Statutes in Context
Chapter 33

The venue rules provided in § 33.001, 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 Estate Code § 33.052.

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 33.004 governs venue in heirship proceedings.

§ 33.001. Probate of Wills and Granting of Letters Testamentary and of Administration

Venue for a probate proceeding to admit a will to probate or for the granting of letters testamentary or of administration is:

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

(2) with respect to a decedent who did not have a domicile or fixed place of residence in this state:

(a) if the decedent died in this state, in the county in which:

(i) the decedent's principal estate was located at the time of the decedent's death; or

(ii) the decedent died; or

(B) if the decedent died outside of this state:

(i) in any county in this state in which the decedent's nearest of kin reside; or

(ii) if there is no next of kin of the decedent in this state, in the county in which the decedent's principal estate was located at the time of the decedent's death.

Derived from Probate Code § 6.

Added by Acts 2011, 82nd Leg., ch. 1338, § 2.04, eff. Jan. 1, 2014.

§ 33.002. Action Related to Probate Proceeding in Statutory Probate Court

Except as provided by Section 33.003, 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.

Derived from Probate Code § 6A.

Added by Acts 2011, 82nd Leg., ch. 1338, § 2.04, eff. Jan. 1, 2014.

§ 33.003. 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.

Derived from Probate Code § 6B.

Added by Acts 2011, 82nd Leg., ch. 1338, § 2.04, eff. Jan. 1, 2014.

§ 33.004. Heirship Proceedings

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

(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 33.001 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) and Section 33.001, 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.

Derived from Probate Code § 6C.

Added by Acts 2011, 82nd Leg., ch. 1338, § 2.04, eff. Jan. 1, 2014.

§ 33.005. 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.

Derived from Probate Code § 6D.

Added by Acts 2011, 82nd Leg., ch. 1338, § 2.04, eff. Jan. 1, 2014.

Subchapter B. Determination of Venue

§ 33.051. Commencement of Proceeding

For purposes of this subchapter, a probate proceeding is considered commenced on the filing of an application for the proceeding that avers facts sufficient to confer venue on the court in which the application is filed.

Derived from Probate Code § 8(a).

Added by Acts 2011, 82nd Leg., ch. 1338, § 2.04, eff. Jan. 1, 2014.

§ 33.052. Concurrent Venue

(a) If applications for probate proceedings involving the same estate are filed in two or more courts having concurrent venue, the court in which a proceeding involving the estate was first commenced has and retains jurisdiction of the proceeding to the exclusion of the other court or courts in which a proceeding involving the same estate was commenced.

(b) The first commenced probate proceeding extends to all of the decedent's property, including the decedent's estate property.

Derived from Probate Code § 8(a).

Added by Acts 2011, 82nd Leg., ch. 1338, § 2.04, eff. Jan. 1, 2014.

§ 33.053. 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 the court in which the proceeding was first commenced makes a final determination of venue.

Derived from Probate Code § 8(b).

Added by Acts 2011, 82nd Leg., ch. 1338, § 2.04, eff. Jan. 1, 2014.

§ 33.054. Jurisdiction to Determine Venue

(a) Subject to Sections 33.052 and 33.053, 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.

(b) A court's determination under this section is not subject to collateral attack.

Derived from Probate Code § 8(e).

Added by Acts 2011, 82nd Leg., ch. 1338, § 2.04, eff. Jan. 1, 2014.

§ 33.055. Protection for Certain Purchasers

Notwithstanding Section 33.052, a bona fide purchaser of real property who relied on a probate proceeding that was not the first commenced proceeding, without knowledge that the proceeding was not the first commenced proceeding, shall be protected with respect to the purchase unless before the purchase an order rendered in the first commenced proceeding admitting the decedent's will to probate, determining the decedent's heirs, or granting administration of the decedent's estate was recorded in the office of the county clerk of the county in which the purchased property is located.

Derived from Probate Code § 8(a).

Added by Acts 2011, 82nd Leg., ch. 1338, § 2.04, eff. Jan. 1, 2014.

Subchapter C. Transfer of Probate Proceeding

§ 33.101. Transfer to Other County in Which Venue is Proper

If probate proceedings involving the same estate are commenced in more than one county and the court making a determination of venue as provided by Section 33.053 determines that venue is proper in another county, the court clerk shall make and retain a copy of the entire file in the case and transmit the original file to the court in the county in which venue is proper. The court to which the file is transmitted shall conduct the proceeding in the same manner as if the proceeding had originally been commenced in that county.

Derived from Probate Code § 8(b).

Added by Acts 2011, 82nd Leg., ch. 1338, § 2.04, eff. Jan. 1, 2014.

§ 33.102. Transfer for Want of Venue

(a) If it appears to the court at any time before the final order in a probate proceeding is rendered that the court does not have priority of venue over the proceeding, the court shall, on the application of an interested person, transfer the proceeding to the proper county by transmitting to the proper court in that county:

(1) the original file in the case; and

(2) certified copies of all entries that have been made in the judge's probate docket in the proceeding.

(b) The court of the county to which a probate proceeding is transferred under Subsection (a) shall complete the proceeding in the same manner as if the proceeding had originally been commenced in that county.

(c) If the question as to priority of venue is not raised before a final order in a probate proceeding is announced, the finality of the order is not affected by any error in venue.

Derived from Probate Code § 8(c)(1).

Added by Acts 2011, 82nd Leg., ch. 1338, § 2.04, eff. Jan. 1, 2014.

§ 33.103. Transfer for Convenience

(a) The court may order that a probate proceeding be transferred to the proper court in another county in this state if it appears to the court at any time before the proceeding is concluded that the transfer would be in the best interest of:

(1) the estate; or

(2) if there is no administration of the estate, the decedent's heirs or beneficiaries under the decedent's will.

(b) The clerk of the court from which the probate proceeding described by Subsection (a) is transferred shall transmit to the court to which the proceeding is transferred:

(1) the original file in the proceeding; and

(2) a certified copy of the index.

Derived from Probate Code § 8(c)(2).

Added by Acts 2011, 82nd Leg., ch. 1338, § 2.04, eff. Jan. 1, 2014.

§ 33.104. Validation of Previous Proceedings

All orders entered in connection with a probate proceeding that is transferred to another county under a provision of this subchapter are valid and shall be recognized in the court to which the proceeding is transferred if the orders were made and entered in conformance with the procedure prescribed by this code.

Derived from Probate Code § 8(d).

Added by Acts 2011, 82nd Leg., ch. 1338, § 2.04, eff. Jan. 1, 2014.

Chapter 34. Matters Relating to Certain Other Types of Proceedings

§ 34.001 [~~5B~~]. Transfer to Statutory Probate Court of Proceeding Related to Probate Proceeding.

§ 34.002 [~~5C~~]. Actions to Collect Delinquent Property Taxes.

Chapter 34. Matters Relating to Certain Other Types of Proceedings

§ 34.001 [~~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 subtitle, Title 1, Subtitle X, Title 2, Chapter 51, 52, 53, 54, 55, or 151, or Section 351.001, 351.002, 351.053, 351.352, 351.353, 351.354, or 351.355 [~~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.

Derived from Probate Code § 5B.

Transferred and amended by Acts 2013, 83rd Leg., ch. 161, § 6.009, eff. Jan. 1, 2014.

§ 34.002 [~~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 Chapter 401 and Section 402.001 [~~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 Subchapter A, Chapter 124, Subchapter B, Chapter 308, Subchapter F, Chapter 351, and Chapters 355 and 356 [~~Parts 4 and 5, Chapter VIII, 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.

Derived from Probate Code § 5C.

Transferred and amended by Acts 2013, 83rd Leg., ch. 161, § 6.009, eff. Jan. 1, 2014.

SUBTITLE B. PROCEDURAL MATTERS

Chapter 51. Notices and Process in Probate Proceedings in General

Subchapter A. Issuance and Form of Notice or Process

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Chapter 51. Notices and Process in Probate Proceedings in General

Statutes in Context
Chapter 51

Chapter 51 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.

Subchapter A. Issuance and Form of Notice or Process

§ 51.001. Issuance of Notice or Process in General

(a) Except as provided by Subsection (b), a person is not required to be cited or otherwise given notice except in a situation in which this title expressly provides for citation or the giving of notice.

(b) If this title does not expressly provide for citation or the issuance or return of notice in a probate matter, the court may require that notice be given. A court that requires that notice be given may prescribe the form and manner of service of the notice and the return of service.

(c) Unless a court order is required by this title, the county clerk without a court order shall issue:

(1) necessary citations, writs, and other process in a probate matter; and

(2) all notices not required to be issued by a personal representative.

Derived from Probate Code §§ 33(a), (b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 51.002. Direction of Writ or Other Process

(a) A writ or other process other than a citation or notice must be directed "To any sheriff or constable within the State of Texas."

(b) Notwithstanding Subsection (a), a writ or other process other than a citation or notice may not be held defective because the process is directed to the sheriff or a constable of a named county if the process is properly served within that county by the sheriff or constable.

Derived from Probate Code § 33(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 51.003. Contents of Citation or Notice

(a) A citation or notice must:

(1) be directed to the person to be cited or notified;

(2) be dated;

(3) state the style and number of the proceeding;

(4) state the court in which the proceeding is pending;

(5) describe generally the nature of the proceeding or matter to which the citation or notice relates;

(6) direct the person being cited or notified to appear by filing a written contest or answer or to perform another required action; and

(7) state when and where the appearance or performance described by Subdivision (6) is required.

(b) A citation or notice issued by the county clerk must be styled "The State of Texas" and be signed by the clerk under the clerk's seal.

(c) A notice required to be given by a personal representative must be in writing and be signed by the representative in the representative's official capacity.

(d) A citation or notice is not required to contain a precept directed to an officer, but may not be held defective because the citation or notice contains a precept directed to an officer authorized to serve the citation or notice.

Derived from Probate Code § 33(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Methods of Serving Citation or Notice; Persons to be Served

§ 51.051. Personal Service

(a) Except as otherwise provided by Subsection (b), if personal service of citation or notice is required, the citation or notice must be served on the attorney of record for the person to be cited or notified. Notwithstanding the requirement of personal service, service may be made on that attorney by any method specified by Section 51.055 for service on an attorney of record.

(b) If the person to be cited or notified does not have an attorney of record in the proceeding, or if an attempt to serve the person's attorney is unsuccessful:

(1) the sheriff or constable shall serve the citation or notice by delivering a copy of the citation or notice to the person to be cited or notified, in person, if the person to whom the citation or notice is directed is in this state; or

(2) any disinterested person competent to make an oath that the citation or notice was served may serve the citation or notice, if the person to be cited or notified is absent from or is not a resident of this state.

(c) The return day of the citation or notice served under Subsection (b) must be at least 10 days after the date of service, excluding the date of service.

(d) If citation or notice attempted to be served as provided by Subsection (b) is returned with the notation that the person sought to be served, whether inside or outside this state, cannot be found, the county clerk shall issue a new citation or notice. Service of the new citation or notice must be made by publication.

Derived from Probate Code § 33(f)(1).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 51.052. Service by Mail

(a) The county clerk, or the personal representative if required by statute or court order, shall serve a citation or notice required or permitted to be served by regular mail by mailing the original citation or notice to the person to be cited or notified.

(b) Except as provided by Subsection (c), the county clerk shall issue a citation or notice required or permitted to be served by registered or certified mail and shall serve the citation or notice by mailing the original citation or notice by registered or certified mail.

(c) A personal representative shall issue a notice required to be given by the representative by registered or certified mail and shall serve the notice by mailing the original notice by registered or certified mail.

(d) The county clerk or personal representative, as applicable, shall mail a citation or notice under Subsection (b) or (c) with an instruction to deliver the citation or notice to the addressee only and with return receipt requested. The clerk or representative, as applicable, shall address the envelope containing the citation or notice to:

(1) the attorney of record in the proceeding for the person to be cited or notified; or

(2) the person to be cited or notified, if the citation or notice to the attorney is returned undelivered or the person to be cited or notified has no attorney of record in the proceeding.

(e) Service by mail shall be made at least 20 days before the return day of the service, excluding the date of service. The date of service by mail is the date of mailing.

(f) A copy of a citation or notice served under Subsection (a), (b), or (c), together with a certificate of the person serving the citation or notice showing that the citation or notice was mailed and the date of the mailing, shall be filed and recorded. A returned receipt for a citation or notice served under Subsection (b) or (c) shall be attached to the certificate.

(g) If a citation or notice served by mail is returned undelivered, a new citation or notice shall be issued. Service of the new citation or notice must be made by posting.

Derived from Probate Code § 33(f)(4).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 51.053. Service by Posting

(a) The county clerk shall deliver the original and a copy of a citation or notice required to be posted to the sheriff or a constable of the county in which the proceeding is pending. The sheriff or constable shall post the copy at the door of the county courthouse or the location in or near the courthouse where public notices are customarily posted.

(b) Citation or notice under this section must be posted for at least 10 days before the return day of the service, excluding the date of posting, except as provided by Section 51.102(b). The date of service of citation or notice by posting is the date of posting.

(c) A sheriff or constable who posts a citation or notice under this section shall return the original citation or notice to the county clerk and state the date and location of the posting in a written return on the citation or notice.

(d) The method of service prescribed by this section applies when a personal representative is required or permitted to post a notice. The notice must be:

(1) issued in the name of the representative;

(2) addressed and delivered to, and posted and returned by, the appropriate officer; and

(3) filed with the county clerk.

Derived from Probate Code § 33(f)(2).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 51.054. Service by Publication

(a) Citation or notice to a person to be served by publication shall be published one time in a newspaper of general circulation in the county in which the proceeding is pending. The publication must be made at least 10 days before the return day of the service, excluding the date of publication.

(b) The date of service of citation or notice by publication is the date of publication printed on the newspaper in which the citation or notice is published.

(c) If no newspaper is published, printed, or of general circulation in the county in which the citation or notice is to be published, the citation or notice under Subsection (a) shall be served by posting.

Derived from Probate Code § 33(f)(3).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 51.055

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 § 51.055.

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§ 51.055. Service on Party's Attorney of Record

(a) If a party is represented by an attorney of record in a probate proceeding, each citation or notice required

to be served on the party in that proceeding shall be served instead on that attorney. A notice under this subsection may be served by delivery to the attorney in person or by registered or certified mail.

(b) A notice may be served on an attorney of record under this section by:

(1) another party to the proceeding;

(2) the attorney of record for another party to the proceeding;

(3) the appropriate sheriff or constable; or

(4) any other person competent to testify.

(c) Each of the following is prima facie evidence of the fact that service has been made under this section:

(1) the written statement of an attorney of record showing service;

(2) the return of the officer showing service; and

(3) the affidavit of any other person showing service.

Derived from Probate Code § 34.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 51.056. Service on Personal Representative or Receiver

Unless this title expressly provides for another method of service, the county clerk who issues a citation or notice required to be served on a personal representative or receiver shall serve the citation or notice by mailing the original citation or notice by registered or certified mail to:

(1) the representative's or receiver's attorney of record; or

(2) the representative or receiver, if the representative or receiver does not have an attorney of record.

Derived from Probate Code § 33(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Return and Proof of Service of Citation or Notice

§ 51.101. Requirements for Return on Citation or Notice Served by Personal Service

The return of the person serving a citation or notice under Section 51.051 must:

(1) be endorsed on or attached to the citation or notice;

(2) state the date and place of service;

(3) certify that a copy of the citation or notice was delivered to the person directed to be served;

(4) be subscribed and sworn to before, and under the hand and official seal of, an officer authorized by the laws of this state to take an affidavit; and

(5) be returned to the county clerk who issued the citation or notice.

Derived from Probate Code § 33(f)(1).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 51.102. Validity of Service and Return on Citation or Notice Served by Posting

(a) A citation or notice in a probate matter that is required to be served by posting and is issued in conformity with this title, and the service and return of service of the citation or notice, is valid if:

(1) a sheriff or constable posts a copy of the citation or notice at the location or locations prescribed by this title; and

(2) the posting occurs on a day preceding the return day of service specified in the citation or notice that provides sufficient time for the period the citation or notice must be posted to expire before the specified return day.

(b) The fact that a sheriff or constable, as applicable, makes the return of service on the citation or notice described by Subsection (a) and returns the citation or notice on which the return has been made to the court before the expiration of the period the citation or notice must be posted does not affect the validity of the citation or notice or the service or return of service. This subsection applies even if the sheriff or constable makes the return of service and returns the citation or notice on which the return is made to the court on the same day the citation or notice is issued.

Derived from Probate Code § 33(h).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 51.103. Proof of Service

(a) Proof of service in each case requiring citation or notice must be filed before the hearing.

(b) Proof of service consists of:

(1) if the service is made by a sheriff or constable, the return of service;

(2) if the service is made by a private person, the person's affidavit;

(3) if the service is made by mail:

(A) the certificate of the county clerk making the service, or the affidavit of the personal representative or other person making the service, stating that the citation or notice was mailed and the date of the mailing; and

(B) the return receipt attached to the certificate or affidavit, as applicable, if the mailing was by registered or certified mail and a receipt has been returned; and

(4) if the service is made by publication, an affidavit:

(A) made by the publisher of the newspaper in which the citation or notice was published or an employee of the publisher;

(B) that contains or to which is attached a copy of the published citation or notice; and

(C) that states the date of publication printed on the newspaper in which the citation or notice was published.

Derived from Probate Code § 33(i).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 51.104. Return to Court

A citation or notice issued by a county clerk must be returned to the court from which the citation or notice was issued on the first Monday after the service is perfected.

Derived from Probate Code § 33(g).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Alternative Manner of Issuance, Service, and Return

§ 51.151. Court-Ordered Issuance, Service, and Return Under Certain Circumstances

(a) A citation or notice required by this title shall be issued, served, and returned in the manner specified by written order of the court in accordance with this title and the Texas Rules of Civil Procedure if:

(1) an interested person requests that action;

(2) a specific method is not provided by this title for giving the citation or notice;

(3) a specific method is not provided by this title for the service and return of citation or notice; or

(4) a provision relating to a matter described by Subdivision (2) or (3) is inadequate.

(b) Citation or notice issued, served, and returned in the manner specified by a court order as provided by Subsection (a) has the same effect as if the manner of service and return had been specified by this title.

Derived from Probate Code § 33(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter E. Additional Notice Provisions

§ 51.201. Waiver of Notice of Hearing

(a) A legally competent person who is interested in a hearing in a probate proceeding may waive notice of the hearing in writing either in person or through an attorney.

(b) A trustee of a trust may waive notice under Subsection (a) on behalf of a beneficiary of the trust as provided by that subsection.

(c) 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 under Subsection (a) on the person's behalf as provided by that subsection.

(d) A person who submits to the jurisdiction of the court in a hearing is considered to have waived notice of the hearing.

Derived from Probate Code § 35.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 51.202. Request for Notice of Filing of Pleading

(a) At any time after an application is filed to commence a probate proceeding, including a proceeding for the probate of a will, the grant of letters testamentary or of administration, or a determination of heirship, a person interested in the estate may file with the county clerk a written request to be notified of all, or any specified, motions, applications, or pleadings filed with respect to the proceeding by any person or by one or more persons specifically named in the request. A person filing a request under this section is responsible for payment of the fees and other costs of providing a requested notice, and the clerk may require a deposit to cover the estimated costs of providing the notice. Thereafter, the clerk shall send to the requestor by regular mail a copy of any requested document.

(b) A county clerk's failure to comply with a request under this section does not invalidate any proceeding.

Derived from Probate Code § 33(j).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 51.203. Service of Notice of Intention to Take Depositions in Certain Matters

(a) If a will is to be probated, or in another probate matter in which there is no opposing party or attorney of record on whom to serve notice and copies of interrogatories, service may be made by posting notice of the intention to take depositions for a period of 10 days as provided by Section 51.053 governing a posting of notice.

(b) When notice by posting under Subsection (a) is filed with the county clerk, a copy of the interrogatories must also be filed.

(c) At the expiration of the 10-day period prescribed by Subsection (a):

(1) [~~commission may issue for taking~~] the depositions for which the notice was posted <u>may be taken</u>; and

(2) the judge may file cross-interrogatories if no person appears.

Derived from Probate Code § 22.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsection (c) amended by Acts 2013, 83rd Leg., ch. 1136, § 4, eff. Jan. 1, 2014.

Chapter 52. Filing and Recordkeeping

Subchapter A. Recordkeeping Requirements

§ 52.001. Probate Docket
§ 52.002. Claim Docket
§ 52.003. Probate Fee Book
§ 52.004. Alternate Recordkeeping

Subchapter B. Files; Index

§ 52.051. Filing Procedures
§ 52.052. Case Files
§ 52.053. Index

Chapter 52. Filing and Recordkeeping

Subchapter A. Recordkeeping Requirements

§ 52.001. Probate Docket

(a) The county clerk shall maintain a record book titled "Judge's Probate Docket" and shall record in the book:

(1) the name of each person with respect to whom, or with respect to whose estate, proceedings are commenced or sought to be commenced;

(2) the name of each executor, administrator, or applicant for letters testamentary or of administration;

(3) the date each original application for probate proceedings is filed;

(4) a notation of each order, judgment, decree, and proceeding that occurs in each estate, including the date it occurs; and

(5) the docket number of each estate as assigned under Subsection (b).

(b) The county clerk shall assign a docket number to each estate in the order proceedings are commenced.

Derived from Probate Code § 13.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (a)(4) amended by Acts 2011, 82nd Leg., ch. 91, § 8.001, eff. Jan. 1, 2014.

§ 52.002. Claim Docket

(a) The county clerk shall maintain a record book titled "Claim Docket" and shall record in the book each claim that is presented against an estate for the court's approval.

(b) The county clerk shall assign one or more pages of the record book to each estate.

(c) The claim docket must 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. The county clerk shall record for each claim, in the order claims are filed, the following information in the respective columns, beginning with the first or marginal column:

(1) the name of the claimant;

(2) the amount of the claim;

(3) the date of the claim;

(4) the date the claim is filed;

(5) the date the claim is due;

(6) the date the claim begins bearing interest;

(7) the interest rate;

(8) the date the claim is allowed by the executor or administrator, if applicable;

(9) the amount allowed by the executor or administrator, if applicable;

(10) the date the claim is rejected, if applicable;

(11) the date the claim is approved, if applicable;

(12) the amount approved for the claim, if applicable;

(13) the date the claim is disapproved, if applicable;

(14) the class to which the claim belongs;

(15) the date the claim is established by a judgment of a court, if applicable; and

(16) the amount of the judgment established under Subdivision (15), if applicable.

Derived from Probate Code § 14.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 52.003. Probate Fee Book

(a) The county clerk shall maintain a record book titled "Probate Fee Book" and shall record in the book each item of cost that accrues to the officers of the court and any witness fees.

(b) Each record entry must include:

(1) the party to whom the cost or fee is due;

(2) the date the cost or fee accrued;

(3) the estate or party liable for the cost or fee; and

(4) the date the cost or fee is paid.

Derived from Probate Code § 16.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 52.004. Alternate Recordkeeping

Instead of maintaining the record books described by Sections 52.001, 52.002, and 52.003, the county clerk may maintain the information described by those sections relating to a person's or estate's probate proceedings:

(1) on a computer file;

(2) on microfilm;

(3) in the form of a digitized optical image; or

(4) in another similar form of data compilation.

Derived from Probate Code § 17.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Files; Index

§ 52.051. Filing Procedures

(a) An application for a probate proceeding, complaint, petition, or other paper permitted or required

by law to be filed with a court in a probate matter must be filed with the county clerk of the appropriate county.

(b) Each paper filed in an estate must be given the docket number assigned to the estate.

(c) On receipt of a paper described by Subsection (a), the county clerk shall:

(1) file the paper; and

(2) endorse on the paper:

(A) the date the paper is filed;

(B) the docket number; and

(C) the clerk's official signature.

Derived from Probate Code §§ 11, 13(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 52.052. Case Files

(a) The county clerk shall maintain a case file for the estate of each decedent for which a probate proceeding has been filed.

(b) Each case file must contain each order, judgment, and proceeding of the court and any other probate filing with the court, including each:

(1) application for the probate of a will;

(2) application for the granting of administration;

(3) citation and notice, whether published or posted, including the return on the citation or notice;

(4) will and the testimony on which the will is admitted to probate;

(5) bond and official oath;

(6) inventory, appraisement, and list of claims;

(6-a) affidavit in lieu of the inventory, appraisement, and list of claims;

(7) exhibit and account;

(8) report of renting;

(9) application for sale or partition of real estate;

(10) report of sale;

(11) report of the commissioners of partition;

(12) application for authority to execute a lease for mineral development, or for pooling or unitization of lands, royalty, or other interest in minerals, or to lend or invest money; and

(13) report of lending or investing money.

(c) Only the substance of a deposition must be recorded under Subsection (b)(4).

Derived from Probate Code § 15.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (b)(6-a) added by Acts 2011, 82nd Leg., ch. 1338, § 2.05, eff. Jan. 1, 2014.

§ 52.053. Index

(a) The county clerk shall properly index the records required under this chapter.

(b) The county clerk shall keep the index open for public inspection, but may not release the index from the clerk's custody.

Derived from Probate Code § 17A.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 53. Other Court Duties and Procedures

Subchapter A. Enforcement of Orders

§ 53.001. Enforcement of Judge's Orders

Subchapter B. Costs and Security

§ 53.051. Applicability of Certain Laws

§ 53.052. Security for Certain Costs

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

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

Subchapter C. Procedures for Probate Matters

§ 53.101. Calling of Dockets

§ 53.102. Setting of Certain Hearings by Clerk

§ 53.103. Rendering of Decisions, Orders, Decrees, and Judgments

§ 53.104. Appointment of Attorneys Ad Litem

§ 53.106. Executions in Probate Matters

§ 53.107. Inapplicability of Certain Rules of Civil Procedure.

Chapter 53. Other Court Duties and Procedures

Subchapter A. Enforcement of Orders

§ 53.001. Enforcement of Judge's Orders

A judge may enforce the judge's lawful orders against an executor or administrator by attachment and confinement. Unless this title expressly provides otherwise, the term of confinement for any one offense under this section may not exceed three days.

Derived from Probate Code § 24.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Costs and Security

§ 53.051. Applicability of Certain Laws

A law regulating costs in ordinary civil cases applies to a probate matter when not expressly provided for in this title.

Derived from Probate Code § 12(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 53.052. Security for Certain Costs

(a) The clerk may require a person who files an application, complaint, or opposition relating to an estate, other than the personal representative of the estate, to provide security for the probable costs of the proceeding before filing the application, complaint, or opposition.

(b) At any time before the trial of an application, complaint, or opposition described by Subsection (a), anyone interested in the estate or an officer of the court may, by written motion, obtain from the court an order requiring the person who filed the application, complaint, or opposition to provide security for the probable costs of the proceeding. The rules governing civil suits in the county court with respect to giving security for the probable costs of a proceeding control in cases described by Subsection (a) and this subsection.

(c) An executor or administrator appointed by a court of this state may not be required to provide security for costs in an action brought by the executor or administrator in the executor's or administrator's fiduciary capacity.

Derived from Probate Code §§ 12(b), (c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 53.053. 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.

Derived from Probate Code § 11A.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 53.054. 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.

Derived from Probate Code § 11B.

Added by Acts 2011, 82nd Leg., ch. 614, § 2.01, eff. Jan. 1, 2014.

Subchapter C. Procedures for Probate Matters

§ 53.101. Calling of Dockets

The judge in whose court probate proceedings are pending, at times determined by the judge, shall:

(1) call the estates of decedents in the estates' regular order on both the probate and claim dockets; and

(2) issue orders as necessary.

Derived from Probate Code § 19.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 53.102. Setting of Certain Hearings by Clerk

(a) If a judge is unable to designate the time and place for hearing a probate matter pending in the judge's court because the judge is absent from the county seat or is on vacation, disqualified, ill, or deceased, the county clerk of the county in which the matter is pending may:

(1) designate the time and place for hearing;

(2) enter the setting on the judge's docket; and

(3) certify on the docket the reason that the judge is not acting to set the hearing.

(b) If, after the perfection of the service of notices and citations required by law concerning the time and place of hearing, a qualified judge is not present for a hearing set under Subsection (a), the hearing is automatically continued from day to day until a qualified judge is present to hear and determine the matter.

Derived from Probate Code § 20.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 53.103. Rendering of Decisions, Orders, Decrees, and Judgments

The county court shall render all decisions, orders, decrees, and judgments in probate matters in open court, except as otherwise specially provided.

Derived from Probate Code § 23.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 53.104

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 Estates Code § 202.009(b) to represent the interests of unknown heirs.

§ 53.104. Appointment of Attorneys Ad Litem

(a) Except as provided by Section 202.009(b), the judge of a probate court may appoint an attorney ad litem in any probate proceeding to represent the interests of any person, including:

(1) a person who has a legal disability under state or federal law;

(2) a nonresident;

(3) an unborn or unascertained person; [~~or~~]

(4) an unknown heir;

(5) a missing heir; or

(6) an unknown or missing person for whom cash is deposited into the court's registry under Section 362.011.

(b) An attorney ad litem appointed under this section is entitled to reasonable compensation for services provided in the amount set by the court. The court shall:

(1) tax the compensation as costs in the probate proceeding and order the compensation to be paid out of the estate or by any party at any time during [~~, to be taxed as costs in~~] the proceeding; or

(2) for an attorney ad litem appointed under Subsection (a)(6), order that the compensation be paid from the cash on deposit in the court's registry as provided by Section 362.011.

Derived from Probate Code § 34A.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 5, eff. Jan. 1, 2014.

§ 53.106. Executions in Probate Matters

(a) An execution in a probate matter must be:

(1) directed "to any sheriff or any constable within the State of Texas";

(2) attested and signed by the clerk officially under court seal; and

(3) made returnable in 60 days.

(b) A proceeding under an execution described by Subsection (a) is governed, to the extent applicable, by the laws regulating a proceeding under an execution issued by a district court.

(c) Notwithstanding Subsection (a), an execution directed to the sheriff or a constable of a specific county in this state may not be held defective if properly executed within that county by the sheriff or constable to whom the execution is directed.

Derived from Probate Code § 25.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 53.107. Inapplicability of Certain Rules of Civil Procedure.

The following do not apply to probate proceedings:

(1) Rules 47(c) and 169, Texas Rules of Civil Procedure; and

(2) the portions of Rule 190.2, Texas Rules of Civil Procedure, concerning expedited actions under Rule 169, Texas Rules of Civil Procedure.

New.

Added by Acts 2013, 83rd Leg., ch. 1136, § 6, eff. Jan. 1, 2014.

Chapter 54. Pleadings and Evidence in General

Subchapter A. Pleadings

§ 54.001. Effect of Filing or Contesting Pleading
§ 54.002. Defect in Pleading

Subchapter B. Evidence

§ 54.051. Applicability of Certain Rules Relating to Witnesses and Evidence
§ 54.052. Use of Certain Records as Evidence

Chapter 54. Pleadings and Evidence in General

Subchapter A. Pleadings

Statutes in Context
§ 54.001

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 the Probate Code predecessor to § 54.001 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.

§ 54.001. Effect of Filing or Contesting Pleading

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

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

Derived from Probate Code § 10C.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 54.002. Defect in Pleading

A court may not invalidate a pleading in probate, or an order based on the pleading, on the basis of a defect of form or substance in the pleading unless a timely objection has been made against the defect and the defect has been called to the attention of the court in which the proceeding was or is pending.

Derived from Probate Code § 9.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Evidence

§ 54.051. Applicability of Certain Rules Relating to Witnesses and Evidence

Except as provided by Section 51.203, the Texas Rules of Evidence [~~rules relating to witnesses and evidence that apply in the district court~~] apply in a proceeding arising under this title to the extent practicable.

Derived from Probate Code § 22.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 7, eff. Jan. 1, 2014.

§ 54.052. Use of Certain Records as Evidence

The following are admissible as evidence in any court of this state:

(1) record books described by Sections 52.001, 52.002, and 52.003 and individual case files described by Section 52.052, including records maintained in a manner allowed under Section 52.004; and

(2) certified copies or reproductions of the records.

Derived from Probate Code § 18.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 55. Complaints and Contests

Subchapter A. Contest of Proceedings in Probate Court

§ 55.001. Opposition in Probate Proceeding
§ 55.002. Trial By Jury

Subchapter B. Institution of Higher Education or Charitable Organization as Party to Certain Actions

§ 55.051. Definition
§ 55.052. Necessary Party
§ 55.053. Service of Process

Subchapter C. Mental Capacity of Decedent

§ 55.101. Entitlement to Production of Communications and Records
§ 55.102. Release of Records

Subchapter D. Attachment of Estate Property

§ 55.151. Order for Issuance of Writ of Attachment
§ 55.152. Bond

Subchapter E. Specific Performance of Agreement to Transfer Title

§ 55.201. Complaint and Citation
§ 55.202. Hearing and Order
§ 55.203. Conveyance

Subchapter F. Bill of Review

§ 55.251. Revision and Correction of Order in Probate Proceeding
§ 55.252. Injunction

Chapter 55. Complaints and Contests

Subchapter A. Contest of Proceedings in Probate Court

Statutes in Context
§ 55.001

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 Estates Code § 22.018 defining "interested person."

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 Estates Code § 256.204.

§ 55.001. Opposition in Probate Proceeding

A person interested in an estate may, at any time before the court decides an issue in a proceeding, file written opposition regarding the issue. The person is entitled to process for witnesses and evidence, and to be heard on the opposition, as in other suits.

Derived from Probate Code § 10.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 55.002

Any party has the right to a jury trial in a contested probate action under § 55.002.

§ 55.002. Trial by Jury

In a contested probate or mental illness proceeding in a probate court, a party is entitled to a jury trial as in other civil actions.

Derived from Probate Code § 21.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Institution of Higher Education or Charitable Organization as Party to Certain Actions

§ 55.051. Definition

In this subchapter, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

Derived from Probate Code § 10A(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 55.052

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 § 55.052. 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).

§ 55.052. Necessary Party

An institution of higher education, a private institution of higher education, or a charitable organization that is a distributee under a will is a necessary party to a will contest or will construction suit involving the will.

Derived from Probate Code § 10A(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 55.053. Service of Process

The court shall serve an institution or organization that is a necessary party under Section 55.052 in the manner provided by this title for service on other parties.

Derived from Probate Code § 10A(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Mental Capacity of Decedent

Statutes in Context
§ 55.101

The ability of litigants to obtain evidence of a decedent's testamentary capacity was greatly enhanced by the legislature's enactment of the Probate Code predecessor to Estates Code § 55.101 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.

§ 55.101. Entitlement to Production of Communications and Records

Notwithstanding Subtitle B, Title 3, Occupations Code, a person who is a party to a will contest or 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.

Derived from Probate Code § 10B.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 55.102. Release of Records

On receipt of a subpoena for communications or records described by Section 55.101 and a file-stamped copy of the will contest or proceeding described by that section, 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 requesting party without further authorization.

Derived from Probate Code § 10B.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Attachment of Estate Property

§ 55.151. Order for Issuance of Writ of Attachment

(a) If a person interested in an estate files with the judge a written complaint made under oath alleging that the executor or administrator of the estate is about to remove the estate or part of the estate outside of the state, the judge may order a writ of attachment to issue, directed "to any sheriff or any constable within the State of Texas." The writ must order the sheriff or constable to:

(1) seize the estate or a part of the estate; and

(2) hold that property subject to the judge's additional orders regarding the complaint.

(b) Notwithstanding Subsection (a), a writ of attachment directed to the sheriff or constable of a specific county within the state is not defective if the writ was properly executed in that county by that officer.

Derived from Probate Code § 26.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 55.152. Bond

Before a writ of attachment ordered under Section 55.151 may be issued, the complainant must execute a bond that is:

(1) payable to the executor or administrator of the estate;

(2) in an amount set by the judge; and

(3) conditioned for the payment of all damages and costs that are recovered for the wrongful suing out of the writ.

Derived from Probate Code § 26.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter E. Specific Performance of Agreement to Transfer Title

§ 55.201. Complaint and Citation

(a) If a person sold property and entered into a bond or other written agreement to transfer title to the property and then died without transferring the title, the owner of the bond or agreement or the owner's legal representative may:

(1) file a written complaint in the court of the county in which letters testamentary or of administration on the decedent's estate were granted; and

(2) have the personal representative of the estate cited to appear on a date stated in the citation and show cause why specific performance of the bond or agreement should not be ordered.

(b) Except as provided by Subsection (c), the bond or agreement must be filed with the complaint described by Subsection (a).

(c) If good cause under oath is shown why the bond or written agreement cannot be filed with the complaint, the bond or agreement or the substance of the bond or agreement must be stated in the complaint.

Derived from Probate Code § 27.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 55.202. Hearing and Order

(a) After service of the citation under Section 55.201, the court shall hear the complaint and the evidence on the complaint.

(b) The court shall order the personal representative to transfer title to the property, according to the tenor of the bond or agreement, to the complainant if the judge is satisfied from the proof that:

(1) the bond or agreement was legally executed by the decedent; and

(2) the complainant has a right to demand specific performance.

(c) The order must fully describe the property to be transferred.

Derived from Probate Code § 27.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 55.203. Conveyance

(a) A conveyance made under this subchapter must refer to and identify the court order authorizing the conveyance. On delivery of the conveyance, all the right and title to the property conveyed that the decedent had vests in the person to whom the conveyance is made.

(b) A conveyance under this subchapter is prima facie evidence that all requirements of the law for obtaining the conveyance have been complied with.

Derived from Probate Code § 27.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter F. Bill of Review

Statutes in Context
§ 55.251

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.

An interested party might also wish to file an equitable (that is, non-statutory) bill of review. "[T]he applicant must plead and prove: (1) a meritorious defense to the underlying cause of action, (2) which the applicant was prevented from making by the fraud, accident or wrongful act of the opposing party or official mistake, (3) unmixed with any fault or negligence on its own part." *In re Estate of Aguilar*, 2013 WL 520282 (Tex. App.—San Antonio 2013, no pet.).

§ 55.251. Revision and Correction of Order or Judgment in Probate Proceeding

(a) An interested person may, by a bill of review filed in the court in which the probate proceedings were held, have an order or judgment rendered by the court revised and corrected on a showing of error in the order or judgment, as applicable.

(b) A bill of review to revise and correct an order or judgment may not be filed more than two years after the date of the order or judgment, as applicable.

Derived from Probate Code § 31.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 91, § 8.002, eff. Jan. 1, 2014.

§ 55.252. Injunction

A process or action under a court order or judgment subject to a bill of review filed under Section 55.251 may be stayed only by writ of injunction.

Derived from Probate Code § 31.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 91, § 8.003, eff. Jan. 1, 2014.

Chapter 56. Change and Resignation of Resident Agent of Personal Representative for Service of Process

§ 56.001. Change of Resident Agent
§ 56.002. Resignation of Resident Agent

Chapter 56. Change and Resignation of Resident Agent of Personal Representative for Service of Process

Statutes in Context
§ 56.001

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 § 304.003(c). Section 56.001 provides guidance for how the personal representative may change the resident agent.

§ 56.001. Change of Resident Agent

(a) A personal representative of an estate may change the representative's resident agent to accept service of process in a probate proceeding or other action relating to the estate by filing with the court in which the probate proceeding is pending a statement titled "Designation of Successor Resident Agent" that states the names and addresses of:

(1) the representative;
(2) the resident agent; and
(3) the successor resident agent.

(b) The designation of a successor resident agent takes effect on the date a statement under Subsection (a) is filed with the court.

Derived from Probate Code § 221A.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 56.002. Resignation of Resident Agent

(a) A resident agent of a personal representative may resign as resident agent by giving notice to the representative and filing with the court in which the probate proceeding is pending a statement titled "Resignation of Resident Agent" that states:

(1) the name of the representative;
(2) the representative's address most recently known by the resident agent;
(3) that notice of the resignation has been given to the representative and the date that notice was given; and
(4) that the representative has not designated a successor resident agent.

(b) The resident agent shall send, by certified mail, return receipt requested, a copy of a resignation statement filed under Subsection (a) to:

(1) the personal representative at the address most recently known by the resident 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 the court enters an order accepting the resignation. A court may not enter an order accepting the resignation unless the resident agent complies with this section.

Derived from Probate Code § 221B.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

SUBTITLE C. PASSAGE OF TITLE AND DISTRIBUTION OF DECEDENTS' PROPERTY IN GENERAL

Chapter 101. Estate Assets in General

Subchapter A. Passage and Possession of Decedent's Estate on Death

§ 101.001. Passage of Estate on Decedent's Death
§ 101.002. Effect of Joint Ownership of Property
§ 101.003. Possession of Estate by Personal Representative

Subchapter B. Liability of Estate for Debts

§ 101.051. Liability of Estate for Debts in General
§ 101.052. Liability of Community Property for Debts of Deceased Spouse

Chapter 101. Estate Assets in General

Subchapter A. Passage and Possession of Decedent's Estate on Death

Statutes in Context
§ 101.001

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 under § 101.051.

§ 101.001. Passage of Estate on Decedent's Death

(a) Subject to Section 101.051, if a person dies leaving a lawful will:

(1) all of the person's estate that is devised by the will vests immediately in the devisees;

(2) all powers of appointment granted in the will vest immediately in the donees of those powers; and

(3) all of the person's estate that is not devised by the will vests immediately in the person's heirs at law.

(b) Subject to Section 101.051, the estate of a person who dies intestate vests immediately in the person's heirs at law.

Derived from Probate Code § 37.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 101.002

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 may not appreciate the significant difference between these two types of concurrent ownership. Consequently, § 101.002 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 Chapter 112.

§ 101.002. Effect of Joint Ownership of Property

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:

(1) does not survive to the remaining joint owner or owners; and

(2) passes by will or intestacy from the decedent as if the decedent's interest had been severed.

Derived from Probate Code § 46(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 101.003

Title to the decedent's property passes to the heirs or beneficiaries immediately upon the decedent's death. 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.

§ 101.003. Possession of Estate by Personal Representative

On the issuance of letters testamentary or of administration on an estate described by Section 101.001, the executor or administrator has the right to possession of the estate as the estate existed at the death of the testator or intestate, subject to the exceptions provided by Section 101.051. The executor or administrator shall recover possession of the estate and hold the estate in trust to be disposed of in accordance with the law.

Derived from Probate Code § 37.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Liability of Estate For Debts

§ 101.051. Liability of Estate for Debts in General

(a) A decedent's estate vests in accordance with Section 101.001(a) subject to the payment of:

(1) the debts of the decedent, except as exempted by law; and

(2) any court-ordered child support payments that are delinquent on the date of the decedent's death.

(b) A decedent's estate vests in accordance with Section 101.001(b) subject to the payment of, and is still liable for:

(1) the debts of the decedent, except as exempted by law; and

(2) any court-ordered child support payments that are delinquent on the date of the decedent's death.

Derived from Probate Code § 37.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 101.052. Liability of Community Property for Debts of Deceased Spouse

(a) 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 on death.

(b) The interest that the deceased spouse owned in any other nonexempt community property passes to the deceased spouse's heirs or devisees charged with the debts that were enforceable against the deceased spouse before death.

(c) This section does not prohibit the administration of community property under other provisions of this title relating to the administration of an estate.

Derived from Probate Code §§ 155, 156.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 102. Probate Assets: Decedent's Homestead

§ 102.001. Treatment of Certain Children
§ 102.002. Homestead Rights Not Affected By Character of the Homestead
§ 102.003. Passage of Homestead
§ 102.004. Liability of Homestead for Debts
§ 102.005. Prohibitions on Partition of Homestead
§ 102.006. Circumstances Under Which Partition of Homestead is Authorized

Chapter 102. Probate Assets: Decedent's Homestead

§ 102.001. Treatment of Certain Children

For purposes of determining homestead rights, a child is a child of his or her mother and a child of his or her father, as provided by Sections 201.051, 201.052, and 201.053.

Derived from Probate Code § 42(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 102.002. Homestead Rights Not Affected by Character of the Homestead

The homestead rights and the respective interests of the surviving spouse and children of a decedent are the same whether the homestead was the decedent's separate property or was community property between the surviving spouse and the decedent.

Derived from Probate Code § 282.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 102.003

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.

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§ 102.003. Passage of Homestead

The homestead of a decedent who dies leaving a surviving spouse descends and vests on the decedent's death in the same manner as other real property of the decedent and is governed by the same laws of descent and distribution.

Derived from Probate Code § 283.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 102.004

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.

The protection of the homestead from most of the decedent's creditors exists only if the decedent was survived by a spouse or a minor child.

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§ 102.004. Liability of Homestead for Debts

If the decedent was survived by a spouse or minor child, the [~~The~~] homestead is not liable for the payment of any of the debts of the estate, other than:

(1) purchase money for the homestead;

(2) taxes due on the homestead;

(3) work and material used in constructing improvements on the homestead 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 a court order or 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 the 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.

Derived from Probate Code § 270.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 8, eff. Jan. 1, 2014.

§ 102.005. Prohibitions on Partition of Homestead

The homestead may not be partitioned among the decedent's heirs:

(1) during the lifetime of the surviving spouse for as long as the surviving spouse elects to use or occupy the property as a homestead; or

(2) during the period the guardian of the decedent's minor children is permitted to use and occupy the homestead under a court order.

Derived from Probate Code § 284.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 102.006. Circumstances Under Which Partition of Homestead is Authorized

The homestead may be partitioned among the respective owners of the property in the same manner as other property held in common if:

(1) the surviving spouse dies, sells his or her interest in the homestead, or elects to no longer use or occupy the property as a homestead; or

(2) the court no longer permits the guardian of the minor children to use and occupy the property as a homestead.

Derived from Probate Code § 285.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 111. Nonprobate Assets in General

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Chapter 111. Nonprobate Assets in General

Subchapter A. Right of Survivorship Agreements Between Joint Tenants

§ 111.001. Right of Survivorship Agreements Authorized

(a) Notwithstanding Section 101.002, two or more persons who hold an interest in property jointly may agree in writing that the interest of a joint owner who dies survives to the surviving joint owner or owners.

(b) An agreement described by Subsection (a) may not be inferred from the mere fact that property is held in joint ownership.

Derived from Probate Code § 46(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 111.002. Agreements Concerning Community Property

(a) Section 111.001 does not apply to an agreement between spouses regarding the spouses' community property.

(b) An agreement between spouses regarding a right of survivorship in community property is governed by Chapter 112.

Derived from Probate Code § 46(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Other Provisions for Payment or Transfer of Certain Assets on Death

Statutes in Context
§§ 111.051 – 111.053

Sections 111.051 – 111.053 authorize a wide range of arrangements which provide for payment or transfer upon death. These designations are effective to transfer property outside of probate.

§ 111.051. Definitions

In this subchapter:

(1) "Contracting third party" means a financial institution, insurance company, plan custodian, plan administrator, or other person who is a party to an account agreement, insurance contract, annuity contract, retirement account, beneficiary designation, or other similar contract the terms of which control whether a nontestamentary transfer has occurred or to whom property passes as a result of a possible nontestamentary transfer. The term does not include a person who is:

(A) an owner of the property subject to a possible nontestamentary transfer; or

(B) a possible recipient of the property subject to a possible nontestamentary transfer.

(1-a) "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. Section 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. Section 1002 (1986)), regardless of whether the plan, program, or arrangement is funded through a trust.

(2) "Financial institution" has the meaning assigned by Section 113.001.

(3) "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. Section 408 (1986)).

(4) "Retirement account" means a retirement-annuity contract, an individual retirement account, a simplified employee pension, or any other retirement savings arrangement.

(5) "Retirement-annuity contract" means an annuity contract under Section 403, Internal Revenue Code of 1954 (26 U.S.C. Section 403 (1986)).

(6) "Simplified employee pension" means a trust, custodial arrangement, or annuity under Section 408, Internal Revenue Code of 1954 (26 U.S.C. Section 408 (1986)).

Derived from Probate Code §§ 450(a), (c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsection (1) amended by Acts 2013, 83rd Leg., ch. 1136, § 9, eff. Jan. 1, 2014.

§ 111.052. Validity of Certain Nontestamentary Instruments and Provisions

(a) This code does not invalidate:

(1) any provision in an insurance policy, employment contract, bond, mortgage, promissory note, deposit agreement, employees' trust, retirement account, deferred compensation arrangement, custodial agreement, pension plan, trust agreement, conveyance of property, security, account with a financial institution, mutual fund account, or any other written instrument effective as a contract, gift, conveyance, or trust, stating that:

(A) money or other benefits under the instrument due to or controlled or owned by a decedent shall be paid after the decedent's death, or property that is the subject of the instrument shall pass, to a person designated by the decedent in the instrument or in a separate writing, including a will, executed at the same time as the instrument or subsequently; or

(B) money due or to become due under the instrument shall cease to be payable if the promisee or promissor dies before payment or demand; or

(2) an instrument described by Subdivision (1).

(b) A provision described by Subsection (a)(1) is considered nontestamentary.

Derived from Probate Code § 450(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 111.053. Creditor's Rights Not Limited

Nothing in this subchapter limits the rights of a creditor under another law of this state.

Derived from Probate Code § 450(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 111.054

The 2013 Legislature enacted this section to overrule *McKeehan v. McKeehan*, 355 S.W.3d 282 (Tex. App.—Austin 2011, pet. denied). According to this case, an agreement relating to a nonprobate asset which contains a choice of law clause causes that state's law to govern the asset such as whether the asset has the survivorship feature. This section now provides that if more than 50% of that asset (e.g., a bank account, retirement plan, annuity, or insurance contract) was contributed by a Texas resident, Texas law will determine whether the asset has the survivorship feature irrespective of any choice of law provision. The applicability of this new provision is based on the date of the owner's death being on or after January 1, 2014 rather than the date on which the decedent entered into the agreement. To enhance the likelihood of a court upholding this statute, the Legislature stated that the change represents "the fundamental policy of [Texas] for the protection of its residents and [is] intended to prevail over the law of another state or jurisdiction, to the extent those laws are in conflict with Texas law." See Acts 2013, 83rd Leg., ch. 1136, § 61(a).

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§ 111.054. Application of State Law to Certain Nontestamentary Transfers

(a) This section applies if more than 50 percent of the:

(1) assets in an account at a financial institution, in a retirement account, or in another similar arrangement are owned, immediately before a possible nontestamentary transfer of the assets, by one or more persons domiciled in this state; or

(2) interests under an insurance contract, annuity contract, beneficiary designation, or other similar arrangement are owned, immediately before a possible nontestamentary transfer of the interests, by one or more persons domiciled in this state.

(b) Notwithstanding a choice of law or other contractual provision in an agreement prepared or provided by a contracting third party, Texas law applies to determine:

(1) whether a nontestamentary transfer of assets or interests described by Subsection (a) has occurred; and

(2) the ownership of the assets or interests following a possible nontestamentary transfer.

(c) Notwithstanding a choice of law or other contractual provision in an agreement prepared or provided by a contracting third party, any person, including a personal representative, who is asserting an ownership interest in assets or interests described by Subsection (a) subject to a possible nontestamentary transfer shall have access to the courts of this state for a judicial determination of:

(1) whether a nontestamentary transfer of the assets or interests has occurred; or

(2) the ownership of the assets or interests following a possible nontestamentary transfer.

(d) Subsections (a), (b), and (c) do not apply to an obligation:

(1) owed by a party to the contracting third party; or

(2) owed by the contracting third party to a party.

(e) This section applies to a community property survivorship agreement governed by Chapter 112 and a multiple-party account governed by Chapter 113.

New.

Added by Acts 2013, 83rd Leg., ch. 1136, § 10, eff. Jan. 1, 2014

Chapter 112. Community Property With Right of Survivorship

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Subchapter B. Community Property Survivorship Agreements

§ 112.051. Agreement for Right of Survivorship in Community Property
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§ 112.251. Multiple-Party Accounts

§ 112.252. Liabilities of Deceased Spouse Not Affected by Right of Survivorship

§ 112.253. Rights of Deceased Spouse's Creditors in Relation to Third Parties

Chapter 112. Community Property with Right of Survivorship

Subchapter A. General Provisions

Statutes in Context
Chapter 112

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. Chapter 112 provide guidance with respect to these agreements.

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§ 112.001. Definition of Community Property Survivorship Agreement

In this chapter, "community property survivorship agreement" means an agreement between spouses creating a right of survivorship in community property.

New.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 112.002. Applicability of Other Law to Community Property Held in Multiple-Party Accounts

Chapter 113 applies to multiple-party accounts held by spouses with a right of survivorship to the extent that chapter is not inconsistent with this chapter.

Derived from Probate Code § 462.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Community Property Survivorship Agreements

§ 112.051. Agreement for Right of Survivorship in Community Property

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.

Derived from Probate Code § 451.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 112.052

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 the Probate Code predecessors to both § 113.151 and § 112.052 to make it clear that this type of designation is insufficient to create the survivorship feature.

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§ 112.052. Form of Agreement

(a) A community property survivorship agreement must be in writing and signed by both spouses.

(b) A written agreement signed by both spouses is sufficient to create a right of survivorship in the community property described in the agreement if the agreement 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."

(c) Notwithstanding Subsection (b), a community property survivorship agreement that otherwise meets the requirements of this chapter is effective without including any of the phrases listed in that subsection.

(d) A survivorship agreement may not be inferred from the mere fact that an account is a joint account or that an account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.

Derived from Probate Code § 452.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (d) added by Acts 2011, 82nd Leg., ch. 1338, § 2.06, eff. Jan. 1, 2014.

§ 112.053. Adjudication Not Required

A community property survivorship agreement that satisfies the requirements of this chapter is effective and enforceable without an adjudication.

Derived from Probate Code §§ 456(a), 458.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 112.054. Revocation of Agreement

(a) A community property survivorship agreement made in accordance with this chapter may be revoked as provided by the terms of the agreement.

(b) If a community property survivorship agreement does not provide a method of revocation, the agreement may be revoked by a written instrument:

(1) signed by both spouses; or

(2) signed by one spouse and delivered to the other spouse.

(c) A community property survivorship agreement may be revoked with respect to specific property subject to the agreement by the disposition of the property by one or both spouses if the disposition is not inconsistent with specific terms of the agreement and applicable law.

Derived from Probate Code § 455.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Adjudication to Prove Community Property Survivorship Agreement

§ 112.101. Application Authorized

(a) Notwithstanding Section 112.053, after the death of a spouse, the surviving spouse or the surviving spouse's personal representative may apply to the court for an order stating that a community property survivorship agreement satisfies the requirements of this chapter and is effective to create a right of survivorship in community property.

(b) An application under this section must include:

(1) the surviving spouse's name and domicile;

(2) the deceased spouse's name and former domicile;

(3) the fact, time, and place of the deceased spouse's death;

(4) facts establishing venue in the court; and

(5) the deceased spouse's social security number, if known.

(c) An application under this section must be filed in the county of proper venue for administration of the deceased spouse's estate.

(d) The original community property survivorship agreement shall be filed with an application under this section.

Derived from Probate Code §§ 456(a), (d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 112.102. Proof Required by Court

An applicant for an order under Section 112.101 must prove to the court's satisfaction that:

(1) the spouse whose community property interest is at issue is deceased;

(2) the court has jurisdiction and venue;

(3) the agreement was executed with the formalities required by law;

(4) the agreement was not revoked; and

(5) citation has been served and returned in the manner and for the length of time required by this title.

Derived from Probate Code § 456(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 112.103. Method of Proof of Signatures

(a) The deceased spouse's signature to an agreement that is the subject of an application under Section 112.101 may be proved by:

(1) the sworn testimony of one witness taken in open court;

(2) the affidavit of one witness; or

(3) the written or oral deposition of one witness taken in the same manner and under the same rules as depositions in other civil actions.

(b) If the surviving spouse is competent to make an oath, the surviving spouse's signature to the agreement may be proved by:

(1) the sworn testimony of the surviving spouse taken in open court;

(2) the surviving spouse's affidavit; or

(3) the written or oral deposition of the surviving spouse taken in the same manner and under the same rules as depositions in other civil actions.

(c) 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 by Subsection (a) for proof of the deceased spouse's signature.

Derived from Probate Code § 456(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 112.104. Court Action; Issuance of Order

(a) On completion of a hearing on an application under Section 112.101, if the court is satisfied that the requisite proof has been made, the court shall enter an order adjudging the agreement valid.

(b) Certified copies of the agreement and order may be:

(1) recorded in other counties; and

(2) used in evidence, as the original agreement might be, on the trial of the same matter in any other court, on appeal or otherwise.

Derived from Probate Code § 457.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 112.105. Effect of Order

(a) An order under this subchapter adjudging a community property survivorship agreement valid constitutes sufficient authority to a person who:

(1) owes money, has custody of any property, or acts as registrar or transfer agent of any evidence of interest, indebtedness, property, or right that is subject to the terms of the agreement; or

(2) purchases from or otherwise deals with the surviving spouse for payment or transfer to the surviving spouse.

(b) The surviving spouse may enforce that spouse's right to a payment or transfer from a person described by Subsection (a)(2).

Derived from Probate Code § 458.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 112.106. Custody of Adjudicated Agreement

(a) An original community property survivorship agreement adjudicated under this subchapter, together with the order adjudging the agreement valid, shall be deposited in the office of the county clerk of the county in which the agreement was adjudicated and must remain at that office, except during a period when the agreement is moved to another location for inspection on order of the court in which the agreement was adjudicated.

(b) If the court orders an original community property survivorship agreement adjudicated under this subchapter to be moved to another location for inspection, the person moving the original agreement shall give a receipt for the agreement and the court clerk shall make and retain a copy of the original agreement.

Derived from Probate Code § 459.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Ownership and Transfer of Community Property Subject to Agreement

§ 112.151. Ownership of Property During Marriage; Management Rights

(a) Property subject to a community property survivorship agreement remains community property during the marriage of the spouses.

(b) Unless the agreement provides otherwise, a community property survivorship agreement does not affect the rights of the spouses concerning the management, control, and disposition of property subject to the agreement.

Derived from Probate Code § 453.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 112.152. Nontestamentary Nature of Transfers Under Agreement

(a) Transfers at death resulting from community property survivorship agreements made in accordance with this chapter are effective by reason of the agreements involved and are not testamentary transfers.

(b) Except as expressly provided otherwise by this title, transfers described by Subsection (a) are not subject to the provisions of this title applicable to testamentary transfers.

Derived from Probate Code § 454.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter E. Third Parties Dealing With Community Property Subject to Right of Survivorship

§ 112.201. Definition of Certified Copy

In this subchapter, a "certified copy" means a copy of an official record or document that is:

(1) authorized by law to be recorded or filed and actually recorded or filed in a public office; and

(2) certified as correct in accordance with Rule 902, Texas Rules of Evidence.

Derived from Probate Code § 460(f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 112.202. Actual Knowledge or Notice of Agreement

(a) In this subchapter, a person or entity has "actual knowledge" of a community property survivorship agreement or the revocation of a community property survivorship agreement only if the person or entity has received:

(1) written notice of the agreement or revocation; or

(2) the original or a certified copy of the agreement or revoking instrument.

(b) In this subchapter, a person or entity has "notice" of a community property survivorship agreement or the revocation of a community property survivorship agreement if:

(1) the person or entity has actual knowledge of the agreement or revocation; or

(2) with respect to real property, the agreement or revoking instrument is properly recorded in the county in which the real property is located.

Derived from Probate Code § 460(f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 112.203. Personal Representative Without Actual Knowledge of Agreement

If the personal representative of a deceased spouse's estate has no actual knowledge of the existence of an agreement creating a right of survivorship in community property in the surviving spouse, the personal representative is not liable to the surviving spouse or any person claiming from the surviving spouse for selling, exchanging, distributing, or otherwise disposing of the property.

Derived from Probate Code § 460(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 112.204. Third-Party Purchaser Without Notice of Agreement

(a) This section applies only to a person or entity who for value purchases property:

(1) from a person claiming from a deceased spouse more than six months after the date of the deceased spouse's death or from the personal representative of the deceased spouse's estate; and

(2) without notice of the existence of an agreement creating a right of survivorship in the property in the surviving spouse.

(b) A purchaser of property from a person claiming from the deceased spouse has good title to the interest in the property that the person would have had in the absence of the agreement described by Subsection (a)(2), as against the claims of the surviving spouse or any person claiming from the surviving spouse.

(c) A purchaser of property from the personal representative of the deceased spouse's estate has good title to the interest in the property that the personal representative would have had authority to convey in the absence of the agreement described by Subsection (a)(2), as against the claims of the surviving spouse or any person claiming from the surviving spouse.

Derived from Probate Code § 460(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 112.205. Debtors and Other Persons Without Notice of Agreement

(a) This section applies only to a person or entity who:

(1) owes money to a deceased spouse; or

(2) has custody of property or acts as registrar or transfer agent of any evidence of interest, indebtedness, property, or right owned by a deceased spouse before that spouse's death.

(b) A person or entity with no actual knowledge of the existence of an agreement creating a right of survivorship in property described by Subsection (a) in the surviving spouse may pay or transfer that property to the personal representative of the deceased spouse's estate or, if no administration of the deceased spouse's estate is pending, to the heirs or devisees of the estate and shall be discharged from all claims for those amounts or property paid or transferred.

Derived from Probate Code § 460(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 112.206. Third-Party Purchaser Without Notice of Revocation of Agreement

(a) This section applies only to a person or entity who for value purchases property from a surviving spouse more than six months after the date of the deceased spouse's death and:

(1) with respect to personal property:

(A) the purchaser has received an original or certified copy of an agreement purporting to create a right of survivorship in the personal property in the surviving spouse, purportedly signed by both spouses; and

(B) the purchaser has no notice of the revocation of the agreement; or

(2) with respect to real property:

(A) the purchaser has received an original or certified copy of an agreement purporting to create a right of survivorship in the real property in the surviving spouse, purportedly signed by both spouses or such an agreement is properly recorded in a county in which any part of the real property is located; and

(B) the purchaser has no notice of the revocation of the agreement.

(b) A purchaser has good title to the interest in the property that the surviving spouse would have had in the absence of the revocation of the agreement, as against the claims of the personal representative of the deceased spouse's estate or any person claiming from the representative or the deceased spouse.

Derived from Probate Code § 460(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 112.207. Debtors and Other Persons Without Notice of Revocation of Agreement

(a) This section applies only to a person or entity who:

(1) owes money to a deceased spouse; or

(2) has custody of property or acts as registrar or transfer agent of any evidence of interest, indebtedness, property, or right owned by a deceased spouse before that spouse's death.

(b) If a person or entity is presented with the original or a certified copy of an agreement creating a right of survivorship in property described by Subsection (a) in the surviving spouse, purportedly signed by both spouses, and if the person or entity has no actual knowledge that the agreement was revoked, the person or entity may pay or transfer that property to the surviving spouse and shall be discharged from all claims for those amounts or property paid or transferred.

Derived from Probate Code § 460(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 112.208. Rights of Surviving Spouse Against Creditors

Except as expressly provided by this subchapter, this subchapter does not affect the rights of a surviving spouse or person claiming from the surviving spouse in disputes with persons claiming from a deceased spouse or the successors of any of them concerning a beneficial interest in property or the proceeds from a beneficial interest in property, subject to a right of survivorship under an agreement that satisfies the requirements of this chapter.

Derived from Probate Code § 460(g).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter F. Rights of Creditors

§ 112.251. Multiple-Party Accounts

Chapter 113 governs the rights of creditors with respect to multiple-party accounts, as defined by Section 113.004.

Derived from Probate Code § 461.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 112.252. Liabilities of Deceased Spouse Not Affected by Right of Survivorship

(a) Except as expressly provided by Section 112.251, 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 on that spouse's death without regard to a right of survivorship in the surviving spouse under an agreement made in accordance with this chapter.

(b) The surviving spouse is liable to account to the deceased spouse's personal representative for property received by the surviving spouse under a right of survivorship to the extent necessary to discharge the deceased spouse's liabilities.

(c) A proceeding to assert a liability under Subsection (b):

(1) may be commenced only if the deceased spouse's personal representative has received a written demand by a creditor; and

(2) must be commenced on or before the second anniversary of the deceased spouse's death.

(d) Property recovered by the deceased spouse's personal representative under this section shall be administered as part of the deceased spouse's estate.

Derived from Probate Code § 461.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 112.253. Rights of Deceased Spouse's Creditors in Relation to Third Parties

This subchapter does not affect the protection afforded to a person or entity under Subchapter E unless, before payment or transfer to the surviving spouse, the person or entity received a written notice from the deceased spouse's personal representative stating the amount needed to discharge the deceased spouse's liabilities.

Derived from Probate Code § 461.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 113. Multiple-Party Accounts

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§ 113.151. Establishment of Right of Survivorship in Joint Account; Ownership on Death of Party
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Chapter 113. Multiple-Party Accounts

Subchapter A. General Provisions

Statutes in Context
Chapter 113

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 113 addresses 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.

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§ 113.001. General Definitions

In this chapter:

(1) "Account" means a contract of deposit of funds between a depositor and a financial institution. The term includes a checking account, savings account, certificate of deposit, share account, or other similar arrangement.

(2) "Beneficiary" means a person named in a trust account 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. The term includes a bank or trust company, savings

bank, building and loan association, savings and loan company or association, credit union, and brokerage firm that deals in the sale and purchase of stocks, bonds, and other types of securities.

(4) "Payment" of sums on deposit includes a withdrawal, a payment on a check or other directive of a party, and a pledge of sums on deposit by a party and any set-off, or reduction or other disposition of all or part of an account under a pledge.

(5) "P.O.D. payee" means a person or charitable organization designated on a P.O.D. account as a person to whom the account is payable on request after the death of one or more persons.

(6) "Proof of death" includes:

(A) a certified copy of a death certificate; or

(B) a judgment or order of a court in a proceeding in which the death of a person is proved to the satisfaction of the court by circumstantial evidence in accordance with Chapter 454.

(7) "Request" means a proper request for withdrawal, or a check or order for payment, that complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution. If a financial institution conditions withdrawal or payment on advance notice, for purposes of this chapter a request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(8) "Sums on deposit" means the balance payable on a multiple-party account including interest, dividends, and any deposit life insurance proceeds added to the account by reason of the death of a party.

(9) "Withdrawal" includes payment to a third person in accordance with a check or other directive of a party.

Derived from Probate Code §§ 436(1), (2), (3), (8), (9), (11), (12), (13), (15).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (2-a) added by Acts 2011, 82nd Leg., ch. 1338, § 2.07, eff. Jan. 1, 2014. Subsec. (5) amended by Acts 2011, 82nd Leg., ch. 1338, § 2.07, eff. Jan. 1, 2014.

§ 113.002. Definition of Party

(a) In this chapter, "party" means a person who, by the terms of a multiple-party account, has a present right, subject to request, to payment from the account. Except as otherwise required by the context, the term includes a guardian, personal representative, or assignee, including an attaching creditor, of a party. The term also includes a person identified as a trustee of an account for another regardless of whether a beneficiary is named. The term does not include a named beneficiary unless the beneficiary has a present right of withdrawal.

(b) 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.

Derived from Probate Code § 436(7).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2011, 82nd Leg., ch. 1338, § 2.08, eff. Jan. 1, 2014.

§ 113.003. Definition of Net Contribution

(a) In this chapter, "net contribution" of a party to a joint account at any given time is the sum of all deposits made to that account by or for the party, less all withdrawals made by or for the party that 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 of the account. The term also includes any deposit life insurance proceeds added to the account by reason of the death of the party whose net contribution is in question.

(b) A financial institution may not be required to inquire, for purposes of establishing net contributions, about:

(1) the source of funds received for deposit to a multiple-party account; or

(2) the proposed application of an amount withdrawn from a multiple-party account.

Derived from Probate Code §§ 436(6), 444.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.004. Types of Accounts

In this chapter:

(1) "Convenience account" means an account that:

(A) is established at a financial institution by one or more parties in the names of the parties and one or more convenience signers; and

(B) has terms that provide that the sums on deposit are paid or delivered to the parties or to the convenience signers "for the convenience" of the parties.

(2) "Joint account" means an account payable on request to one or more of two or more parties, regardless of whether there is a right of survivorship.

(3) "Multiple-party account" means a joint account, a convenience account, a P.O.D. account, or a trust account. The term does not include an account established for the deposit of funds of a partnership, joint venture, or other association for business purposes, or an account controlled by one or more persons as the authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization, or a regular

fiduciary or trust account in which the relationship is established other than by deposit agreement.

(4) "P.O.D. account" means an account payable on request to:

(A) one person during the person's lifetime and, on the person's death, to one or more P.O.D. payees; or

(B) one or more persons during their lifetimes and, on the death of all of those persons, to one or more P.O.D. payees.

(5) "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries in which the relationship is established by the form of the account and the deposit agreement with the financial institution and in which there is no subject of the trust other than the sums on deposit in the account. The deposit agreement is not required to address payment to the beneficiary. The term does not include:

(A) a regular trust account under a testamentary trust or a trust agreement that has significance apart from the account; or

(B) a fiduciary account arising from a fiduciary relationship, such as the attorney-client relationship.

Derived from Probate Code §§ 436(4), (5), (10), (14), 438A(A).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.005. Authority of Financial Institutions to Enter into Certain Accounts

A financial institution may enter into a multiple-party account to the same extent that the institution may enter into a single-party account.

Derived from Probate Code § 444.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Uniform Account Form

§ 113.051. Establishment of Type of Account; Applicability of Certain Law

(a) A contract of deposit that contains provisions substantially the same as in the form provided by Section 113.052 establishes the type of account selected by a party. This chapter governs an account selected under the form.

(b) A contract of deposit that does not contain provisions substantially the same as in the form provided by Section 113.052 is governed by the provisions of this chapter applicable to the type of account that most nearly conforms to the depositor's intent.

Derived from Probate Code § 439A(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2011, 82nd Leg., ch. 90, § 8.004, eff. Jan. 1, 2014.

Statutes in Context
§ 113.052

A financial institution may use the form provided in § 113.052 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.

§ 113.052. Form

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 parties to the account own the account. One or more convenience signers to the account may make account transactions for a party. A convenience signer does not own the account. On the death of the last surviving party, ownership of the account passes as a part of the last surviving party's estate under the last surviving party's will or by intestacy. The financial institution may pay funds in the account to a convenience signer before the financial institution receives notice of the death of the last surviving party. The payment to a convenience signer does not affect the parties' ownership of the account.

Enter the names of the parties:

_____

_____

Enter the name(s) of the convenience 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:

_____

_____

Derived from Probate Code § 439A(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 90, § 8.005, eff. Jan. 1, 2014.

§ 113.053. Use of Form; Disclosure

(a) A financial institution is considered to have adequately disclosed the information provided in this subchapter if the financial institution uses the form provided by Section 113.052.

(b) If a financial institution varies the format of the form provided by Section 113.052, the financial institution may make disclosures in the account agreement or in any other form that adequately discloses the information provided by this subchapter.

(c) If the customer receives adequate disclosure of the ownership rights to an account and the names of the parties are appropriately indicated, a financial institution may combine any of the provisions in, and vary the format of, the form and notices described in Section 113.052 in:

(1) a universal account form with options listed for selection and additional disclosures provided in the account agreement; or

(2) any other manner that adequately discloses the information provided by this subchapter.

Derived from Probate Code §§ 439A(c), (d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Ownership and Operation of Accounts

Statutes in Context
§ 113.101

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.

§ 113.101. Effect of Certain Provisions Regarding Ownership Between Parties and Others

The provisions of this subchapter and Subchapters B and D that relate to beneficial ownership between parties, or between parties and P.O.D. payees or beneficiaries of multiple-party accounts:

(1) are relevant only to controversies between those persons and those persons' creditors and other successors; and

(2) do not affect the withdrawal power of those persons under the terms of an account contract.

Derived from Probate Code § 437.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§§ 113.102–113.104

Sections 113.102–113.104 explain 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 § 113.003.

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.

§ 113.102. Ownership of Joint Account During Parties' Lifetimes

During the lifetime of all parties to a joint account, the account belongs to the parties in proportion to the net contributions by each party to the sums on deposit unless there is clear and convincing evidence of a different intent.

Derived from Probate Code § 438(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.103. Ownership of P.O.D. Account During Original Payee's Lifetime

(a) During the lifetime of an original payee of a P.O.D. account, the account belongs to the original payee and does not belong to the P.O.D. payee or payees.

(b) If two or more parties are named as original payees of a P.O.D. account, during the parties' lifetimes rights between the parties are governed by Section 113.102.

Derived from Probate Code § 438(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.104. Ownership of Trust Account During Trustee's Lifetime

(a) A trust account belongs beneficially to the trustee during the trustee's lifetime unless:

(1) the terms of the account or the deposit agreement manifest a contrary intent; or

(2) other clear and convincing evidence of an irrevocable trust exists.

(b) If two or more parties are named as trustees on a trust account, during the parties' lifetimes beneficial rights between the parties are governed by Section 113.102.

(c) An account that is an irrevocable trust belongs beneficially to the beneficiary.

Derived from Probate Code § 438(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 113.105

Section 113.105 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, in prison, 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.

§ 113.105. Ownership of Convenience Account; Additions and Accruals

(a) The making of a deposit in a convenience account does not affect the title to the deposit.

(b) 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.

(c) An addition made to a convenience account by anyone other than a party, and accruals to the addition, are considered to have been made by a party.

Derived from Probate Code §§ 438A(b), (c), (e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 113.106

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 § 113.105 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.

§ 113.106. Ownership and Operation of Other Account With Convenience Signer

(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 Section 113.1541:

(1) the provisions of Sections 113.105, 113.206, and 113.208 apply to an account described by Subsection (a), 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.

Derived from Probate Code § 438B.

Added by Acts 2011, 82nd Leg., ch. 90, § 8.006, eff. Jan. 1, 2014.

Subchapter D. Rights of Survivorship in Accounts

Statutes in Context
§§ 113.151 –113.155

Sections 113.151–113.155 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 § 101.002.) 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 § 112.051 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 the Probate Code predecessors to both § 113.151 and § 112.052 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.

4. Convenience Accounts. When the party dies, the entire account passes into the party's estate. The co-signer has no survivorship rights.

---

§ 113.151. Establishment of Right of Survivorship in Joint Account; Ownership on Death of Party

(a) Sums remaining on deposit on the death of a party to a joint account belong to the surviving party or parties against the estate of the deceased party if the interest of the deceased party is made to survive to the surviving party or parties by a written agreement signed by the party who dies.

(b) Notwithstanding any other law, an agreement is sufficient under this section to confer an absolute right of survivorship on parties to a joint account if the agreement contains a statement substantially similar to the following: "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."

(c) A survivorship agreement may 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.

(d) If there are two or more surviving parties to a joint account that is subject to a right of survivorship agreement:

(1) during the parties' lifetimes respective ownerships are in proportion to the parties' previous ownership interests under Sections 113.102, 113.103, and 113.104, as applicable, augmented by an equal share for each survivor of any interest a deceased party owned in the account immediately before that party's death; and

(2) the right of survivorship continues between the surviving parties if a written agreement signed by a party who dies provides for that continuation.

Derived from Probate Code § 439(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (c) amended by Acts 2011, 82nd Leg., ch. 1338, § 2.09, eff. Jan. 1, 2014.

§ 113.152. Ownership of P.O.D. Account on Death of Party

(a) 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:

(1) the P.O.D. payee or payees if surviving; or

(2) the survivor of the P.O.D. payees if one or more P.O.D. payees die before the original payee.

(b) If two or more P.O.D. payees survive, no right of survivorship exists between the surviving P.O.D. payees unless the terms of the account or deposit agreement expressly provide for survivorship between those payees.

Derived from Probate Code § 439(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.153. Ownership of Trust Account on Death of Trustee

(a) 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:

(1) the person or persons named as beneficiaries, if surviving; or

(2) the survivor of the persons named as beneficiaries if one or more beneficiaries die before the trustee.

(b) If two or more beneficiaries survive, no right of survivorship exists between the surviving beneficiaries unless the terms of the account or deposit agreement expressly provide for survivorship between those beneficiaries.

Derived from Probate Code § 439(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.1541. Ownership of Other Account with Convenience Signer on Death of Last Surviving Party

On the death of the last surviving party to an account that has a convenience signer designated as provided by Section 113.106, 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.

Derived from Probate Code § 438B(c).

§ 113.154. Ownership of Convenience Account on Death of Party

On the death of the last surviving party to a convenience account:

(1) a convenience signer has no right of survivorship in the account; and

(2) ownership of the account remains in the estate of the last surviving party.

Derived from Probate Code § 438A(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.155. Effect of Death of Party on Certain Accounts Without Rights of Survivorship

The death of a party to a multiple-party account to which Sections 113.151, 113.152, and 113.153 do not apply has no effect on the beneficial ownership of the account, other than to transfer the rights of the deceased party as part of the deceased party's estate.

Derived from Probate Code § 439(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.156. Applicability of Certain Provisions on Death of Party

Sections 113.151, 113.152, 113.153, and 113.155 as to rights of survivorship are determined by the form of the account at the death of a party.

Derived from Probate Code § 440.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.157. Written Notice to Financial Institutions Regarding Form of Account

Notwithstanding any other law, the form of an account 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 another written order of the same party during the party's lifetime.

Derived from Probate Code § 440.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.158. Nontestamentary Nature of Certain Transfers

Transfers resulting from the application of Sections 113.151, 113.152, 113.153, and 113.155 are effective by reason of the account contracts involved and this chapter and are not to be considered testamentary transfers or subject to the testamentary provisions of this title.

Derived from Probate Code § 441.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter E. Protection of Financial Institutions

§ 113.201. Applicability of Subchapter

This subchapter and Section 113.003(b) govern:

(1) the liability of financial institutions that make payments as provided by this subchapter; and

(2) the set-off rights of those institutions.

Derived from Probate Code § 443.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.202. Payment of Multiple-Party Account

A multiple-party account may be paid, on request, to any one or more of the parties.

Derived from Probate Code § 444.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.203. Payment of Joint Account

(a) Subject to Subsection (b), amounts 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.

(b) Payment may not be made to the personal representative or heir of a deceased party unless:

(1) proofs of death are presented to the financial institution showing that the deceased party was the last surviving party; or

(2) there is no right of survivorship under Sections 113.151, 113.152, 113.153, and 113.155.

Derived from Probate Code § 445.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.204. Payment of P.O.D. Account

(a) A P.O.D. account may be paid, on request, to any original payee of the account.

(b) 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 on the presentation to the financial institution of proof of death showing that the P.O.D. payee survived each person named as an original payee.

(c) 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 the deceased original payee was the survivor of each other person named on the account as an original payee or a P.O.D. payee.

Derived from Probate Code § 446.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.205. Payment of Trust Account

(a) A trust account may be paid, on request, to any trustee.

(b) Unless a financial institution has received written notice that a beneficiary has a vested interest not dependent on the beneficiary's 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 the deceased trustee was the survivor of each other person named on the account as a trustee or beneficiary.

(c) Payment may be made, on request, to a beneficiary if proof of death is presented to the financial

institution showing that the beneficiary or beneficiaries survived all persons named as trustees.

Derived from Probate Code § 447.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.206. Payment of Convenience Account

Deposits to a convenience account and additions and accruals to the deposits may be paid to a party or a convenience signer.

Derived from Probate Code § 438A(f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.207. Liability for Payment from Joint Account After Death

A financial institution that pays an amount from a joint account to a surviving party to that account in accordance with a written agreement under Section 113.151 is not liable to an heir, devisee, or beneficiary of the deceased party's estate.

Derived from Probate Code § 445.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.208. Liability for Payment from Convenience Account

(a) A financial institution is completely released from liability for a payment made from a convenience account before the financial institution receives notice in writing signed by a 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.

(b) A financial institution that makes a payment of the sums on deposit in a convenience account to a convenience signer after the death of the last surviving party, but before the financial institution receives written notice of the last surviving party's death, is completely released from liability for the payment.

(c) A financial institution that makes a payment of the sums on deposit in a convenience account to the personal representative of the deceased last surviving party's estate after the death of the last surviving party, but before a court order prohibiting payment is served on the financial institution, is, to the extent of the payment, released from liability to any person claiming a right to the funds. The personal representative's receipt of the funds is a complete release and discharge of the financial institution.

Derived from Probate Code §§ 438A(f), (g).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.209. Discharge from Claims

(a) Payment made in accordance with Section 113.202, 113.203, 113.204, 113.205, or 113.207 discharges the financial institution from all claims for those amounts paid regardless of whether the payment is consistent with the beneficial ownership of the account between parties, P.O.D. payees, or beneficiaries, or their successors.

(b) The protection provided by Subsection (a) does not extend to payments made after a financial institution receives, from any party able to request present payment, written notice 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 the notice, the successor of a deceased party must concur in a demand for withdrawal for the financial institution to be protected under Subsection (a).

(c) No notice, other than the notice described by Subsection (b), or any other information shown to have been available to a financial institution affects the institution's right to the protection provided by Subsection (a).

(d) The protection provided by Subsection (a) does not affect the rights of parties in disputes between the parties or the parties' successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts.

Derived from Probate Code § 448.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.210. Set-Off to Financial Institution

(a) 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 the party's death, a present right of withdrawal.

(b) The amount of the account subject to set-off under this section is that proportion to which the debtor is, or was immediately before the debtor's death, beneficially entitled, and in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal.

Derived from Probate Code § 449.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter F. Rights of Creditors; Pledge of Account

§ 113.251. Pledge of Account

(a) 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 applicable, a P.O.D. payee, a beneficiary, a convenience signer, or any other party to a joint account, regardless of whether a right of survivorship exists.

(b) A convenience signer may not pledge or otherwise create a security interest in an account.

(c) Not later than the 30th day after the date a security interest on a multiple-party account is perfected, a secured creditor that is a financial institution with accounts 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 each other party at the last address the party provided to the depository bank.

(d) The financial institution is not required to provide the notice described by Subsection (c) to a P.O.D. payee, beneficiary, or convenience signer.

Derived from Probate Code § 442.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 113.252

Section 113.252 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.

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§ 113.252. Rights of Creditors

(a) A multiple-party account is not effective against:

(1) an estate of a deceased party to transfer to a survivor amounts 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; or

(2) the claim of a secured creditor who has a lien on the account.

(b) A party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party is liable to account to the deceased party's personal representative for amounts the deceased party owned beneficially immediately before the party's death to the extent necessary to discharge the claims and charges described by Subsection (a) that remain unpaid after application of the deceased party's estate. The party, P.O.D. payee, or beneficiary is not liable in an amount greater than the amount the party, P.O.D. payee, or beneficiary received from the multiple-party account.

(c) A proceeding to assert liability under Subsection (b):

(1) may only be commenced if the personal representative receives a written demand by a surviving spouse, a creditor, or one acting for a minor child of the deceased party; and

(2) must be commenced on or before the second anniversary of the death of the deceased party.

(d) Amounts recovered by the personal representative under this section must be administered as part of the decedent's estate.

Derived from Probate Code § 442.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 113.253. No Effect on Certain Rights and Liabilities of Financial Institutions

This subchapter does not:

(1) affect the right of a financial institution to make payment on multiple-party accounts according to the terms of the account; or

(2) make the financial institution liable to the estate of a deceased party unless, before payment, the institution received written notice from the personal representative stating the amounts needed to pay debts, taxes, claims, and expenses of administration.

Derived from Probate Code § 442.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 121. Survival Requirements

Subchapter A. General Provisions

§ 121.001. Applicability of Chapter

Subchapter B. Survival Requirement for Intestate Succession and Certain Other Purposes

§ 121.051. Applicability of Subchapter
§ 121.052. Required Period of Survival for Intestate Succession and Certain Other Purposes
§ 121.053. Intestate Succession: Failure to Survive Presumed Under Certain Circumstances

Subchapter C. Survival Requirements for Certain Beneficiaries

§ 121.101. Required Period of Survival for Devisee
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§ 121.151. Distribution of Community Property
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Chapter 121. Survival Requirements

Subchapter A. General Provisions

Statutes in Context
Chapter 121

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, Chapter 121 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.

§ 121.001. Applicability of Chapter

This chapter does not apply if provision has been made by will, living trust, deed, or insurance contract, or in any other manner, for a disposition of property that is different from the disposition of the property that would be made if the provisions of this chapter applied.

Derived from Probate Code § 47(f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Survival Requirement for Intestate Succession and Certain Other Purposes

§ 121.051. Applicability of Subchapter

This subchapter does not apply if the application of this subchapter would result in the escheat of an intestate estate.

Derived from Probate Code § 47(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 121.052. Required Period of Survival for Intestate Succession and Certain Other Purposes

A person who does not survive a decedent by 120 hours is considered to have predeceased the decedent for purposes of the homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly, except as otherwise provided by this chapter.

Derived from Probate Code § 47(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 121.053. Intestate Succession: Failure to Survive Presumed Under Certain Circumstances

A person who, if the person survived a decedent by 120 hours, would be the decedent's heir is considered not to have survived the decedent for the required period if:

(1) the time of death of the decedent or of the person, or the times of death of both, cannot be determined; and

(2) the person's survival for the required period after the decedent's death cannot be established.

Derived from Probate Code § 47(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Survival Requirements for Certain Beneficiaries

§ 121.101. Required Period of Survival for Devisee

A devisee who does not survive the testator by 120 hours is treated as if the devisee predeceased the testator unless the testator's will contains some language that:

(1) deals explicitly with simultaneous death or deaths in a common disaster; or

(2) requires the devisee to survive the testator, or to survive the testator for a stated period, to take under the will.

Derived from Probate Code § 47(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 121.102. Required Period of Survival for Contingent Beneficiary

(a) If property is disposed of in a manner that conditions the right of a beneficiary to succeed to an interest in the property on the beneficiary surviving another person, the beneficiary is considered not to have survived the other person unless the beneficiary survives the person by 120 hours, except as provided by Subsection (b).

(b) If an interest in property is given alternatively to one of two or more beneficiaries, with the right of each beneficiary to take being dependent on that beneficiary surviving the other beneficiary or beneficiaries, and all of the beneficiaries die within a period of less than 120 hours, the property shall be divided into as many equal portions as there are beneficiaries. The portions shall be distributed respectively to those who would have taken if each beneficiary had survived.

Derived from Probate Code § 47(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Distribution of Certain Property on Person's Failure to Survive for Required Period

§ 121.151. Distribution of Community Property

(a) This section applies to community property, including the proceeds of life or accident insurance that are community property and become payable to the estate of either the husband or wife.

(b) If a husband and wife die leaving community property but neither survives 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 shall be distributed as if the wife had survived.

Derived from Probate Code § 47(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 121.152. Distribution of Property Owned by Joint Owners

If property, including community property with a right of survivorship, is owned so that one of two joint owners is entitled to the whole of the property on the death of the other, but neither survives the other by 120 hours, one-half of the property shall be distributed as if one joint owner had survived, and the other one-half shall be distributed as if the other joint owner had survived. If there are more than two joint owners and all of the joint owners die within a period of less than 120 hours, the property shall be divided into as many equal portions as there are joint owners and the portions shall be distributed respectively to those who would have taken if each joint owner survived.

Derived from Probate Code § 47(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 121.153. Distribution of Certain Insurance Proceeds

(a) If the insured under a life or accident insurance policy and a beneficiary of the proceeds of that policy die within a period of less than 120 hours, the insured is considered to have survived the beneficiary for the purpose of determining the rights under the policy of the beneficiary or beneficiaries as such.

(b) This section does not prevent the applicability of Section 121.151 to proceeds of life or accident insurance that are community property.

Derived from Probate Code § 47(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

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Chapter 122. Disclaimers and Assignments

Subchapter A. General Provisions Relating to Disclaimer

Statutes in Context
Chapter 122

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).

Subchapter B 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. 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.

There are, however, two important exceptions. First, the United States Supreme Court held that a disclaimer will not defeat a federal tax lien. *Drye v. United States*, 528 U.S. 49 (1999). Second, as of January 1, 2014, an heir or will beneficiary may not disclaim property if that person is in arrears in paying child support. Note that beneficiaries of inter vivos trusts may still disclaim to avoid their child support obligations.

§ 122.001. Definitions

In this chapter, other than Subchapter E:

(1) "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:

(A) by inheritance;

(B) under a will;

(C) by an agreement between spouses for community property with a right of survivorship;

(D) by a joint tenancy with a right of survivorship;

(E) by a survivorship agreement, account, or interest in which the interest of the decedent passes to a surviving beneficiary;

(F) by an insurance, annuity, endowment, employment, deferred compensation, or other contract or arrangement; or

(G) 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.

(2) "Disclaimer" includes renunciation.

(3) "Property" includes all legal and equitable interests, powers, and property, present or future, vested or contingent, and beneficial or burdensome, in whole or in part.

Derived from Probate Code § 37A(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.002. Who May Disclaim

(a) A person who may be entitled to receive property as a beneficiary who on or after September 1, 1977, intends to irrevocably disclaim all or any part of the property shall evidence the disclaimer as provided by this chapter.

(b) Subject to Subsection (c), the legally authorized representative of a person who may be entitled to receive property as a beneficiary who on or after September 1, 1977, intends to irrevocably disclaim all or any part of the property on the beneficiary's behalf shall evidence the disclaimer as provided by this chapter.

(c) A disclaimer made by a legally authorized representative described by Subsection (d)(1), (2), or (3), other than an independent executor, must be made with prior court approval of the court that has or would have jurisdiction over the legally authorized representative. A disclaimer made by an independent executor on behalf of a decedent may be made without prior court approval.

(d) In this section, "legally authorized representative" means:

(1) a guardian if the person entitled to receive the property as a beneficiary is an incapacitated person;

(2) a guardian ad litem if the person entitled to receive the property as a beneficiary is an unborn or unascertained person;

(3) a personal representative, including an independent executor, if the person entitled to receive the property as a beneficiary is a decedent; or

(4) an attorney in fact or agent appointed under a durable power of attorney authorizing disclaimers if the person entitled to receive the property as a beneficiary executed the power of attorney as a principal.

Derived from Probate Code § 37A(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.003. Effective Date; Creditors' Claims

(a) A disclaimer evidenced as provided by this chapter is effective for all purposes as of the date of the decedent's death.

(b) Property disclaimed in accordance with this chapter is not subject to the claims of a creditor of the disclaimant.

Derived from Probate Code § 37A(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.004. Disclaimer Irrevocable

A disclaimer that is filed and served as provided by this chapter is irrevocable.

Derived from Probate Code § 37A(k).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.005. Power to Provide Method of Disclaimer

A will, insurance policy, employee benefit agreement, or other instrument may provide for the making of a disclaimer by a beneficiary of an interest receivable under that instrument and for the disposition of disclaimed property in a manner different than provided by this chapter.

Derived from Probate Code § 37A(j).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Form, Filing, and Notice of Disclaimer

§ 122.051. Form <u>and Contents</u>

<u>(a)</u> A disclaimer of property receivable by a beneficiary must be evidenced by written memorandum acknowledged before:

(1) a notary public; or

(2) another person authorized to take acknowledgments of conveyances of real estate.

<u>(b) A disclaimer of property receivable by a beneficiary must include a statement regarding whether the beneficiary is a child support obligor described by Section 122.107.</u>

Derived from Probate Code § 37A(g).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 689, § 1, eff. Jan. 1, 2014.

§ 122.052. Filing in Probate Court

Except as provided by Sections 122.053 and 122.054, the written memorandum of disclaimer must be filed in the probate court in which:

(1) the decedent's will has been probated;

(2) proceedings have commenced for the administration of the decedent's estate; or

(3) an application has been filed for probate of the decedent's will or administration of the decedent's estate.

Derived from Probate Code § 37A(h).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.053. Filing in County of Decedent's Residence

The written memorandum of disclaimer must be filed with the county clerk of the county of the decedent's residence on the date of the decedent's death if:

(1) the administration of the decedent's estate is closed;

(2) one year has expired since the date letters testamentary were issued in an independent administration;

(3) a will of the decedent has not been probated or filed for probate;

(4) administration of the decedent's estate has not commenced; or

(5) an application for administration of the decedent's estate has not been filed.

Derived from Probate Code § 37A(h).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.054. Nonresident Decedent

If the decedent is not a resident of this state on the date of the decedent's death and the disclaimer is of real property that is located in this state, the written memorandum of disclaimer must be:

(1) filed with the county clerk of the county in which the real property is located; and

(2) recorded by the county clerk in the deed records of that county.\

Derived from Probate Code § 37A(h).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.055. Filing Deadline

(a) Except as provided by Subsection (c), a written memorandum of disclaimer of a present interest must be filed not later than nine months after the date of the decedent's death.

(b) Except as provided by Subsection (c), a written memorandum of disclaimer of a future interest may be filed not later than nine months after the date of the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested.

(c) If the beneficiary is a charitable organization or a governmental agency of the state, a written memorandum of disclaimer of a present or future interest must be filed not later than the later of:

(1) the first anniversary of the date the beneficiary receives the notice required by Subchapter A, Chapter 308; or

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

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

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

Derived from Probate Code § 37A(h).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (c) amended by Acts 2011, 82nd Leg., ch. 1338, § 2.10, eff. Jan. 1, 2014.

§ 122.056. Notice

(a) Except as provided by Subsection (b), a copy of the written memorandum of disclaimer shall be delivered in person to, or 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:

(1) the date of the decedent's death; or

(2) if the interest is a future interest, the date the person who will receive the property or interest is finally ascertained and the person's interest is indefeasibly vested.

(b) If the beneficiary is a charitable organization or a governmental agency of this state, notice of a disclaimer required by Subsection (a) must be filed not later than the later of:

(1) the first anniversary of the date the beneficiary receives the notice required by Subchapter A, Chapter 308; or

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

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

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

Derived from Probate Code § 37A(i).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2011, 82nd Leg., ch. 1338, § 2.11, eff. Jan. 1, 2014.

~~**§ 122.057. Extension of Time for Certain Disclaimers**~~

~~(a) This section does not apply to a disclaimer made by a beneficiary that is a charitable organization or governmental agency of the state.~~

~~(b) Notwithstanding the periods prescribed by Sections 122.055 and 122.056, 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.~~

~~(c) A disclaimer filed and for which notice is given during the extended period described by Subsection (b) is valid and shall be treated as if the disclaimer had been filed and notice had been given within the periods prescribed by Sections 122.055 and 122.056.~~

Derived from Probate Code § 37A(p).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338, Sec. 2.12, eff. January 1, 2014. Repealed by Acts 2013, 83rd Leg., ch. 1136, § 60, eff. Jan. 1, 2014.

Subchapter C. Effect of Disclaimer

§ 122.101. Effect

Unless the decedent's will provides otherwise:

(1) property subject to a disclaimer passes as if the person disclaiming or on whose behalf a disclaimer is made had predeceased the decedent; and

(2) 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.

Derived from Probate Code § 37A(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.102. Ineffective Disclaimer

(a) Except as provided by Subsection (b), a disclaimer that does not comply with this chapter is ineffective.

(b) A disclaimer otherwise ineffective under Subsection (a) is effective as an assignment of the disclaimed property to those who would have received the property had the person attempting the disclaimer died before the decedent.

Derived from Probate Code § 37A(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.103. Subsequent Disclaimer

This chapter does not prevent a person who is entitled to property as the result of a disclaimer from subsequently disclaiming the property.

Derived from Probate Code § 37A(f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.104. Disclaimer After Acceptance

A disclaimer is not effective if the person making the disclaimer has previously accepted the property by taking possession or exercising dominion and control of the property as a beneficiary.

Derived from Probate Code § 37A(n).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.105. 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.

Derived from Probate Code § 37A(o).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.106. Interest in Securities

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 (15 U.S.C. Section 78a et seq.) is not considered an ownership interest in the business of the issuer of the securities within the meaning of any statute, pursuant thereto.

Derived from Probate Code § 37A(o).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.107. Attempted Disclaimers by Certain Child Obligors Ineffective

(a) A disclaimer made by a beneficiary who is a child support obligor of estate property that could be applied to satisfy the beneficiary's child support obligation is not effective if the beneficiary owes child support arrearages that have been:

(1) administratively determined by the Title IV-D agency as defined by Section 101.033, Family Code, in a Title IV-D case as defined by Section 101.034, Family Code; or

(2) confirmed and reduced to judgment as provided by Section 157.263, Family Code.

(b) After distribution of estate property to a beneficiary described by Subsection (a), the child support obligee to whom the child support arrearages are owed may enforce the child support obligation by a lien or by any other remedy provided by law.

New.

Added by Acts 2013, 83rd Leg., ch. 689, § 2, eff. Jan. 1, 2014.

Subchapter D. Partial Disclaimer

§ 122.151. Partial Disclaimer

A person who may be entitled to receive property as a beneficiary may wholly or partly disclaim the property, including:

(1) specific powers of invasion;

(2) powers of appointment; and

(3) fee estate in favor of life estates.

Derived from Probate Code § 37A(l).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.152. Effect of Partial Disclaimer

A partial disclaimer in accordance with this chapter is effective whether the property disclaimed constitutes a portion of a single, aggregate gift or constitutes part or all of a separate, independent gift, except that:

(1) a partial disclaimer is effective only with respect to property expressly described or referred to by category in the disclaimer; and

(2) a partial disclaimer of property subject to a burdensome interest created by the decedent's will is not effective unless the property constitutes a gift separate and distinct from undisclaimed gifts.

Derived from Probate Code § 37A(l).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,

2014.

§ 122.153. Partial Disclaimer by Spouse

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.

Derived from Probate Code § 37A(m).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter E. Assignment of Interest

Statutes in Context
§§ 122.201–122.206

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, 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 § 122.206.

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§ 122.201. Assignment

A person who is 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 does not disclaim the property under this chapter may assign the property or interest in property to any person.

Derived from Probate Code § 37B(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.202. Filing of Assignment

An assignment may, at the request of the assignor, be filed as provided for the filing of a disclaimer under Subchapter B.

Derived from Probate Code § 37B(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.203. Notice

Notice of the filing of an assignment as provided by Section 122.202 must be served as required by Section 122.056 for notice of a disclaimer.

Derived from Probate Code § 37B(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.204. Failure to Comply

Failure to comply with Subchapters A, B, C, and D does not affect an assignment.

Derived from Probate Code § 37B(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.205. Gift

An assignment under this subchapter is a gift to the assignee and is not a disclaimer under Subchapters A, B, C, and D.

Derived from Probate Code § 37B(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 122.206. Spendthrift Provision

An assignment of property or interest that would defeat a spendthrift provision imposed in a trust may not be made under this subchapter.

Derived from Probate Code § 37B(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 123. Dissolution of Marriage

Subchapter A. Effect of Dissolution of Marriage on Will

§ 123.001. Will Provisions Made Before Dissolution of Marriage

§ 123.002. Treatment of Decedent's Former Spouse

Subchapter B. Effect of Dissolution of Marriage on Certain Nontestamentary Transfers

§ 123.051. Definitions

§ 123.052. Revocation of Certain Nontestamentary Transfers; Treatment of Former Spouse as Beneficiary Under Certain Policies or Plans

§ 123.053. Effect of Revocation

§ 123.054. Liability of Certain Purchasers or Recipients of Certain Payments, Benefits, or Property

§ 123.055. Liability of Former Spouse for Certain Payments, Benefits, or Property

Subchapter C. Certain Marriages Voidable After Death

§ 123.101. Proceeding to Void Marriage Based on Mental Capacity Pending at Time of Death

§ 123.102. Application to Void Marriage After Death

§ 123.103. Action on Application to Void Marriage After Death

§ 123.104. Effect of Voided Marriage

Chapter 123. Dissolution of Marriage

Subchapter A. Effect of Dissolution of Marriage on Will

Statutes in Context
Chapter 123, Subchapter A

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 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 123.001 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 under § 123.002, 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 polices and retirement plans and Estates Code § 123.051–123.055 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.

§ 123.001. Will Provisions Made Before Dissolution of Marriage

(a) In this section, "relative" means an individual related to another individual by:

(1) consanguinity, as determined under Section 573.022, Government Code; or

(2) affinity, as determined under Section 573.024, Government Code.

(b) If, after the testator makes a will, the testator's marriage is dissolved 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.

Derived from Probate Code §§ 69(a), (b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 123.002. Treatment of Decedent's Former Spouse

A person is not a surviving spouse of a decedent if the person's marriage to the decedent has been dissolved by divorce, annulment, or a declaration that the marriage is void, unless:

(1) as the result of a subsequent marriage, the person is married to the decedent at the time of death; and

(2) the subsequent marriage is not declared void under Subchapter C.

Derived from Probate Code § 69(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Effect of Dissolution of Marriage on Certain Nontestamentary Transfers

Statutes in Context
Chapter 123, Subchapter B

The predecessor to Chapter 123, Subchapter B, was 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 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.

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§ 123.051. Definitions

In this subchapter:

(1) "Disposition or appointment of property" includes a transfer of property to or a provision of another benefit to a beneficiary under a trust instrument.

(2) "Divorced individual" means an individual whose marriage has been dissolved 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 that is contained in a trust instrument executed by the individual before the dissolution of the individual's marriage to the spouse and 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.

Derived from Probate Code § 471.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (2) amended by Acts 2011, 82nd Leg., ch. 1338, § 2.13, eff. Jan. 1, 2014. Subsec. (2-a) added by Acts 2011, 82nd Leg., ch. 1338, § 2.13, eff. Jan. 1, 2014.

§ 123.052. Revocation of Certain Nontestamentary Transfers; Treatment of Former Spouse as Beneficiary Under Certain Policies or Plans

(a) The dissolution of the marriage revokes a provision in a trust instrument that was executed by a divorced individual before the divorced individual's marriage was dissolved and that:

(1) is a revocable disposition or appointment of property made to the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual;

(2) confers a general or special power of appointment on the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; or

(3) nominates the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve:

(A) as a personal representative, trustee, conservator, agent, or guardian; or

(B) in another fiduciary or representative capacity.

(b) Subsection (a) does not apply if one of the following provides otherwise:

(1) a court order;

(2) the express terms of a trust instrument executed by the divorced individual before the individual's marriage was dissolved; or

(3) an express provision of a contract relating to the division of the marital estate entered into between the divorced individual and the individual's former spouse before, during, or after the marriage.

(c) Sections 9.301 and 9.302, Family Code, govern the designation of a former spouse as a beneficiary of certain life insurance policies or as a beneficiary under certain retirement benefit plans or other financial plans.

Derived from Probate Code § 472(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2011, 82nd Leg., ch. 1338, § 2.14, eff. Jan. 1, 2014.

§ 123.053. Effect of Revocation

(a) An interest granted in a provision of a trust instrument that is revoked under Section 123.052(a)(1) or (2) 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.

(b) An interest granted in a provision of a trust instrument that is revoked under Section 123.052(a)(3) 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.

Derived from Probate Code § 472(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.15, eff. Jan. 1, 2014.

§ 123.054. Liability of Certain Purchasers or Recipients of Certain Payments, Benefits, or Property

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 the 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 subchapter to return the payment, benefit, or property; and

(2) is not liable under this subchapter for the amount of the payment or the value of the property or benefit.

Derived from Probate Code § 473(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.16, eff. Jan. 1, 2014.

§ 123.055. Liability of Former Spouse for Certain Payments, Benefits, or Property

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 Sections 123.052(a) and (b):

(1) shall return the payment, benefit, or property to the person who is entitled to the payment, benefit, or property under this subchapter; or

(2) is personally liable to the person described by Subdivision (1) for the amount of the payment or the value of the benefit or property received, as applicable.

Derived from Probate Code § 473(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.17, eff. Jan. 1, 2014.

Subchapter C. Certain Marriages Voidable After Death

Statutes in Context
Chapter 123, Subchapter C

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.

§ 123.101. Proceeding to Void Marriage Based on Mental Capacity Pending at Time of Death

(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 the ward's or proposed ward's death, the court may make the determination and declare the marriage void after the decedent's death.

(b) In making a determination described by Subsection (a), the court shall apply the standards for an annulment prescribed by Section 6.108(a), Family Code.

Derived from Probate Code § 47A(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 123.102. Application to Void Marriage After Death

(a) Subject to Subsection (c), if a proceeding described by Section 123.101(a) 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:

(1) on the date of the decedent's death, the decedent was married; and

(2) that marriage commenced not earlier than three years before the date of the decedent's death.

(b) The notice applicable to a proceeding for a declaratory judgment under Chapter 37, Civil Practice and Remedies Code, applies to a proceeding under Subsection (a).

(c) An application authorized by Subsection (a) may not be filed after the first anniversary of the date of the decedent's death.

Derived from Probate Code §§ 47A(b), (c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 123.103. Action on Application to Void Marriage After Death

(a) Except as provided by Subsection (b), in a proceeding brought under Section 123.102, 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.

(b) A court that makes a finding described by Subsection (a) 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.

Derived from Probate Code §§ 47A(d), (e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 123.104. Effect of Voided Marriage

If the court declares a decedent's marriage void in a proceeding described by Section 123.101(a) or brought under Section 123.102, the other party to the marriage is not considered the decedent's surviving spouse for purposes of any law of this state.

Derived from Probate Code § 47A(f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 124. Valuation and Taxation of Estate Property

Subchapter A. Apportionment of Taxes

§ 124.001. Definitions
§ 124.002. References to Internal Revenue Code
§ 124.003. Apportionment Directed by Federal Law
§ 124.004. Effect of Disclaimers
§ 124.005. General Apportionment of Estate Tax; Exceptions
§ 124.006. Effect of Tax Deductions, Exemptions, or Credits
§ 124.007. Exclusion of Certain Property From Apportionment
§ 124.008. Exclusion of Certain Temporary Interests From Apportionment
§ 124.009. Qualified Real Property
§ 124.010. Effect of Extension or Deficiency in Payment of Estate Taxes; Liability of Representative
§ 124.011. Apportionment of Interest and Penalties
§ 124.012. Apportionment of Representative's Expenses
§ 124.013. Withholding of Estate Tax Share by Representative
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§ 124.015. Recovery of Unpaid Estate Tax; Reimbursement
§ 124.016. Time to Initiate Actions to Recover Unpaid Estate Tax
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Subchapter B. Satisfaction of Certain Pecuniary Gifts

§ 124.051. Valuation of Property Distributed in Kind in Satisfaction of Pecuniary Gift
§ 124.052. Satisfaction of Marital Deduction Pecuniary Gifts With Assets in Kind

Chapter 124. Valuation and Taxation of Estate Property

Subchapter A. Apportionment of Taxes

Statutes in Context
Chapter 124

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 Chapter 124, 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. Chapter 124 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.

Chapter 124 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).

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§ 124.001. Definitions

In this subchapter:

(1) "Court" means:

(A) a court in which proceedings for administration of an estate are pending or have been completed; or

(B) if no proceedings are pending or have been completed, a court in which venue lies for the administration of an estate.

(2) "Estate" means the gross estate of a decedent as determined for the purpose of estate taxes.

(3) "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 and imposed by federal, state, local, or foreign law, including the federal estate tax and the inheritance tax imposed by Chapter 211, Tax Code, and including interest and penalties imposed in addition to those taxes. The term does not include a tax imposed under Section 2701(d)(1)(A), Internal Revenue Code of 1986 (26 U.S.C. Section 2701(d)).

(4) "Person" includes a trust, natural person, partnership, association, joint stock company, corporation, government, political subdivision, or governmental agency.

(5) "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, property included in the decedent's estate for purposes of the estate tax. The term does not include a creditor of the decedent or of the decedent's estate.

(6) "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.

Derived from Probate Code §§ 322A(a), (s).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 124.002. References to Internal Revenue Code

A reference in this subchapter to a section of the Internal Revenue Code of 1986 refers to that section as it exists at the time in question. The reference also includes a corresponding section of a subsequent Internal Revenue Code and, if the referenced section is renumbered, the section as renumbered.

Derived from Probate Code § 322A(x).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 124.003. Apportionment Directed by Federal Law

If federal law directs the apportionment of the federal estate tax, a similar state tax shall be apportioned in the same manner.

Derived from Probate Code § 322A(l).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 124.004. Effect of Disclaimers

This subchapter shall be applied after giving effect to any disclaimers made in accordance with Subchapters A, B, C, and D, Chapter 122.

Derived from Probate Code § 322A(p).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 124.005. General Apportionment of Estate Tax; Exceptions

(a) A representative shall charge each person interested in the estate a portion of the total estate tax assessed against the estate. The portion charged to each person 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 subsection, the representative shall disregard a portion of the tax that is:

(1) apportioned under the law imposing the tax;

(2) otherwise apportioned by federal law; or

(3) apportioned as otherwise provided by this subchapter.

(b) Subsection (a) 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.

(c) If directions under Subsection (b) for the apportionment of an estate tax are provided in two or more instruments executed by the same person and the directions in those instruments conflict, the instrument

disposing of or creating an interest in the property to be taxed controls. If directions for the apportionment of estate tax are provided in two or more instruments executed by different persons and the directions in those instruments conflict, the direction of the person in whose estate the property is included controls.

(d) Subsections (b) and (c) do not:

(1) 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; or

(2) apply to the extent federal law directs a different manner of apportionment.

Derived from Probate Code § 322A(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 124.006. Effect of Tax Deductions, Exemptions, or Credits

(a) A deduction, exemption, or credit allowed by law in connection with the estate tax inures to a person interested in the estate as provided by this section.

(b) 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.

(c) 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 the decedent's estate inure proportionally to all persons interested in the estate who are liable for a share of the estate tax.

(d) A credit for inheritance, succession, or estate taxes, or for similar taxes 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 proportionately reduces those taxes.

Derived from Probate Code §§ 322A(c), (d), (e), (f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 124.007. Exclusion of Certain Property from Apportionment

(a) 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:

(1) the property is not included in the computation provided for by Section 124.005; and

(2) no apportionment is made against the property.

(b) The exclusion provided by this section 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, for a state death tax on a transfer for a public, charitable, or religious use.

Derived from Probate Code § 322A(g).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 124.008. Exclusion of Certain Temporary Interests from Apportionment

(a) Except as provided by Section 124.009(c), the following temporary interests are not subject to apportionment:

(1) an interest in income;

(2) an estate for years or for life; or

(3) another temporary interest in any property or fund.

(b) The estate tax apportionable to a temporary interest described by Subsection (a) 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.

Derived from Probate Code § 322A(h).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 124.009. Qualified Real Property

(a) In this section, "qualified real property" has the meaning assigned by Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 2032A).

(b) If an election is made under Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 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 representative shall apply the amount of the reduction of the estate tax resulting from the election 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 of that reduction is greater than the amount of the taxes allocated based on the value of the qualified real property, the representative shall:

(1) apply the excess amount to the portion of the taxes allocated for all other property; and

(2) apportion the amount described by Subdivision (1) under Section 124.005(a).

(c) If additional federal estate tax is imposed under Section 2032A(c), Internal Revenue Code of 1986 (26 U.S.C. Section 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 that 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.

Derived from Probate Code § 322A(i).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 124.010. Effect of Extension or Deficiency in Payment of Estate Taxes; Liability of Representative

(a) If the date for the payment of any portion of an estate tax is extended:

(1) the amount of the extended tax shall be apportioned to the persons who receive the specific property that gives rise to the extension; and

(2) those persons are entitled to the benefits and shall bear the burdens of the extension.

(b) Except as provided by Subsection (c), 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.

(c) A representative shall be charged with the amount of any penalty or interest that is assessed due to delay caused by the representative's negligence.

Derived from Probate Code §§ 322A(k), (m).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 124.011. Apportionment of Interest and Penalties

(a) Interest and penalties assessed against an estate by a taxing authority shall be apportioned among and charged to the persons interested in the estate in the manner provided by Section 124.005 unless, on application by any person interested in the estate, the court determines that:

(1) the proposed apportionment is not equitable; or

(2) the assessment of interest or penalties was caused by a breach of fiduciary duty of a representative.

(b) If the apportionment is not equitable, the court may apportion interest and penalties in an equitable manner.

(c) 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 the representative's conduct.

Derived from Probate Code § 322A(q).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 124.012. Apportionment of Representative's Expenses

(a) 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 Section 124.005 unless, on application by any person interested in the estate, the court determines that the proposed apportionment is not equitable.

(b) If the court determines that the proposed apportionment is not equitable, the court may apportion the expenses in an equitable manner.

Derived from Probate Code § 322A(r).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 124.013. Withholding of Estate Tax Share by Representative

A representative who has possession of any estate property 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.

Derived from Probate Code § 322A(t).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 124.014. Recovery of Estate Tax Share Not Withheld

(a) If property includable in an estate does not come into possession of a representative obligated to pay the estate tax, the representative shall:

(1) recover from each person interested in the estate the amount of the estate tax apportioned to the person under this subchapter; or

(2) assign to persons affected by the tax obligation the representative's right of recovery.

(b) The obligation to recover a tax under Subsection (a) 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.

Derived from Probate Code § 322A(n).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 124.015. Recovery of Unpaid Estate Tax; Reimbursement

(a) 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 subchapter unless the representative determines in good faith that an attempt to recover the amount would be economically impractical.

(b) A representative who cannot collect from a person interested in the estate an unpaid amount of estate tax apportioned to that person shall apportion the amount not collected in the manner provided by Section 124.005(a) among the other persons interested in the estate who are subject to apportionment.

(c) A person who is charged with or who pays an apportioned amount under Subsection (b) 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 Subsection (b) 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.

(d) A representative who has a right of reimbursement may petition a court to determine the right of reimbursement.

Derived from Probate Code §§ 322A(o), (u).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 124.016. Time to Initiate Actions to Recover Unpaid Estate Tax

(a) A representative required to recover unpaid amounts of estate tax apportioned to persons interested in the estate under this subchapter may not be required to initiate the necessary actions until the expiration of the 90th day after the date of the final determination by the Internal Revenue Service of the amount of the estate tax.

(b) A representative who initiates an action under this subchapter within a reasonable time after the expiration of the 90-day period is not subject to any liability or surcharge because a portion of the estate tax apportioned to a person interested in the estate was collectible during a period after the death of the decedent but thereafter became uncollectible.

Derived from Probate Code § 322A(v).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 124.017. Tax or Death Duty Payable to Another State

(a) A representative acting in another state may initiate an action in a court of this state to recover from a person interested in the estate who is domiciled in this state or owns property in this state subject to attachment or execution, a proportionate amount of:

(1) the federal estate tax;

(2) an estate tax payable to another state; or

(3) a death duty due by a decedent's estate to another state.

(b) 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.

(c) This section applies only if the state in which the determination of apportionment was made provides a substantially similar remedy.

Derived from Probate Code § 322A(w).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 124.018. Payment of Expenses and Attorney's Fees

The court shall award necessary expenses, including reasonable attorney's fees, to 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 Section 124.005.

Derived from Probate Code § 322A(y).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Satisfaction of Certain Pecuniary Gifts

Statutes in Context
Chapter 124, Subchapter B

Chapter 124, Subchapter B, 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.

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§ 124.051. Valuation of Property Distributed in Kind in Satisfaction of Pecuniary Gift

Unless the governing instrument provides otherwise, if a will or trust contains a pecuniary devise or transfer that may be satisfied by distributing assets in kind and the executor, administrator, or trustee determines to fund the devise or transfer by distributing assets in kind, the property shall be valued, for the purpose of funding the devise or transfer, at the value of the property on the date or dates of distribution.

Derived from Probate Code § 378A(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 124.052. Satisfaction of Marital Deduction Pecuniary Gifts with Assets in Kind

(a) This section applies to an executor, administrator, or trustee authorized under the will or trust of a decedent to satisfy a pecuniary 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.

(b) Unless the governing instrument provides otherwise, an executor, administrator, or trustee, in order to implement a devise or transfer described by

Subsection (a), shall distribute assets, including cash, fairly representative of appreciation or depreciation in the value of all property available for distribution in satisfaction of the devise or transfer.

Derived from Probate Code § 378A(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

SUBTITLE D. PROCEEDINGS BEFORE ADMINISTRATION OF ESTATE

Chapter 151. Examination of Documents and Safe Deposit Boxes

§ 151.001. Examination of Documents or Safe Deposit Box With Court Order
§ 151.002. Delivery of Document With Court Order
§ 151.003. Examination of Document or Safe Deposit Box Without Court Order
§ 151.004. Delivery of Document Without Court Order
§ 151.005. Restriction on Removal of Contents of Safe Deposit Box

Chapter 151. Examination of Documents and Safe Deposit Boxes

Statutes in Context
Chapter 151

A testator often protects the will and other important documents by placing them in a safe deposit box. Chapter 151 provides guidelines for certain parties, such as a spouse, parent, adult descendent, 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.

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

(a) A judge of a court that has 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) a will of the decedent;

(B) a deed to a burial plot in which the decedent is to be buried; or

(C) 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 that person is a corporation, an officer of the corporation or an agent of an officer.

Derived from Probate Code § 36B.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 151.002. Delivery of Document with Court Order

(a) A judge who orders an examination of a decedent's documents or safe deposit box under Section 151.001 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 a document described by Section 151.001(a)(2).

(b) The court representative shall deliver:

(1) a will to the clerk of a court that:

(A) has probate jurisdiction; and

(B) is located in the same county as the court of the judge who ordered the examination under Section 151.001;

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

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

(c) A court clerk to whom a will is delivered under Subsection (b) shall issue a receipt for the will to the court representative.

Derived from Probate Code § 36C.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 151.003. 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 examination of the document or the contents of the safe deposit box by:

(1) the decedent's spouse;

(2) a parent of the decedent;

(3) a descendant of the decedent who is at least 18 years of age; 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) An examination under Subsection (a) 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.

Derived from Probate Code § 36D.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 151.004. Delivery of Document Without Court Order

(a) Subject to Subsection (c), a person who permits an examination of a decedent's document or safe deposit box under Section 151.003 may deliver:

(1) a document appearing to be the decedent's will to:

(A) the clerk of a court that:

(i) has probate jurisdiction; and

(ii) is located in the county in which the decedent resided; or

(B) a 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 conducting 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 delivered by the person under Subsection (a)(1) until the fourth anniversary of the date of delivery.

(c) A person may not deliver a document under Subsection (a) unless the person examining the document:

(1) requests delivery of the document; and

(2) issues a receipt for the document to the person delivering the document.

Derived from Probate Code § 36E.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 151.005. 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 151.002, Section 151.004, or another law.

Derived from Probate Code § 36F.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 152. Emergency Intervention

Subchapter A. Emergency Intervention Application

§ 152.001. Application Authorized

§ 152.002. Contents of Application

§ 152.003. Additional Contents of Application: Instructions Regarding Decedent's Funeral and Remains

§ 152.004. Time and Place of Filing

Subchapter B. Order for Emergency Intervention

§ 152.051. Issuance of Order Regarding Funeral and Burial Expenses

§ 152.052. Issuance of Order Regarding Access to Certain Personal Property

§ 152.053. Duration of Order

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§ 152.055. Liability of Certain Persons in Connection With Order

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§ 152.101. Application Authorized

§ 152.102. Hearing; Issuance of Order

Chapter 152. Emergency Intervention

Subchapter A. Emergency Intervention Application

Statutes in Context
Chapter 152

Chapter 152 provides a method for a person qualified to serve as an administrator under § 304.001 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.

§ 152.001. Application Authorized

(a) Subject to Subsection (b), a person qualified to serve as an administrator under Section 304.001 may file an application requesting emergency intervention by a court exercising probate jurisdiction to provide for:

(1) the payment of the decedent's funeral and burial expenses; or

(2) the protection and storage of personal property owned by the decedent that, on the date of the decedent's death, was located in accommodations rented by the decedent.

(b) An applicant may file an application under this section only if:

(1) an application or affidavit has not been filed and is not pending under Section [~~145,~~] 256.052, 256.054, or 301.052 or Chapter 205 or 401; and

(2) the applicant needs to:

(A) obtain funds for the payment of the decedent's funeral and burial expenses; or

(B) gain access to accommodations rented by the decedent that contain the decedent's personal property and the applicant has been denied access to those accommodations.

Derived from Probate Code §§ 108, 109, & 110.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsection (b) amended by Acts 2013, 83rd Leg., ch. 161, § 6.010, eff. Jan. 1, 2014.

§ 152.002. Contents of Application

(a) An emergency intervention application must be sworn and must contain:

(1) the applicant's name, address, and interest;

(2) facts showing an immediate necessity for the issuance of an emergency intervention order under Subchapter B;

(3) the decedent's date of death, place of death, and residential address on the date of death;

(4) the name and address of the funeral home holding the decedent's remains; and

(5) the names of any known or ascertainable heirs and devisees of the decedent.

(b) In addition to the information required under Subsection (a), if emergency intervention is requested to obtain funds needed for the payment of the decedent's funeral and burial expenses, the application must also contain:

(1) the reason any known or ascertainable heirs and devisees of the decedent:

(A) cannot be contacted; or

(B) have refused to assist in the decedent's burial;

(2) a description of necessary funeral and burial procedures and a statement from the funeral home that contains a detailed and itemized description of the cost of those procedures; and

(3) the name and address of an individual, entity, or financial institution, including an employer, in possession of any funds of or due to the decedent, and related account numbers and balances, if known by the applicant.

(c) In addition to the information required under Subsection (a), if emergency intervention is requested to gain access to accommodations rented by a decedent that at the time of the decedent's death contain the decedent's personal property, the application must also contain:

(1) the reason any known or ascertainable heirs and devisees of the decedent:

(A) cannot be contacted; or

(B) have refused to assist in the protection of the decedent's personal property;

(2) the type and location of the decedent's personal property and the name of the person in possession of the property; and

(3) the name and address of the owner or manager of the accommodations and a statement regarding whether access to the accommodations is necessary.

Derived from Probate Code §§ 111(a), 112.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 152.003. Additional Contents of Application: Instructions Regarding Decedent's Funeral and Remains

(a) In addition to the information required under Section 152.002, if emergency intervention is requested to obtain funds needed for the payment of a decedent's funeral and burial expenses, the application must also state whether there are any written instructions from the decedent relating to the type and manner of funeral or burial preferred by the decedent. The applicant shall:

(1) attach the instructions, if available, to the application; and

(2) fully comply with the instructions.

(b) 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 remains.

Derived from Probate Code § 111(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 152.004. Time and Place of Filing

An emergency intervention application must be filed:

(1) with the court clerk in the county in which:

(A) the decedent was domiciled; or

(B) the accommodations rented by the decedent that contain the decedent's personal property are located; and

(2) 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.

Derived from Probate Code § 108.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Order for Emergency Intervention

§ 152.051. Issuance of Order Regarding Funeral and Burial Expenses

If on review of an application filed under Section 152.001 the court determines that emergency intervention is necessary to obtain funds needed for the

payment of a decedent's funeral and burial expenses, the court may order funds of the decedent that are being held by an individual, an employer, or a financial institution to be paid directly to a funeral home only for:

(1) reasonable and necessary attorney's fees for the attorney who obtained the order;

(2) court costs for obtaining the order; and

(3) 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.

Derived from Probate Code § 113(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 152.052. Issuance of Order Regarding Access to Certain Personal Property

If on review of an application filed under Section 152.001 the court determines that emergency intervention is necessary to gain access to accommodations rented by the decedent that, at the time of the decedent's death, contain the decedent's personal property, the court may order one or more of the following:

(1) that the owner or agent of the accommodations shall grant the applicant access to the accommodations at a reasonable time and in the presence of the owner or agent;

(2) that the applicant and owner or agent of the accommodations shall jointly prepare and file with the court a list that generally describes the decedent's property found at the premises;

(3) that the applicant or the owner or agent of the accommodations may remove and store the decedent's property at another location until claimed by the decedent's heirs;

(4) that 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) that funds of the decedent held by an individual, an employer, or a financial institution be paid to the applicant for reasonable and necessary attorney's fees and court costs for obtaining the order.

Derived from Probate Code § 113(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 152.053. Duration of Order

The authority of an applicant under an emergency intervention order expires on the earlier of:

(1) the 90th day after the date the order is issued; or

(2) the date a personal representative of the decedent's estate qualifies.

Derived from Probate Code § 114(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 152.054. Certified Copies of Order

The court clerk may issue certified copies of an emergency intervention order on request of the applicant only until the earlier of:

(1) the 90th day after the date the order is signed; or

(2) the date a personal representative of the decedent's estate qualifies.

Derived from Probate Code § 113(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 152.055. Liability of Certain Persons in Connection with Order

(a) A person who is provided a certified copy of an emergency intervention order within the period prescribed by Section 152.054 is not personally liable for an action taken by the person in accordance with and in reliance on the order.

(b) If a personal representative has not been appointed when an emergency intervention order issued under Section 152.052 expires, a person 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 Code, or Section 7.209 or 7.210, Business & Commerce Code.

Derived from Probate Code §§ 113(d), 114(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Limitation on Right of Decedent's Surviving Spouse to Control Decedent's Burial or Cremation

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Statutes in Context
Chapter 152

Chapter 152 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.

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§ 152.101. Application Authorized

(a) The executor of a decedent's will or the decedent's next of kin may file an application for an order limiting the right of the decedent's surviving spouse to control the decedent's burial or cremation.

(b) For purposes of Subsection (a), the decedent's next of kin:

(1) is determined in accordance with order of descent, with the person nearest in order of descent first, and so on; and

(2) includes the decedent's descendants who legally adopted the decedent or who have been legally adopted by the decedent.

(c) An application under this section must be under oath and must establish:

(1) whether the decedent died intestate or testate;

(2) that the surviving spouse is alleged to be a principal or accomplice in a wilful act that resulted in the decedent's death; and

(3) that good cause exists to limit the surviving spouse's right to control the decedent's burial or cremation.

Derived from Probate Code §§ 115(a), (b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 152.102. Hearing; Issuance of Order

(a) If the court finds that there is good cause to believe that the decedent's surviving spouse is the principal or an accomplice in a wilful act that resulted in the decedent's death, the court may, after notice and a hearing, limit the surviving spouse's right to control the decedent's burial or cremation.

(b) Subsection (a) applies:

(1) without regard to whether the decedent died intestate or testate; [~~and~~]

(2) regardless of whether the surviving spouse is designated by the decedent's will as the executor of the decedent's estate; and

(3) subject to the prohibition described by Section 711.002(l), Health and Safety Code.

(c) If the court limits the surviving spouse's right of control as provided by Subsection (a), the court shall designate and authorize a person to make burial or cremation arrangements.

Derived from Probate Code § 115(c), (d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsection (b) amended by Acts 2013, 83rd Leg., ch. 161, § 6.011, eff. Jan. 1, 2014.

SUBTITLE E. INTESTATE SUCCESSION

Chapter 201. Descent and Distribution

Subchapter A. Intestate Succession

§ 201.001. Estate of an Intestate Not Leaving Spouse
§ 201.002. Separate Estate of an Intestate
§ 201.003. Community Estate of an Intestate

Subchapter B. Matters Affecting Inheritance

§ 201.051. Maternal Inheritance
§ 201.052. Paternal Inheritance
§ 201.053. Effect of Reliance on Affidavit of Heirship
§ 201.054. Adopted Child
§ 201.055. Issue of Void or Voidable Marriage
§ 201.056. Persons Not in Being
§ 201.057. Collateral Kindred of Whole and Half Blood
§ 201.058. Convicted Persons
§ 201.059. Person Who Dies by Casualty
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§ 201.061. Estate of Person Who Dies by Suicide
§ 201.062. Treatment of Certain Parent-Child Relationships

Subchapter C. Distribution to Heirs

§ 201.101. Determination of Per Capita With Representation Distribution
§ 201.102. No Distinction Based on Property's Source
§ 201.103. Treatment of Intestate's Estate

Subchapter D. Advancements

§ 201.151. Determination of Advancement; Date of Valuation
§ 201.152. Survival of Recipient Required

Chapter 201. Descent and Distribution

Statutes in Context
Chapter 201

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 201 of the Estates 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.

Subchapter A. Intestate Succession

Statutes in Context
Chapter 201, Subchapter A

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 from §§ 201.001–201.002 (distribution of property of a single decedent and the separate property of a married decedent), § 201.003 (distribution of the community property of a married decedent), and § 201.101 (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 Estates Code § 201.001. 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 Estates Code § 201.003. 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 has retained a vestige of the common law distinction between the descent of real property and the distribution of personal property in § 201.002.

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 owing 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 Estates Code § 201.101.

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.

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§ 201.001. Estate of an Intestate Not Leaving Spouse

(a) If a person who dies intestate does not leave a spouse, the estate to which the person had title descends and passes in parcenary to the person's kindred in the order provided by this section.

(b) The person's estate descends and passes to the person's children and the children's descendants.

(c) If no child or child's descendant survives the person, the person's estate descends and passes in equal portions to the person's father and mother.

(d) If only the person's father or mother survives the person, the person's estate shall:

(1) be divided into two equal portions, with:

(A) one portion passing to the surviving parent; and

(B) one portion passing to the person's siblings and the siblings' descendants; or

(2) be inherited entirely by the surviving parent if there is no sibling of the person or siblings' descendants.

(e) If neither the person's father nor mother survives the person, the person's entire estate passes to the person's siblings and the siblings' descendants.

(f) If none of the kindred described by Subsections (b)-(e) survive the person, the person's estate shall be divided into two moieties, with:

(1) one moiety passing to the person's paternal kindred as provided by Subsection (g); and

(2) one moiety passing to the person's maternal kindred as provided by Subsection (h).

(g) The moiety passing to the person's paternal kindred passes in the following order:

(1) if both paternal grandparents survive the person, equal portions pass to the person's paternal grandfather and grandmother;

(2) if only the person's paternal grandfather or grandmother survives the person, the person's estate shall:

(A) be divided into two equal portions, with:

(i) one portion passing to the surviving grandparent; and

(ii) one portion passing to the descendants of the deceased grandparent; or

(B) pass entirely to the surviving grandparent if no descendant of the deceased grandparent survives the person; and

(3) if neither the person's paternal grandfather nor grandmother survives the person, the moiety passing to the decedent's paternal kindred passes to the descendants of the person's paternal grandfather and grandmother, and so on without end, passing in like manner to the nearest lineal ancestors and their descendants.

(h) The moiety passing to the person's maternal kindred passes in the same order and manner as the other moiety passes to the decedent's paternal kindred under Subsection (g).

Derived from Probate Code § 38(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 201.002. Separate Estate of an Intestate

(a) If a person who dies intestate leaves a surviving spouse, the estate, other than a community estate, to which the person had title descends and passes as provided by this section.

(b) If the person has one or more children or a descendant of a child:

(1) the surviving spouse takes one-third of the personal estate;

(2) two-thirds of the personal estate descends to the person's child or children, and the descendants of a child or children; and

(3) the surviving spouse is entitled to a life estate in one-third of the person's land, with the remainder descending to the person's child or children and the descendants of a child or children.

(c) Except as provided by Subsection (d), if the person has no child and no descendant of a child:

(1) the surviving spouse is entitled to all of the personal estate;

(2) the surviving spouse is entitled to one-half of the person's land without a remainder to any person; and

(3) one-half of the person's land passes and is inherited according to the rules of descent and distribution.

(d) If the person described by Subsection (c) does not leave a surviving parent or one or more surviving siblings, or their descendants, the surviving spouse is entitled to the entire estate.

Derived from Probate Code § 38(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 201.003

Section 201.003 provides the intestate distribution scheme for community property. See the *Statutes in Context* to Chapter 201, Subchapter A 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.

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§ 201.003. Community Estate of an Intestate

(a) If a person who dies intestate leaves a surviving spouse, the community estate of the deceased spouse passes as provided by this section.

(b) The community 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 of the surviving children and descendants of the deceased spouse are also children or descendants of the surviving spouse.

(c) If the deceased spouse is survived by a child or other descendant who is not also 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 deceased spouse's children or descendants. The descendants inherit only the portion of that estate to which they would be entitled under Section 201.101. In every case, the community estate passes charged with the debts against the community estate.

Derived from Probate Code § 45.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Matters Affecting Inheritance

Statutes in Context
§§ 201.051–201.052

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.

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§ 201.051. Maternal Inheritance

For purposes of inheritance, a child is the child of the child's biological or adopted mother, and the child and the child's issue shall inherit from the child's mother and the child's maternal kindred, both descendants, ascendants, and collateral kindred in all degrees, and they may inherit from the child and the child's issue. However, if a child has intended parents, as defined by Section 160.102, Family Code, under a gestational agreement validated under Subchapter I, Chapter 160, Family Code, the child is the child of the intended mother and not the biological mother or gestational mother unless the biological mother is also the intended mother.

Derived from Probate Code § 42(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 11, eff. Jan. 1, 2014.

§ 201.052. Paternal Inheritance

(a) For purposes of inheritance, a child is the child of the child's biological father if:

(1) the child is born under circumstances described by Section 160.201, Family Code;

(2) the child is adjudicated to be the child of the father by court decree under Chapter 160, Family Code;

(3) the child was adopted by the child's father; or

(4) the father executed an acknowledgment of paternity under Subchapter D, Chapter 160, Family Code, or a similar statement properly executed in another jurisdiction.

(a-1) Notwithstanding Subsection (a), if a child has intended parents, as defined by Section 160.102, Family Code, under a gestational agreement validated under Subchapter I, Chapter 160, Family Code, the child is the child of the intended father and not the biological father unless the biological father is also the intended father.

(b) A child described by Subsection (a) or (a-1) and the child's issue shall inherit from the child's father and the child's paternal kindred, both descendants, ascendants, and collateral kindred in all degrees, and they may inherit from the child and the child's issue.

(c) A person may petition the probate court for a determination of right of inheritance from a decedent if the person:

(1) claims to be a biological child of the decedent and is not otherwise presumed to be a child of the decedent; or

(2) claims inheritance through a biological child of the decedent who is not otherwise presumed to be a child of the decedent.

(d) If under Subsection (c) the court finds by clear and convincing evidence that the purported father was the biological father of the child:

(1) the child is treated as any other child of the decedent for purposes of inheritance; and

(2) the child and the child's issue may inherit from the child's paternal kindred, both descendants, ascendants, and collateral kindred in all degrees, and they may inherit from the child and the child's issue.

(e) This section does not permit inheritance by a purported father of a child, recognized or not, if the purported father's parental rights have been terminated.

Derived from Probate Code § 42(b)(1).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsections (a-1) added and (b) amended by Acts 2013, 83rd Leg., ch. 1136, § 12, eff. Jan. 1, 2014.

§ 201.053. Effect of Reliance on Affidavit of Heirship

(a) A person who purchases for valuable consideration any interest in property of the heirs of a decedent acquires good title to the interest that the person would have received, as purchaser, in the absence of a claim of the child described by Subdivision (1), if the person:

(1) 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:

(A) is not a presumed child of the decedent; and

(B) has not under a final court decree or judgment been found to be entitled to treatment under Section 201.052 as a child of the decedent; and

(2) is without knowledge of the claim of the child described by Subdivision (1).

(b) Subsection (a) does not affect any liability of the heirs for the proceeds of a sale described by Subsection (a) to the child who was not included in the affidavit of heirship.

Derived from Probate Code § 42(b)(2).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 201.054

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 201.054 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).

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§ 201.054. Adopted Child

(a) For purposes of inheritance under the laws of descent and distribution, an adopted child is regarded as the child of the adoptive parent or parents, and the adopted child and the adopted child's descendants inherit from and through the adoptive parent or parents and their kindred as if the adopted child were the natural child of the adoptive parent or parents. The adoptive parent or parents and their kindred inherit from and through the adopted child as if the adopted child were the natural child of the adoptive parent or parents.

(b) The natural parent or parents of an adopted child and the kindred of the natural parent or parents may not inherit from or through the adopted child, but the adopted child inherits from and through the child's natural parent or parents, except as provided by Section 162.507(c), Family Code.

(c) This section does not prevent an adoptive parent from disposing of the parent's property by will according to law.

(d) This section does not diminish the rights of an adopted child under the laws of descent and distribution or otherwise that the adopted child acquired by virtue of inclusion in the definition of "child" under Section 22.004.

Derived from Probate Code § 40.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 201.055. Issue of Void or Voidable Marriage

The issue of a marriage declared void or voided by annulment shall be treated in the same manner as the issue of a valid marriage.

Derived from Probate Code § 42(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 201.056

Posthumous heirs are heirs who are born after the intestate dies. Section 201.056 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.

§ 201.056. Persons Not in Being

No right of inheritance accrues to any person other than to a child or lineal descendant of an intestate, unless the person is in being and capable in law to take as an heir at the time of the intestate's death.

Derived from Probate Code § 41(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 201.057

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 § 201.057 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).

§ 201.057. Collateral Kindred of Whole and Half Blood

If the inheritance from an intestate passes to the collateral kindred of the intestate and part of the collateral kindred are of whole blood and the other part are of half blood of the intestate, each of the collateral kindred who is of half blood inherits only half as much as that inherited by each of the collateral kindred who is of whole blood. If all of the collateral kindred are of half blood of the intestate, each of the collateral kindred inherits a whole portion.

Derived from Probate Code § 41(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 201.058

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 § 201.058 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 § 201.058 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 201.058, 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 dism'd).

§ 201.058. Convicted Persons

(a) No conviction shall work corruption of blood or forfeiture of estate except as provided by Subsection (b).

(b) If a beneficiary of a life insurance policy or contract is convicted and sentenced as a principal or accomplice in wilfully bringing about the death of the insured, the proceeds of the insurance policy or contract shall be paid in the manner provided by the Insurance Code.

Derived from Probate Code § 41(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 201.059. Person Who Dies by Casualty

Death by casualty does not result in forfeiture of estate.

Derived from Probate Code § 41(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 201.060

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 § 201.060, noncitizens are treated no differently than citizens when it comes to inheritance rights. Note, however, that during the World Wars, the United States government restricted the inheritance rights of citizens of enemy nations.

§ 201.060. Alienage

A person is not disqualified to take as an heir because the person, or another person through whom the person claims, is or has been an alien.

Derived from Probate Code § 41(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 201.061

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 201.061 restates the Constitutional provision.

§ 201.061. Estate of Person Who Dies by Suicide

The estate of a person who commits suicide descends or vests as if the person died a natural death.

Derived from Probate Code § 41(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 201.062

The 2007 Legislature added the Probate Code predecessor to § 201.062 which allows 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 [Estates] Code section [201.062(a)(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.

§ 201.062. Treatment of Certain Parent-Child Relationships

(a) A probate court may enter an order declaring 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:

(A) abandoned the child's mother beginning at a time during her pregnancy with the child and continuing through the birth;

(B) failed to provide adequate support or medical care for the mother during the period of abandonment before the child's birth; and

(C) 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 (indecency 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).

(b) On a determination under Subsection (a) that the parent of a child may not inherit from or through the child, 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.

Derived from Probate Code §§ 41(e), (f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Distribution to Heirs

Statutes in Context
§ 201.101

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 Chapter 201, Subchapter A.

§ 201.101. Determination of Per Capita with Representation Distribution

(a) The children, descendants, brothers, sisters, uncles, aunts, or other relatives of an intestate who stand in the first or same degree of relationship alone and come into the distribution of the intestate's estate take per capita, which means by persons.

(b) If some of the persons described by Subsection (a) are dead and some are living, each descendant of those persons who have died is entitled to a distribution of the intestate's estate. Each descendant inherits only that portion of the property to which the parent through whom the descendant inherits would be entitled if that parent were alive.

Derived from Probate Code § 43.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§§ 202.102–202.103

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.

Sections 201.102–201.103 provide 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.

§ 201.102. No Distinction Based on Property's Source

A distinction may not be made, in regulating the descent and distribution of an estate of a person dying intestate, between property derived by gift, devise, or descent from the intestate's father, and property derived by gift, devise, or descent from the intestate's mother.

Derived from Probate Code § 39.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 201.103. Treatment of Intestate's Estate

All of the estate to which an intestate had title at the time of death descends and vests in the intestate's heirs in the same manner as if the intestate had been the original purchaser.

Derived from Probate Code § 39.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Advancements

Statutes in Context
Chapter 201, Subchapter D

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 201.151 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 hotpotch 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 § 201.152, 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 §§ 255.101–255.102.

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§ 201.151. Determination of Advancement; Date of Valuation

(a) If a decedent dies intestate as to all or part of the decedent's estate, property that 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 the decedent's heir under a nontestamentary transfer under Subchapter B, Chapter 111, or Chapter 112 or 113, is an advancement against the heir's intestate share of the estate 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 acknowledgment otherwise indicates that the gift or nontestamentary transfer is to be considered in computing the division and distribution of the decedent's intestate estate.

(b) For purposes of Subsection (a), property that is advanced is valued as of the earlier of:

(1) the time that the heir came into possession or enjoyment of the property; or

(2) the time of the decedent's death.

Derived from Probate Code §§ 44(a), (b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 201.152. Survival of Recipient Required

If the recipient of property described by Section 201.151 does not survive the decedent, the property is not considered in computing the division and distribution of the decedent's intestate estate unless the decedent's contemporaneous writing provides otherwise.

Derived from Probate Code § 44(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

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Chapter 202. Determination of Heirship

Subchapter A. Authorization and Procedures for Commencement of Proceeding to Declare Heirship

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Statutes in Context
Chapter 202

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.

The analogous proceeding for a testate decedent is to probate the will as a muniment of title as discussed in §§ 257.051–257.153.

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§ 202.001. General Authorization for and Nature of Proceeding to Declare Heirship

In the manner provided by this chapter, a court may determine through a proceeding to declare heirship:

(1) the persons who are a decedent's heirs and only heirs; and

(2) the heirs' respective shares and interests under the laws of this state in the decedent's estate or, if applicable, in the trust.

Derived from Probate Code § 48(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (2) amended by Acts 2011, 82nd Leg., ch. 1338, § 2.18, eff. Jan. 1, 2014.

§ 202.002. Circumstances Under Which Proceeding to Declare Heirship Is Authorized

A court may conduct a proceeding to declare heirship when:

(1) a person dies intestate owning or entitled to property in this state and there has been no administration in this state of the person's estate;

(2) there has been a will probated in this state or elsewhere or an administration in this state of a decedent's estate, but:

(A) property in this state was omitted from the will or administration; or

(B) no final disposition of property in this state has been made in the administration; or

(3) it is necessary for the trustee of a trust holding assets for the benefit of a decedent to determine the heirs of the decedent.

Derived from Probate Code § 48(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (2) amended by Acts 2011, 82nd Leg., ch. 1338, § 2.19, eff. Jan. 1, 2014. Subsec. (3) added by Acts 2011, 82nd Leg., ch. 1338, § 2.19, eff. Jan. 1, 2014.

Statutes in Context
§ 202.0025

The 2013 Legislature added Estates Code § 202.0025 to make it clear that there is no statute of limitations with regard to a proceeding to declare heirship of a decedent. Although the provision is effective on January 1, 2014, the Legislature stated that this section is "intended to clarify current law" and that "an inference may not be made regarding the statute of limitations for a proceeding to declare heirship filed before the

effective date." See Acts 2013, 83rd Leg., ch. 1136, § 62(g).

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§ 202.0025. Action Brought After Decedent's Death

Notwithstanding Section 16.051, Civil Practice and Remedies Code, a proceeding to declare heirship of a decedent may be brought at any time after the decedent's death.

New.

Added by Acts 2013, 83rd Leg., ch. 1136, § 13, eff. Jan. 1, 2014.

§ 202.004. Persons Who May Commence Proceeding to Declare Heirship

A proceeding to declare heirship of a decedent may be commenced and maintained under a circumstance specified by Section 202.002 by:

(1) the personal representative of the decedent's estate;

(2) a person claiming to be a [~~secured~~] creditor or the owner of all or part of the decedent's estate;

(3) if the decedent was a ward with respect to whom a guardian of the estate had been appointed, the guardian of the estate, provided that the proceeding is commenced and maintained in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the decedent's death;

(4) a party seeking the appointment of an independent administrator under Section 401.003; or

(5) the trustee of a trust holding assets for the benefit of a decedent.

Derived from Probate Code § 49(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.20, eff. Jan. 1, 2014. Subsecs. (4) and (5) added by Acts 2011, 82nd Leg., ch. 1338, § 2.20, eff. Jan. 1, 2014.

§ 202.005. Application for Proceeding to Declare Heirship

A person authorized by Section 202.004 to commence a proceeding to declare heirship must file an application in a court specified by Section 33.004 to commence the proceeding. The application must state:

(1) the decedent's name and 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 decedent's estate or in the trust, as applicable;

(3) if the time or place of the decedent's death or the name or residence of an heir is not definitely known to the applicant, all the material facts and circumstances with respect to which the applicant has knowledge and information that might reasonably tend to show the time or place of the decedent's death or the name or residence of the heir;

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

(5) that each of the decedent's marriages has been listed with:

(A) the date of the marriage;

(B) the name of the spouse;

(C) the date and place of termination if the marriage was terminated; and

(D) other facts to show whether a spouse has had an interest in the decedent's property;

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

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

(8) an explanation for the omission from the application of any of the information required by this section.

Derived from Probate Code § 49(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.21, eff. Jan. 1, 2014.

§ 202.006. Request for Determination of Necessity for Administration

A person who files an application under Section 202.005 not later than the fourth anniversary of the date of the death of the decedent who is the subject of the application may request that the court determine whether there is a need for administration of the decedent's estate. The court shall hear evidence on the issue and, in the court's judgment, make a determination of the issue.

Derived from Probate Code § 48(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 202.007. Affidavit Supporting Application Required

(a) An application filed under Section 202.005 must be supported by the affidavit of each applicant.

(b) An affidavit of an applicant under Subsection (a) must state that, to the applicant's knowledge:

(1) all the allegations in the application are true; and

(2) no material fact or circumstance has been omitted from the application.

Derived from Probate Code § 49(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 202.008. Required Parties to Proceeding to Declare Heirship

Each of the following persons must be made a party to a proceeding to declare heirship:

(1) each unknown heir of the decedent who is the subject of the proceeding;

(2) each person who is named as an heir of the decedent in the application filed under Section 202.005; and

(3) each person who is, on the filing date of the application, shown as owning a share or interest in any real property described in the application by the deed records of the county in which the property is located.

Derived from Probate Code § 49(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 202.009. Attorney Ad Litem [~~Representation of Interests of Certain Persons~~]

(a) The [~~If it appears to the court in a proceeding to declare heirship that there is or may be a living heir whose name or whereabouts is unknown, or that a defendant is an incapacitated person, the~~] court shall [~~may~~] appoint an attorney ad litem in a proceeding to declare heirship [~~or guardian ad litem~~] to represent the interests of heirs whose names or locations are unknown [~~that person. 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~~].

(b) The court may expand the appointment of the [~~shall appoint an~~] attorney ad litem appointed under Subsection (a) to include representation of an heir who is an incapacitated person on a finding that the appointment is necessary to protect the interests of the heir [~~to represent the interests of unknown heirs~~].

Derived from Probate Code § 53(b), (c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 15, eff. Jan. 1, 2014.

Subchapter B. Notice of Proceeding to Declare Heirship

§ 202.051. Service of Citation by Mail When Recipient's Name and Address Are Known or Ascertainable

Except as provided by Section 202.054, citation in a proceeding to declare heirship must be served by registered or certified mail on:

(1) each distributee who is 12 years of age or older and whose name and address are known or can be ascertained through the exercise of reasonable diligence; and

(2) the parent, managing conservator, or guardian of each distributee who is younger than 12 years of age if the name and address of the parent, managing conservator, or guardian are known or can be reasonably ascertained.

Derived from Probate Code § 50(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 202.052. Service of Citation by Publication When Recipient's Name or Address Is Not Ascertainable

If the address of a person or entity on whom citation is required to be served cannot be ascertained, citation must be served on the person or entity by publication in the county in which the proceeding to declare heirship is commenced and in the county of the last residence of the decedent who is the subject of the proceeding, if that residence was in a county other than the county in which the proceeding is commenced. To determine whether a decedent has any other heirs, citation must be served on unknown heirs by publication in the manner provided by this section.

Derived from Probate Code § 50(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 202.053. Required Posting of Citation

Except in a proceeding in which citation is served by publication as provided by Section 202.052, citation in a proceeding to declare heirship must be posted in:

(1) the county in which the proceeding is commenced; and

(2) the county of the last residence of the decedent who is the subject of the proceeding.

Derived from Probate Code § 50(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 202.054. Personal Service of Citation May Be Required

The court may require that service of citation in a proceeding to declare heirship be made by personal service on some or all of those named as distributees in the application filed under Section 202.005.

Derived from Probate Code § 50(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 202.055. Service of Citation on Certain Persons Not Required

A party to a proceeding to declare heirship who executed the application filed under Section 202.005 is not required to be served by any method.

Derived from Probate Code § 50(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 202.056. Waiver of Service of Citation [~~on Certain Persons Not Permitted~~]

A parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a minor distributee who:

(1) is younger than 12 years of age [~~or older, but younger than 19 years of age,~~] may [~~not~~] waive

citation required by this subchapter to be served on the distributee; and

(2) is 12 years of age or older may not waive citation required by this subchapter to be served on the distributee.

Derived from Probate Code § 50(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 16, eff. Jan. 1, 2014.

Statutes in Context
§ 202.057

A court cannot enter an order determining heirs unless the applicant files (1) a copy of the notice and proof of delivery sent to interested parties and (2) an affidavit of the applicant or a certificate signed by the applicant's attorney stating that notice was given, the name of each person who received the notice if not shown on the proof, and the name of each person who waived citation.

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§ 202.057. Affidavit of Service of Citation

(a) A person who files an application under Section 202.005 shall file with the court:

(1) a copy of any citation required by this subchapter and the proof of delivery of service of the citation; and

(2) an affidavit sworn to by the applicant or a certificate signed by the applicant's attorney stating:

(A) that the citation was served as required by this subchapter;

(B) the name of each person to whom the citation was served, if the person's name is not shown on the proof of delivery; and

(C) the name of each person who waived citation under Section 202.056.

(b) The court may not enter an order in the proceeding to declare heirship under Subchapter E until the affidavit or certificate required by Subsection (a) is filed.

New.

Added by Acts 2013, 83rd Leg., ch. 1136, § 17, eff. Jan. 1, 2014.

Subchapter C. Transfer of Pending Proceeding to Declare Heirship

§ 202.101. Required Transfer of Pending Proceeding to Declare Heirship Under Certain Circumstances

If, after a proceeding to declare heirship is commenced, an administration of the estate of the decedent who is the subject of the proceeding is granted in this state or the decedent's will is admitted to probate in this state, the court in which the proceeding to declare heirship is pending shall, by an order entered of record in the proceeding, transfer the proceeding to the court in which the administration was granted or the will was probated.

Derived from Probate Code § 51.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 202.102. Transfer of Records

The clerk of the court from which a proceeding to declare heirship is transferred under Section 202.101 shall, on entry of the order under that section, send to the clerk of the court named in the order a certified transcript of all pleadings, entries in the judge's probate docket, and orders of the court in the proceeding. The clerk of the court to which the proceeding is transferred shall:

(1) file the transcript;

(2) record the transcript in the judge's probate docket of that court; and

(3) docket the proceeding.

Derived from Probate Code § 51.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 90, § 8.007, eff. Jan. 1, 2014.

§ 202.103. Procedures Applicable to Transferred Proceeding to Declare Heirship; Consolidation with Other Proceeding

A proceeding to declare heirship that is transferred under Section 202.101 shall proceed as though the proceeding was originally filed in the court to which the proceeding is transferred. The court may consolidate the proceeding with the other proceeding pending in that court.

Derived from Probate Code § 51.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Evidence Relating to Determination of Heirship

§ 202.151. [~~Written~~] Evidence in Proceeding to Declare Heirship

(a) The court may require that [~~all or~~] any testimony [~~part of the evidence~~] admitted as evidence in a proceeding to declare heirship be [~~:~~

[~~(1)~~] reduced to writing and subscribed and sworn to by the witnesses, respectively [~~; and~~

[~~(2) filed in the proceeding and recorded in the judge's probate docket~~].

(b) Testimony in a proceeding to declare heirship must be taken in open court, by deposition in accordance with Section 51.203, or in accordance with the Texas Rules of Civil Procedure.

Derived from Probate Code § 53(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 90,

§ 8.008, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 18, eff. Jan. 1, 2014.

Subchapter E. Judgment in Proceeding to Declare Heirship

§ 202.201. Required Statements in Judgment

(a) The judgment in a proceeding to declare heirship must state:

(1) the names and places of residence of the heirs of the decedent who is the subject of the proceeding; and

(2) the heirs' respective shares and interests in the decedent's property.

(b) If the proof in a proceeding to declare heirship is in any respect deficient, the judgment in the proceeding must state that.

Derived from Probate Code § 54.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 202.202. Finality and Appeal of Judgment

(a) The judgment in a proceeding to declare heirship is a final judgment.

(b) At the request of an interested person, the judgment in a proceeding to declare heirship may be appealed or reviewed within the same time limits and in the same manner as other judgments in probate matters.

Derived from Probate Code § 55(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 202.203. Correction of Judgment at Request of Heir Not Properly Served

If an heir of a decedent who is the subject of a proceeding to declare heirship is not served with citation by registered or certified mail or personal service in the proceeding, the heir may:

(1) have the judgment in the proceeding corrected by bill of review:

(A) at any time, but not later than the fourth anniversary of the date of the judgment; or

(B) after the passage of any length of time, on proof of actual fraud; and

(2) recover the heir's just share of the property or the value of that share from:

(A) the heirs named in the judgment; and

(B) those who claim under the heirs named in the judgment and who are not bona fide purchasers for value.

Derived from Probate Code § 55(A).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 202.204. Limitation of Liability of Certain Persons Acting in Accordance with Judgment

(a) The judgment in a proceeding to declare heirship is conclusive in a suit between an heir omitted from the judgment and a bona fide purchaser for value who purchased property after entry of the judgment without actual notice of the claim of the omitted heir, regardless of whether the judgment is subsequently modified, set aside, or nullified.

(b) A person is not liable to another person for the following actions performed in good faith after a judgment is entered in a proceeding to declare heirship:

(1) delivering the property of the decedent who was the subject of the proceeding to the persons named as heirs in the judgment; or

(2) engaging in any other transaction with the persons named as heirs in the judgment.

Derived from Probate Code § 55(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 202.205. Effect of Certain Judgments on Liability to Creditors

(a) A judgment in a proceeding to declare heirship stating that there is no necessity for administration of the estate of the decedent who is the subject of the proceeding constitutes authorization for a person who owes money to the estate, has custody of estate property, acts as registrar or transfer agent of an evidence of interest, indebtedness, property, or right belonging to the estate, or purchases from or otherwise deals with an heir named in the judgment to take the following actions without liability to a creditor of the estate or other person:

(1) to pay, deliver, or transfer the property or the evidence of property rights to an heir named in the judgment; or

(2) to purchase property from an heir named in the judgment.

(b) An heir named in a judgment in a proceeding to declare heirship is entitled to enforce the heir's right to payment, delivery, or transfer described by Subsection (a) by suit.

(c) Except as provided by this section, this chapter does not affect the rights or remedies of the creditors of a decedent who is the subject of a proceeding to declare heirship.

Derived from Probate Code § 55(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 202.206. Filing and Recording of Judgment

(a) A certified copy of the judgment in a proceeding to declare heirship may be:

(1) filed for record in the office of the county clerk of the county in which any real property described in the judgment is located;

(2) recorded in the deed records of that county; and

(3) indexed in the name of the decedent who was the subject of the proceeding as grantor and in the names of the heirs named in the judgment as grantees.

(b) On the filing of a judgment in accordance with Subsection (a), the judgment constitutes constructive notice of the facts stated in the judgment.

Derived from Probate Code § 56.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 203. Nonjudicial Evidence of Heirship

§ 203.001. Recorded Statement of Facts as Prima Facie Evidence of Heirship

§ 203.002. Form of Affidavit Concerning Identity of Heirs

Chapter 203. Nonjudicial Evidence of Heirship

Statutes in Context
Chapter 203

Some title companies, oil landpersons, and financial institutions may rely on a affidavit of heirship, standing alone without a formal determination of heirship, to clear defects in title to real property.

§ 203.001. Recorded Statement of Facts as Prima Facie Evidence of Heirship

(a) A court shall receive in a proceeding to declare heirship or a suit involving title to property a statement of facts concerning the family history, genealogy, marital status, or the identity of the heirs of a decedent as prima facie evidence of the facts contained in the statement if:

(1) the statement is contained in:

(A) an affidavit or other instrument legally executed and acknowledged or sworn to before, and certified by, an officer authorized to take acknowledgments or oaths, as applicable; or

(B) a judgment of a court of record; and

(2) the affidavit or instrument containing the statement has been of record for five years or more in the deed records of a county in this state in which the property is located at the time the suit involving title to property is commenced, or in the deed records of a county in this state in which the decedent was domiciled or had a fixed place of residence at the time of the decedent's death.

(b) If there is an error in a statement of facts in a recorded affidavit or instrument described by Subsection (a), anyone interested in a proceeding in which the affidavit or instrument is offered in evidence may prove the true facts.

(c) An affidavit of facts concerning the identity of a decedent's heirs as to an interest in real property that is filed in a proceeding or suit described by Subsection (a) may be in the form prescribed by Section 203.002.

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

Derived from Probate Code § 52.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 203.002. Form of Affidavit Concerning Identity of Heirs

An affidavit of facts concerning the identity of a decedent's heirs 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 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: _____

Derived from Probate Code § 52A.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 204. Genetic Testing in Proceedings to Declare Heirship

Subchapter A. General Provisions

§ 204.001. Proceedings and Records Public

Subchapter B. Court Orders for Genetic Testing in Proceedings to Declare Heirship

§ 204.051. Order for Genetic Testing
§ 204.052. Advancement of Costs
§ 204.053. Order and Advancement of Costs for Subsequent Genetic Testing
§ 204.054. Submission of Genetic Material by Other Relative Under Certain Circumstances
§ 204.055. Genetic Testing of Deceased Individual
§ 204.056. Criminal Penalty

Subchapter C. Results of Genetic Testing

§ 204.101. Results of Genetic Testing; Admissibility
§ 204.102. Presumption Regarding Results of Genetic Testing; Rebuttal
§ 204.103. Contesting Results of Genetic Testing

Subchapter D. Use of Results of Genetic Testing in Certain Proceedings to Declare Heirship

§ 204.151. Applicability of Subchapter
§ 204.152. Presumption; [~~Required Findings in Absence of~~] Rebuttal [~~Evidence~~]
§ 204.153. Effect of Inconclusive Results of Genetic Testing

Subchapter E. Additional Orders Following Results of Genetic Testing

§ 204.201. Order for Change of Name

Chapter 204. Genetic Testing in Proceedings to Declare Heirship

Subchapter A. General Provisions

§ 204.001. Proceedings and Records Public

A proceeding under this chapter or Chapter 202 involving genetic testing is open to the public as in other civil cases. Papers and records in the proceeding are available for public inspection.

Derived from Probate Code § 53E.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Court Orders for Genetic Testing in Proceedings to Declare Heirship

§ 204.051. Order for Genetic Testing

(a) In a proceeding to declare heirship under Chapter 202, 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 by 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.

(b) The court may enforce an order under this section by contempt.

Derived from Probate Code § 53A(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 204.052. Advancement of Costs

Subject to any assessment of costs following a proceeding to declare heirship in accordance with Rule 131, Texas Rules of Civil Procedure, the cost of genetic testing ordered under Section 204.051 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.

Derived from Probate Code § 53A(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 204.053. Order and Advancement of Costs for Subsequent Genetic Testing

(a) Subject to Subsection (b), the court shall order genetic testing subsequent to the testing conducted under Section 204.051 if:

(1) a party to the proceeding to declare heirship contests the results of the genetic testing ordered under Section 204.051; and

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

(b) If the results of the genetic testing ordered under Section 204.051 identify a tested individual as an heir of the decedent, the court may order additional genetic testing in accordance with Subsection (a) only if the party contesting those results pays for the additional testing in advance.

Derived from Probate Code §§ 53A(c), (d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 204.054. Submission of Genetic Material by Other Relative Under Certain Circumstances

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 subchapter, 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 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.

Derived from Probate Code § 53A(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 204.055. Genetic Testing of Deceased Individual

On good cause shown, the court may order:

(1) genetic testing of a deceased individual under this subchapter; 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.

Derived from Probate Code § 53A(f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 204.056. Criminal Penalty

(a) An individual commits an offense if:

(1) 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 subchapter; and

(2) the release:

(A) is for a purpose not related to the proceeding to declare heirship; and

(B) was not ordered by the court or done in accordance with written permission obtained from the individual who provided the sample.

(b) An offense under this section is a Class A misdemeanor.

Derived from Probate Code § 53A(g).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Results of Genetic Testing

§ 204.101. Results of Genetic Testing; Admissibility

A report of the results of genetic testing ordered under Subchapter B:

(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 Chapter 202 as evidence of the truth of the facts asserted in the report.

Derived from Probate Code § 53B(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 204.102. Presumption Regarding Results of Genetic Testing; Rebuttal

The presumption under Section 160.505, Family Code:

(1) applies to the results of genetic testing ordered under Subchapter B; and

(2) may be rebutted as provided by Section 160.505, Family Code.

Derived from Probate Code § 53B(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 204.103. Contesting Results of Genetic Testing

(a) A party to a proceeding to declare heirship 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.

(b) Unless otherwise ordered by the court, the party offering the testimony under Subsection (a) bears the expense for the expert testifying.

Derived from Probate Code § 53B(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Use of Results of Genetic Testing in Certain Proceedings to Declare Heirship

§ 204.151. Applicability of Subchapter

This subchapter 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 201.052(c); and~~

~~[(2)~~] claims[:

[~~(A)~~] to be a biological child of the decedent or claims[~~, but with respect to whom a parent-child relationship with the decedent was not established as provided by Section 160.201, Family Code; or~~

[~~(B)~~] to inherit 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~~].

Derived from Probate Code § 53C(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 19, eff. Jan. 1, 2014.

§ 204.152. Presumption; [~~Required Findings in Absence of~~] Rebuttal [~~Evidence~~]

The presumption under Section 160.505, Family Code, that applies in establishing a parent-child relationship also applies in determining heirship in the probate court using the results of genetic testing ordered with respect to an individual described by Section 204.151, and the presumption may be rebutted in the same manner provided by Section 160.505, Family Code. [~~Unless the results of genetic testing of another individual who is an heir of the decedent who is the subject of a proceeding to declare heirship to which this subchapter applies are admitted as rebuttal evidence, the court shall find that the individual described by Section 204.151:~~

[~~(1) is an heir of the decedent, if the results of genetic testing ordered under Subchapter B identify a tested individual who is an heir of the decedent as the ancestor of the individual described by Section 204.151; or~~

[~~(2) is not an heir of the decedent, if the results of genetic testing ordered under Subchapter B exclude a tested individual who is an heir of the decedent as the ancestor of the individual described by Section 204.151.~~]

Derived from Probate Code § 53C(b), (c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 19, eff. Jan. 1, 2014.

§ 204.153. Effect of Inconclusive Results of Genetic Testing

If the results of genetic testing ordered under Subchapter B do not identify or exclude a tested individual as the ancestor of the individual described by Section 204.151:

(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.

Derived from Probate Code § 53C(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter E. Additional Orders Following Results of Genetic Testing

§ 204.201. Order for Change of Name

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), order the bureau of vital statistics to issue an amended birth record for the individual.

Derived from Probate Code § 53D.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 205. Small Estate Affidavit

§ 205.001. Entitlement to Estate Without Appointment of Personal Representative
§ 205.002. Affidavit Requirements
§ 205.003. Examination and Approval of Affidavit
§ 205.004. Copy of Affidavit to Certain Persons
§ 205.005. Affidavit as Local Government Record
§ 205.006. Title to Homestead Transferred Under Affidavit
§ 205.007. Liability of Certain Persons
§ 205.008. Effect of Chapter

Chapter 205. Small Estate Affidavit

Statutes in Context
Chapter 205

Chapter 205 provides 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, the decedent's homestead, and other exempt property.

§ 205.001. Entitlement to Estate Without Appointment of Personal Representative

The distributees of the estate of a decedent who dies intestate are entitled to the decedent's estate without waiting for the appointment of a personal representative of the estate to the extent the estate assets, excluding homestead and exempt property, exceed the known liabilities of the estate, excluding any liabilities secured by homestead and exempt property, if:

(1) 30 days have elapsed since the date of the decedent's death;

(2) no petition for the appointment of a personal representative is pending or has been granted;

(3) the value of the estate assets, excluding homestead and exempt property, does not exceed $50,000;

(4) an affidavit that meets the requirements of Section 205.002 is filed with the clerk of the court that has jurisdiction and venue of the estate;

(5) the judge approves the affidavit as provided by Section 205.003; and

(6) the distributees comply with Section 205.004.

Derived from Probate Code § 137(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 205.002. Affidavit Requirements

An affidavit filed under Section 205.001 must:

(1) be sworn to by:

(A) two disinterested witnesses;

(B) each distributee of the estate who has legal capacity; and

(C) if warranted by the facts, the natural guardian or next of kin of any minor distributee or the guardian of any other incapacitated distributee;

(2) show the existence of the conditions prescribed by Sections 205.001(1), (2), and (3); and

(3) include:

(A) a list of all known estate assets and liabilities;

(B) the name and address of each distributee; and

(C) the relevant family history facts concerning heirship that show each distributee's right to receive estate money or other property or to have any evidence of money, property, or other right of the estate as is determined to exist transferred to the distributee as an heir or assignee.

Derived from Probate Code § 137(A).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 205.003. Examination and Approval of Affidavit

The judge shall examine an affidavit filed under Section 205.001. The judge may approve the affidavit if the judge determines that the affidavit conforms to the requirements of this chapter.

Derived from Probate Code § 137(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 205.004. Copy of Affidavit to Certain Persons

The distributees of the estate shall provide a copy of the affidavit under this chapter, certified by the court clerk, to each person who:

(1) owes money to the estate;

(2) has custody or possession of estate property; or

(3) acts as a registrar, fiduciary, or transfer agent of or for an evidence of interest, indebtedness, property, or other right belonging to the estate.

Derived from Probate Code § 137(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 205.005. Affidavit as Local Government Record

(a) If the judge approves an affidavit under Section 205.003, the affidavit shall be maintained as a local government record under Subtitle C, Title 6, Local Government Code.

(b) If the county does not maintain local government records in a manner authorized under

Subtitle C, Title 6, Local Government Code, the county clerk shall provide and keep in the clerk's office an appropriate book labeled "Small Estates" in which the clerk shall, on payment of the legal recording fee, record each affidavit filed under this chapter. The small estates book must contain an accurate index that shows the decedent's name and references to any land involved.

Derived from Probate Code § 137(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 205.006. Title to Homestead Transferred Under Affidavit

(a) If a decedent's homestead is the only real property in the decedent's estate, title to the homestead may be transferred under an affidavit that meets the requirements of this chapter. The affidavit used to transfer title to the homestead must be recorded in the deed records of a county in which the homestead is located.

(b) A bona fide purchaser for value may rely on an affidavit recorded under this section. A bona fide purchaser for value without actual or constructive notice of an heir who is not disclosed in the recorded affidavit acquires title to a homestead free of the interests of the undisclosed heir, but 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 the recorded affidavit if an affidavit, judgment of heirship, or title transaction in the chain of title in the deed records identifies that heir as the decedent's heir.

(c) An heir who is not disclosed in an affidavit recorded 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.

Derived from Probate Code § 137(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 205.007. Liability of Certain Persons

(a) A person making a payment, delivery, transfer, or issuance under an affidavit described by this chapter is released to the same extent as if made to a personal representative of the decedent. The person may not be required to:

(1) see to the application of the affidavit; or

(2) inquire into the truth of any statement in the affidavit.

(b) The distributees to whom payment, delivery, transfer, or issuance is made are:

(1) answerable for the payment, delivery, transfer, or issuance to any person having a prior right; and

(2) accountable to any personal representative appointed after the payment, delivery, transfer, or issuance.

(c) Each person who executed the affidavit is liable for any damage or loss to any person that arises from a payment, delivery, transfer, or issuance made in reliance on the affidavit.

(d) If a person to whom the affidavit is delivered refuses to pay, deliver, transfer, or issue property as provided by this section, the property may be recovered in an action brought for that purpose by or on behalf of the distributees entitled to the property on proof of the facts required to be stated in the affidavit.

Derived from Probate Code § 138.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 205.008. Effect of Chapter

(a) This chapter does not affect the disposition of property under a will or other testamentary document.

(b) Except as provided by Section 205.006, this chapter does not transfer title to real property.

Derived from Probate Code § 137(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

SUBTITLE F. WILLS

Chapter 251. Fundamental Requirements and Provisions Relating to Wills

Subchapter A. Will Formation

§ 251.001. Who May Execute Will
§ 251.002. Interests That May Pass by Will; Disinheritance

Subchapter B. Will Requirements

§ 251.051. Written, Signed, and Attested
§ 251.052. Exception for Holographic Wills

Subchapter C. Self-Proved Wills

§ 251.101. Self-Proved Will
§ 251.102. Probate and Treatment of Self-Proved Will
§ 251.103. Period for Making Attested Wills Self-Proved
§ 251.104. Requirements for Self-Proving Affidavit
§ 251.105. Effect of Signature on Self-Proving Affidavit
§ 251.106. Contest, Revocation, or Amendment of Self-Proved Will
§ 251.107. Self-Proved Holographic Will

Chapter 251. Fundamental Requirements and Provisions Relating to Wills

Statutes in Context
Chapter 251

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 (§ 251.001), (2) testamentary capacity (§ 251.001 and case law thereunder), (3) testamentary intent (case law), and (4) formalities (attested wills under § 251.051 and holographic wills under § 251.052). 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.

Subchapter A. Will Formation

Statutes in Context
§ 251.001

Section 251.001 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.).

§ 251.001. Who May Execute Will

Under the rules and limitations prescribed by law, a person of sound mind has the right and power to make a last will and testament if, at the time the will is made, the person:

(1) is 18 years of age or older;

(2) is or has been married; or

(3) is 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.

Derived from Probate Code § 57.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 251.002

Section 251.002 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.

§ 251.002. Interests That May Pass by Will; Disinheritance

(a) Subject to limitations prescribed by law, a person competent to make a last will and testament may

devise under the will and testament all the estate, right, title, and interest in property the person has at the time of the person's death.

(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.

Derived from Probate Code §§ 58(a), (b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Will Requirements

Statutes in Context
§ 251.051

Section 251.051 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.

Section 251.051 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 dism'd w.o.j.). The witnesses only need to be above the age of 14. See Estates Code § 254.002 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 § 251.051 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.).

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§ 251.051. Written, Signed, and Attested

Except as otherwise provided by law, a last will and testament must be:

(1) in writing;

(2) signed by:

(A) the testator in person; or

(B) another person on behalf of the testator:

(i) in the testator's presence; and

(ii) under the testator's direction; and

(3) attested by two or more credible witnesses who are at least 14 years of age and who subscribe their names to the will in their own handwriting in the testator's presence.

Derived from Probate Code § 59(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 251.052

A holographic will is prepared in the testator's own handwriting. Section 251.052 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. See Estates Code § 251.107. Because the self-proving affidavit is a separate instrument, it does not need to be holographic.

§ 251.052. Exception for Holographic Wills

Notwithstanding Section 251.051, a will written wholly in the testator's handwriting is not required to be attested by subscribing witnesses.

Derived from Probate Code §§ 59(a), 60.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Self-Proved Wills

Statutes in Context
Chapter 251

Self-Proving Affidavit. Section 251.101 provides the testator with the option making the will self-proved by either (1) adding an affidavit as a separate document under § 251.051 or (2) including the affidavit within the text of the will under § 251.1045. 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 the predecessor to Estates Code § 251.105 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 § 251.1045.

§ 251.101. Self-Proved Will

A self-proved will is a will:

(1) to which a self-proving affidavit subscribed and sworn to by the testator and witnesses is attached or annexed; or

(2) that is simultaneously executed, attested, and made self-proved as provided by Section 251.1045.

Derived from Probate Code § 59(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.22, eff. Jan. 1, 2014.

§ 251.102. Probate and Treatment of Self-Proved Will

(a) A self-proved will may be admitted to probate without the testimony of any subscribing witnesses if:

(1) the testator and witnesses execute a self-proving affidavit; or

(2) the will is simultaneously executed, attested, and made self-proved as provided by Section 251.1045.

(b) A self-proved will may not otherwise be treated differently than a will that is not self-proved.

Derived from Probate Code §§ 59(a), (c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2011, 82nd Leg., ch. 1338, § 2.23, eff. Jan. 1, 2014.

§ 251.103. Period for Making Attested Wills Self-Proved

A will or testament that meets the requirements of Section 251.051 may be made self-proved at:

(1) the time of the execution of the will or testament; or

(2) a later date during the lifetime of the testator and the witnesses.

Derived from Probate Code § 59(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 251.104. Requirements for Self-Proving Affidavit

(a) An affidavit that is in form and content substantially as provided by Subsection (e) is a self-proving affidavit.

(b) A self-proving affidavit must be made by the testator and by the attesting witnesses before an officer authorized to administer oaths. The officer shall affix the officer's official seal to the self-proving affidavit.

(c) The self-proving affidavit shall be attached or annexed to the will or testament.

(d) An affidavit that is in substantial compliance with the form of the affidavit provided by Subsection

(e), that is subscribed and acknowledged by the testator, and that is subscribed and sworn to by the attesting witnesses is sufficient to self-prove the will. No other affidavit or certificate of a testator is required to self-prove a will or testament other than the affidavit provided by Subsection (e).

(e) The form and content of the self-proving affidavit must be 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/her] last will and testament, and that [he/she] had willingly made and executed it as [his/her] free act and deed; and the said witnesses, each on [his/her] oath 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/her] last will and testament, and that [he/she] 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/her] request; that [he/she] 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 an auxiliary of the armed forces of the United States, or the United States 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)

Derived from Probate Code § 59(a), (b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2011, 82nd Leg., ch. 1338, § 2.24, eff. Jan. 1, 2014.

§ 251.1045. Simultaneous Execution, Attestation, and Self-Proving

(a) As an alternative to the self-proving of a will by the affidavits of the testator and the attesting witnesses as provided by Section 251.104, 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 at least 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 of the armed forces of the United States or of the United States 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) A will that is in substantial compliance with the form provided by Subsection (a) is sufficient to self-prove a will.

Derived from Probate Code § 59(a-1).

Added by Acts 2011, 82nd Leg., ch. 1338, § 2.25, eff. Jan. 1, 2014.

§ 251.105. Effect of Signature on Self-Proving Affidavit

A signature on a self-proving affidavit is considered a signature to the will if necessary to prove that the will was signed by the testator or witnesses or both, except that, in that case, the will may not be considered a self-proved will.

Derived from Probate Code § 59(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 251.106. Contest, Revocation, or Amendment of Self-Proved Will

A self-proved will may be contested, revoked, or amended by a codicil in the same manner as a will that is not self-proved.

Derived from Probate Code § 59(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 251.107. Self-Proved Holographic Will

Notwithstanding any other provision of this subchapter, a will written wholly in the testator's handwriting may be made self-proved at any time during the testator's lifetime by the attachment or annexation to the will of an affidavit by the testator to the effect that:

(1) the instrument is the testator's last will;

(2) the testator was 18 years of age or older at the time the will was executed or, if the testator was younger than 18 years of age, that the testator:

(A) was or had been married; or

(B) was 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 at the time the will was executed;

(3) the testator was of sound mind; and

(4) the testator has not revoked the will.

Derived from Probate Code § 60.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 252. Safekeeping and Custody of Wills

Subchapter A. Deposit of Will with County Clerk

§ 252.001. Will Deposit; Certificate
§ 252.002. Sealed Wrapper Required
§ 252.003. Numbering of Filed Wills and Corresponding Certificates
§ 252.004. Index

Subchapter B. Will Delivery During Life of Testator

§ 252.051. Will Delivery
§ 252.052. Surrender of Certificate of Deposit; Exception

Subchapter C. Actions by County Clerk on Death of Testator

§ 252.101. Notification by County Clerk
§ 252.102. Will Delivery on Testator's Death
§ 252.103. Inspection of Will by County Clerk
§ 252.104. Notice and Delivery of Will to Executor
§ 252.105. Notice and Delivery of Will to Devisees

Subchapter D. Legal Effect of Will Deposit

§ 252.151. Deposit Has No Legal Significance
§ 252.152. Prior Deposited Will in Relation to Later Will
§ 252.153. Will Deposit Does Not Constitute Notice

Subchapter E. Duty and Liability of Custodian of Estate Papers

§ 252.201. Will Delivery
§ 252.202. Personal Service on Custodian of Estate Papers
§ 252.203. Arrest; Confinement
§ 252.204. Damages

Chapter 252. Safekeeping and Custody of Wills

Subchapter A. Deposit of Will with County Clerk

Statutes in Context
Chapter 252

Chapter 252 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.

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§ 252.001. Will Deposit; Certificate

(a) A testator, or another person for the testator, may deposit the testator's will with the county clerk of the county of the testator's residence. Before accepting

the will for deposit, the clerk may require proof satisfactory to the clerk concerning the testator's identity and residence.

(b) The county clerk shall receive and keep the will on the payment of a $5 fee.

(c) On the deposit of the will, the county clerk shall issue a certificate of deposit for the will.

Derived from Probate Code § 71(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 252.002. Sealed Wrapper Required

(a) A will intended to be deposited with a county clerk shall be enclosed in a sealed wrapper.

(b) The wrapper must be endorsed with:

(1) "Will of," followed by the name, address, and signature of the testator; and

(2) the name and current address of each person who is to be notified of the deposit of the will after the testator's death.

Derived from Probate Code § 71(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 252.003. Numbering of Filed Wills and Corresponding Certificates

(a) A county clerk shall number wills deposited with the clerk in consecutive order.

(b) A certificate of deposit issued under Section 252.001(c) on receipt of a will must bear the same number as the will for which the certificate is issued.

Derived from Probate Code § 71(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 252.004. Index

A county clerk shall keep an index of all wills deposited with the clerk under Section 252.001.

Derived from Probate Code § 71(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Will Delivery During Life of Testator

§ 252.051. Will Delivery

During the lifetime of the testator, a will deposited with a county clerk under Subchapter A may be delivered only to:

(1) the testator; or

(2) another person authorized by the testator by a sworn written order.

Derived from Probate Code § 71(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 252.052. Surrender of Certificate of Deposit; Exception

(a) Except as provided by Subsection (b), on delivery of a will to the testator or a person authorized by the testator under Section 252.051, the certificate of deposit issued for the will must be surrendered by the person to whom delivery of the will is made.

(b) A county clerk may instead accept and file an affidavit by the testator stating that the certificate of deposit issued for the will has been lost, stolen, or destroyed.

Derived from Probate Code § 71(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Actions by County Clerk on Death of Testator

§ 252.101. Notification by County Clerk

A county clerk shall notify, by registered mail, return receipt requested, each person named on the endorsement of the will wrapper that the will is on deposit in the clerk's office if:

(1) an affidavit is submitted to the clerk stating that the testator has died; or

(2) the clerk receives other notice or proof of the testator's death sufficient to convince the clerk that the testator has died.

Derived from Probate Code § 71(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 252.102. Will Delivery on Testator's Death

On the request of one or more persons notified under Section 252.101, the county clerk shall deliver the will that is the subject of the notice to the person or persons. The clerk shall obtain a receipt for delivery of the will.

Derived from Probate Code § 71(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 252.103. Inspection of Will by County Clerk

A county clerk shall open a will wrapper and inspect the will if:

(1) the notice required by Section 252.101 is returned as undelivered; or

(2) the clerk has accepted for deposit a will that does not specify on the will wrapper the person to whom the will is to be delivered on the testator's death.

Derived from Probate Code § 71(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 252.104. Notice and Delivery of Will to Executor

If a county clerk inspects a will under Section 252.103 and the will names an executor, the clerk shall:

(1) notify the person named as executor, by registered mail, return receipt requested, that the will is on deposit with the clerk; and

(2) deliver, on request, the will to the person named as executor.

Derived from Probate Code § 71(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 252.105. Notice and Delivery of Will to Devisees

(a) If a county clerk inspects a will under Section 252.103, the clerk shall notify by registered mail, return receipt requested, the devisees named in the will that the will is on deposit with the clerk if:

(1) the will does not name an executor;

(2) the person named as executor in the will:

(A) has died; or

(B) fails to take the will before the 31st day after the date the notice required by Section 252.104 is mailed to the person; or

(3) the notice mailed to the person named as executor is returned as undelivered.

(b) On request, the county clerk shall deliver the will to any or all of the devisees notified under Subsection (a).

Derived from Probate Code § 71(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Legal Effect of Will Deposit

§ 252.151. Deposit Has No Legal Significance

The provisions of Subchapter A providing for the deposit of a will with a county clerk during the lifetime of a testator are solely for the purpose of providing a safe and convenient repository for a will. For purposes of probate, a will deposited as provided by Subchapter A may not be treated differently than a will that has not been deposited.

Derived from Probate Code § 71(f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 252.152. Prior Deposited Will in Relation to Later Will

A will that is not deposited as provided by Subchapter A shall be admitted to probate on proof that the will is the last will and testament of the testator, notwithstanding the fact that the testator has a prior will that has been deposited in accordance with Subchapter A.

Derived from Probate Code § 71(f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 252.153. Will Deposit Does Not Constitute Notice

The deposit of a will as provided by Subchapter A does not constitute notice, constructive or otherwise, to any person as to the existence or the contents of the will.

Derived from Probate Code § 71(g).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter E. Duty and Liability of Custodian of Estate Papers

Statutes in Context
Chapter 252, Subchapter E

After a testator dies, the custodian of the will does not have a duty to probate the will. Instead, § 252.201 merely requires that the custodian deliver the will to the clerk of the court. Section 252.203 provides procedures, including imprisonment of the custodian, which may be used if the custodian is unwilling to deliver the will.

§ 252.201. Will Delivery

On receiving notice of a testator's death, the person who has custody of the testator's will shall deliver the will to the clerk of the court that has jurisdiction of the testator's estate.

Derived from Probate Code § 75.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 252.202. Personal Service on Custodian of Estate Papers

On a sworn written complaint that a person has custody of the last will of a testator or any papers belonging to the estate of a testator or intestate, the judge of the court that has jurisdiction of the estate shall have the person cited by personal service to appear and show cause why the person should not deliver:

(1) the will to the court for probate; or

(2) the papers to the executor or administrator.

Derived from Probate Code § 75.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 252.203. Arrest; Confinement

On the return of a citation served under Section 252.202, if the judge is satisfied that the person served with the citation had custody of the will or papers at the time the complaint under that section was filed and the person does not deliver the will or papers or show good cause why the will or papers have not been delivered, the judge may have the person arrested and confined until the person delivers the will or papers.

Derived from Probate Code § 75.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,

2014.

§ 252.204. Damages

(a) A person who refuses to deliver a will or papers described by Section 252.202 is liable to any person aggrieved by the refusal for all damages sustained as a result of the refusal.

(b) Damages may be recovered under this section in any court of competent jurisdiction.

Derived from Probate Code § 75.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 253. Change and Revocation of Wills

§ 253.001. Court May Not Prohibit Changing a Will
§ 253.002. Revocation of Will

Chapter 253. Change and Revocation of Wills

Statutes in Context
§ 253.001

A judge in a divorce action may issue an order preventing a party from changing his or her will during the pendency of the divorce. Section 253.001 prohibits this practice and provides that such an order is void.

§ 253.001. Court May Not Prohibit Changing a Will

(a) Notwithstanding Section 22.007(a), in this section, "court" means a constitutional county court, district court, or statutory county court, including a statutory probate court.

(b) A court may not prohibit a person from executing a new will or a codicil to an existing will.

(c) Any portion of a court order that purports to prohibit a person from executing a new will or a codicil to an existing will is void and may be disregarded without penalty or sanction of any kind.

Derived from Probate Code § 69A.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsection (c) added by Acts 2013, 83rd Leg., ch. 1136, § 20, eff. Jan. 1, 2014.

Statutes in Context
§ 253.002

Section 253.002 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 Estates Code § 256.156. 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.

§ 253.002. Revocation of Will

A written will, or a clause or devise in a written will, may not be revoked, except by a subsequent will, codicil, or declaration in writing that is executed with like formalities, or by the testator destroying or canceling the same, or causing it to be destroyed or canceled in the testator's presence.

Derived from Probate Code § 63.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 254. Validity of Certain Provisions in, and Contracts Relating to, Wills

§ 254.001. Devises to Trustees
§ 254.002. Bequests to Certain Subscribing Witnesses

§ 254.003. Devises to Certain Attorneys and Other Persons

§ 254.004. Contracts Concerning Wills or Devises; Joint or Reciprocal Wills

§ 254.005. Forfeiture Clause

Chapter 254. Validity of Certain Provisions in, and Contracts Relating to, Wills

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Statutes in Context
§ 254.001

Section 254.001 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 254.001 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.

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§ 254.001. Devises to Trustees

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

(1) during the testator's lifetime by the testator, the testator and another person, or 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 to the trustee, regardless of the existence, size, or character of the corpus of the trust, if:

(A) the trust is identified in the testator's will; and

(B) the terms of the trust are in:

(i) a written instrument, other than a will, executed before, with, or after the execution of the testator's will; or

(ii) another person's will if that person predeceased the testator.

(b) A devise under Subsection (a) is not invalid because the trust:

(1) is amendable or revocable; or

(2) was amended after the execution of the will or the testator's death.

(c) Unless the testator's will provides otherwise, property devised to a trust described by Subsection (a) is not held under a testamentary trust of the testator. The property:

(1) becomes part of the trust to which the property is devised; and

(2) must be administered and disposed of according to the provisions of the instrument establishing the trust, including any amendment 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 to lapse.

Derived from Probate Code § 58a.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 254.002

A testamentary gift to a beneficiary who is also a witness to the will is presumed void under the Texas purging statute, § 254.002. 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 § 254.002(c).

Section 254.002(c) provides the third exception to the interested witness rule. 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.

§ 254.002. Bequests to Certain Subscribing Witnesses

(a) Except as provided by Subsection (c), if a devisee under a will is also a subscribing witness to the will and the will cannot be otherwise established:

(1) the bequest is void; and

(2) the subscribing witness shall be allowed and compelled to appear and give the witness's testimony in the same manner as if the bequest to the witness had not been made.

(b) Notwithstanding Subsection (a), if the subscribing witness described by that subsection would have been entitled to a share of the testator's estate had the testator died intestate, the witness is entitled to as much of that share as does not exceed the value of the bequest to the witness under the will.

(c) If the testimony of a subscribing witness described by Subsection (a) proving the will is corroborated by at least one disinterested and credible person who testifies that the subscribing witness's testimony is true and correct:

(1) the bequest to the subscribing witness is not void under Subsection (a); and

(2) the subscribing witness is not regarded as an incompetent or noncredible witness under Subchapters B and C, Chapter 251.

Derived from Probate Code §§ 61, 62.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 254.003

Section 254.003 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 descendent 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 the Probate Code predecessor to Estates Code § 254.003. 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) (as found in the Government Code).

§ 254.003. Devises to Certain Attorneys and Other Persons

(a) A devise of property in a will is void if the devise 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); or

(3) the spouse of a person described by Subdivision (1) or (2).

(b) This section does not apply to:

(1) a devise 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.

Derived from Probate Code § 58b.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 254.004

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, § 254.004 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.

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§ 254.004. Contracts Concerning Wills or Devises; Joint or Reciprocal Wills

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

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

(2) a will stating:

(A) that a contract exists; and

(B) the material provisions of the contract.

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

Derived from Probate Code § 59A.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 254.005

A forfeiture, no contest, or *in terrorem* clause provides that a beneficiary who unsuccessfully contests a will is precluded from thereafter receiving property under the will. A forfeiture clause is presumed enforceable unless the party who wants the clause to be unenforceable establishes by a preponderance of the evidence that just cause existed for bringing the action and the action was brought and maintained in good faith.

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§ 254.005. 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.

Derived from Probate Code § 64.

Added by Acts 2011, 82nd Leg., ch. 91), § 8.009(a), eff. Jan. 1, 2014; Acts 2011, 82nd Leg., ch. 1338, § 2.26, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 351, § 2.01, eff. Jan. 1, 2014.

Chapter 255. Construction and Interpretation of Wills

Subchapter A. Certain Personal Property Excluded From Devise or Legacy

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Subchapter H. Exercise of Power of Appointment Through Will

§ 255.351. Exercise of Power of Appointment Through Will

Chapter 255. Construction and Interpretation of Wills

Subchapter A. Certain Personal Property Excluded from Devise or Legacy

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Statutes in Context
Chapter 255, Subchapter A

Section 255.003 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.

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§ 255.001. Definitions

In this subchapter:

(1) "Contents" means tangible personal property, other than titled personal property, found inside of or on a specifically devised item. The term includes clothing, pictures, furniture, coin collections, and other items of tangible personal property that:

(A) do not require a formal transfer of title; and

(B) 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.

Derived from Probate Code § 58(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 255.002. Certain Personal Property Excluded from Devise of Real Property

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.

Derived from Probate Code § 58(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 255.003. Contents Excluded from Legacy of Personal Property

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.

Derived from Probate Code § 58(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Succession by Pretermitted Child

Statutes in Context
Chapter 255, Subchapter B

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. This Subchapter 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 died before September 1, 2011, Paul will receive Husband's entire estate because Wife is not Paul's other parent. However, if Husband died on or after September 1, 2011, Paul will receive only one-half of Husband's estate because of the limitation imposed by § 255.056 and Wife will receive the remaining half.

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§ 255.051. Definition

In this subchapter, "pretermitted child" means a testator's child who is born or adopted:

(1) during the testator's lifetime or after the testator's death; and

(2) after the execution of the testator's will.

Derived from Probate Code § 67(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 255.052. Applicability and Construction

(a) Sections 255.053 and 255.054 apply only to a pretermitted child who is not:

(1) mentioned in the testator's will;

(2) provided for in the testator's will; or

(3) otherwise provided for by the testator.

(b) For purposes of this subchapter, 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 to a trustee under Section 254.001; or

(2) outside the testator's will and is intended to take effect at the testator's death.

Derived from Probate Code §§ 67(a), (d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 255.053. Succession by Pretermitted Child if Testator Has Living Child at Will's Execution

(a) If no provision is made in the testator's last will for any child of the testator who is living when the testator executes the will, a pretermitted child succeeds to the portion of the testator's separate and community estate, other than any portion of the estate devised to the pretermitted child's other parent, to which the pretermitted child would have been entitled under Section 201.001 if the testator had died intestate without a surviving spouse, except as limited by Section 255.056.

(b) If a provision, whether vested or contingent, is made in the testator's last will for one or more children of the testator who are living when the testator executes the will, a pretermitted child is entitled only to a portion of the disposition made to children under the will that is equal to the portion the child would have received if the testator had:

(1) included all of the testator's pretermitted children with the children on whom benefits were conferred under the will; and

(2) given an equal share of those benefits to each child.

(c) To the extent feasible, the interest in the testator's estate to which the pretermitted child is entitled under Subsection (b) must be of the same character, whether an equitable or legal life estate or in fee, as the interest that the testator conferred on the testator's children under the will.

Derived from Probate Code § 67(a)(1).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2011, 82nd Leg., ch. 1338, § 2.27, eff. Jan. 1, 2014.

§ 255.054. Succession by Pretermitted Child if Testator Has No Living Child at Will's Execution

If a testator has no child living when the testator executes the testator's last will, a pretermitted child succeeds to the portion of the testator's separate and community estate, other than any portion of the estate devised to the pretermitted child's other parent, to which the pretermitted child would have been entitled under Section 201.001 if the testator had died intestate without a surviving spouse, except as limited by Section 255.056.

Derived from Probate Code § 67(a)(2).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.28, eff. Jan. 1, 2014.

§ 255.055. Ratable Recovery by Pretermitted Child from Portions Passing to Other Beneficiaries

(a) A pretermitted child may recover the share of the testator's estate to which the child is entitled from the testator's other children under Section 255.053(b) or from the testamentary beneficiaries under Sections 255.053(a) and 255.054, other than the pretermitted child's other parent, ratably, out of the portions of the estate passing to those persons under the will.

(b) In abating the interests of the beneficiaries described by Subsection (a), the character of the testamentary plan adopted by the testator must be preserved to the maximum extent possible.

Derived from Probate Code § 67(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 255.056. Limitation on Reduction of Estate Passing to Surviving Spouse

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 Section 255.053(a) or 255.054 may not reduce the portion of the testator's estate passing to the testator's surviving spouse by more than one-half.

Derived from Probate Code § 67(e).

Added by Acts 2011, 82nd Leg., ch. 1338, § 2.29, eff. Jan. 1, 2014.

Subchapter C. Lifetime Gifts as Satisfaction of Devise

Statutes in Context
Chapter 255, Subchapter C

The 2003 Texas Legislature enacted the Probate Code predecessor to this Subchapter to explain when an inter vivos gift will be treated as being in satisfaction of a testamentary gift. The provision is analogous to Estates Code Chapter 201 dealing with advancements in an intestacy context.

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.

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§ 255.101. Certain Lifetime Gifts Considered Satisfaction of Devise

Property that a testator gives to a person 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 from the devise;

(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.

Derived from Probate Code § 37C(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 255.102. Valuation of Property

Property given in partial satisfaction of a devise shall be valued as of the earlier of:

(1) the date the devisee acquires possession of or enjoys the property; or

(2) the date of the testator's death.

Derived from Probate Code § 37C(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Failure of Devise; Disposition of Property to Devisee Who Predeceases Testator

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Statutes in Context
Chapter 255, Subchapter D

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 (§ 122.002) or fail to satisfy the survival period imposed by the will or Chapter 121.

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, § 255.153 may provide a substitute beneficiary. Language in the residuary clause including within its scope lapsed gifts may prevent the application of the anti-lapse statute. See *Lacis v. Lacis*, 355 S.W.3d 727 (Tex. App.—Houston [1st Dist.] 2011, writ dism'd w.o.j.).

Section 255.153 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 255.154 provides that the anti-lapse provisions apply 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 255.152 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 255.152 implies survivorship language even though the will is silent. Remember that survivorship language is implied only for residuary gifts (that is, not for specific or general gifts).

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§ 255.151. Applicability of Subchapter

This subchapter applies unless the testator's last will and testament provides otherwise. For example, a devise in the testator's will stating "to my surviving children" or "to such of my children as shall survive me" prevents the application of Sections 255.153 and 255.154.

Derived from Probate Code § 68(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 255.152. Failure of Devise; Effect on Residuary Estate

(a) Except as provided by Sections 255.153 and 255.154, if a devise, other than a residuary devise, fails

for any reason, the devise becomes a part of the residuary estate.

(b) Except as provided by Sections 255.153 and 255.154, if the residuary estate is devised to two or more persons and the share of one of the residuary devisees fails for any reason, that residuary devisee's share passes to the other residuary devisees, in proportion to the residuary devisee's interest in the residuary estate.

(c) Except as provided by Sections 255.153 and 255.154, the residuary estate passes as if the testator had died intestate if all residuary devisees:

(1) are deceased at the time the testator's will is executed;

(2) fail to survive the testator; or

(3) are treated as if the residuary devisees predeceased the testator.

Derived from Probate Code §§ 68(b), (c), (d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 255.153. Disposition of Property to Certain Devisees Who Predecease Testator

(a) If a devisee who is a descendant of the testator or a descendant of a testator's parent is deceased at the time the will is executed, fails to survive the testator, or is treated as if the devisee predeceased the testator by Chapter 121 or otherwise, the descendants of the devisee who survived the testator by 120 hours take the devised property in place of the devisee.

(b) Devised property to which Subsection (a) applies shall be divided into the number of shares equal to the total number of surviving descendants in the nearest degree of kinship to the devisee and deceased persons in the same degree of kinship to the devisee whose descendants survived the testator. Each surviving descendant in the nearest degree of kinship to the devisee receives one share, and the share of each deceased person in the same degree of kinship to the devisee whose descendants survived the testator is divided among the descendants by representation.

Derived from Probate Code § 68(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 255.154. Devisee Under Class Gift

For purposes of this subchapter, 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.

Derived from Probate Code § 68(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter F. Devise of Securities

Statutes in Context
Chapter 255, Subchapter F

This Subchapter 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.

§ 255.251. Definitions

In this subchapter:

(1) "Securities" has the meaning assigned by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes).

(2) "Stock" means securities.

Derived from Probate Code § 70A(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 255.252. Increase in Securities; Accessions

Unless the will of a testator clearly provides otherwise, a devise of securities that are owned by the testator on the date the will is executed 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 an 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.

Derived from Probate Code § 70A(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 255.253. Cash Distribution Not Included in Devise

Unless the will of a testator clearly provides otherwise, a devise of securities does not include a cash distribution relating to the securities that accrues before the testator's death, regardless of whether the distribution is paid before the testator's death.

Derived from Probate Code § 70A(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter G. Exoneration of Debts Secured by Specific Devises

Statutes in Context
Chapter 255, Subchapter G

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 Estates Code § 255.302.

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 provision addressing the situation where a secured creditor elects matured secured claim status under Estates Code § 355.153.

§ 255.301. No Right to Exoneration of Debts

Except as provided by Section 255.302, 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 is not entitled to exoneration from the testator's estate for payment of the debt.

Derived from Probate Code § 71A(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 255.302. Exception

A specific devise does not pass to the devisee subject to a debt described by Section 255.301 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 section.

Derived from Probate Code § 71A(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 255.303. Rights of Certain Creditors and Other Persons

(a) Section 255.301 does not affect the rights of creditors provided under this title or the rights of other persons or entities provided under Chapters 102 and 353.

(b) A debt described by Section 255.301 that a creditor elects to have allowed and approved as a matured secured claim shall be paid in accordance with Sections 355.153(b), (c), (d), and (e).

Derived from Probate Code § 71A(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter H. Exercise of Power of Appointment Through Will

Statutes in Context
§ 255.351

The 2003 Texas Legislature clarified whether a residuary clause will be deemed to exercise a power of appointment held by the testator by enacting the Probate Code predecessor to Estates Code § 255.351. 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.

§ 255.351. Exercise of Power of Appointment Through Will

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 of 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.

Derived from Probate Code § 58c.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 256. Probate of Wills Generally

Subchapter A. Effectiveness of Will; Period for Probate

§ 256.001. Will Not Effective Until Probated
§ 256.002. Probate Before Death Void
§ 256.003. Period for Admitting Will to Probate; Protection for Certain Purchasers

Subchapter B. Application Requirements

§ 256.051. Eligible Applicants for Probate of Will

§ 256.052. Contents of Application For Probate of ~~[Written]~~ Will ~~[Generally]~~

§ 256.053. Filing of [~~Written~~] Will With Application For Probate Generally Required.

§ 256.054. Additional Application Requirements When No [~~Written~~] Will Is Produced

Subchapter C. Procedures for Second Application

§ 256.101. Procedure on Filing of Second Application When Original Application Has Not Been Heard

§ 256.102. Procedure on Filing of Second Application for Probate After First Will Has Been Admitted

§ 256.103. Procedure When Application for Probate is Filed After Letters of Administration Have Been Granted

Subchapter D. Required Proof for Probate of Will

§ 256.151. General Proof Requirements

§ 256.152. Additional Proof Required for Probate of Will

§ 256.153. Proof of Execution of [~~Authorized Methods of Proving~~] Attested [~~Written~~] Will

§ 256.154. Proof of Execution [~~Authorized Methods~~] OF [~~Proving~~] Holographic Will

§ 256.155. Procedures for Depositions When No Contest is Filed

§ 256.156. Proof of [~~Written~~] Will Not Produced in Court

§ 256.157. Testimony Regarding Probate to be Committed to Writing

Subchapter E. Admission of Will to, and Procedures Following, Probate

§ 256.201. Admission of Will to Probate

§ 256.202. Custody of Probated Will

§ 256.203. Establishing Contents of Will Not in Court's Custody

§ 256.204. Period for Contest

Chapter 256. Probate of Wills Generally

Subchapter A. Effectiveness of Will; Period for Probate

Statutes in Context
§ 256.001

A will has no legal effect until it is probated. Under § 256.001, a beneficiary has no claim to the devised or bequeathed property until the will is admitted to probate.

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§ 256.001. Will Not Effective Until Probated

Except as provided by Subtitle K with respect to foreign wills, a will is not effective to prove title to, or the right to possession of, any property disposed of by the will until the will is admitted to probate.

Derived from Probate Code § 94.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 256.002

Texas does not recognize ante-mortem probate. However, a few states including Alaska, Arkansas, North Dakota, and Ohio do permit a testator to have the validity of his or her will determined while the testator is still alive.

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§ 256.002. Probate Before Death Void

The probate of a will of a living person is void.

Derived from Probate Code § 72(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 256.003

A will must usually be probated within 4 years of the testator's death. However, § 256.003(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).

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§ 256.003. Period for Admitting Will to Probate; Protection for Certain Purchasers

(a) A will may not be admitted to probate after the fourth anniversary of the testator's death unless it is shown by proof that the applicant for the probate of the will was not in default in failing to present the will for

probate on or before the fourth anniversary of the testator's death.

(b) Letters testamentary may not be issued if a will is admitted to probate after the fourth anniversary of the testator's death.

(c) A person who for value, in good faith, and without knowledge of the existence of a will purchases property from a decedent's heirs after the fourth anniversary of the decedent's death shall be held to have good title to the interest that the heir or heirs would have had in the absence of a will, as against the claim of any devisee under any will that is subsequently offered for probate.

Derived from Probate Code § 73.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Application Requirements

§ 256.051. Eligible Applicants for Probate of Will

(a) An executor named in a will or an interested person may file an application with the court for an order admitting a will to probate, whether the will is:

(1) written or unwritten;

(2) in the applicant's possession or not;

(3) lost;

(4) destroyed; or

(5) outside of this state.

(b) An application for the probate of a will may be combined with an application for the appointment of an executor or administrator. A person interested in either the probate or the appointment may apply for both.

Derived from Probate Code § 76.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 256.052. Contents of Application For Probate of [~~Written~~] Will [~~Generally~~]

(a) An application for the probate of a [~~written~~] will must state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

(1) each applicant's name and domicile;

(2) the testator's name, domicile, and, if known, age, on the date of the testator's death;

(3) the fact, time, and place of the testator's death;

(4) facts showing that the court with which the application is filed has venue;

(5) that the testator owned property, including a statement generally describing the property and the property's probable value;

(6) the date of the will;

(7) the name, state of residence, and physical address where service can be had [~~residence~~] of the [~~:~~[~~(a) any~~] executor named in the will or other [~~, if no executor is named, of the~~] person to whom the applicant desires that letters be issued; [~~and~~]

(8) the name of [~~(B)~~] each subscribing witness to the will, if any;

(9) [~~(8)~~] whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children;

(10) [~~(9)~~] whether a marriage of the testator was ever dissolved after the will was made and, if so, when and from whom;

(11) [~~(10)~~] whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee; and

(12) [~~(11)~~] that the executor named in the will, the applicant, or another person to whom the applicant desires that letters be issued is not disqualified by law from accepting the letters.

(b) If an applicant does not state or aver any matter required by Subsection (a) in the application, the application must state the reason the matter is not stated and averred.

Derived from Probate Code § 81(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (a)(9) amended by Acts 2011, 82nd Leg., ch. 91, § 8.010, eff. Jan. 1, 2014 and Acts 2011, 82nd Leg., ch. 1338, § 2.30, eff. Jan. 1, 2014.Amended by Acts 2013, 83rd Leg., ch. 1136, §§ 21 & 22, eff. Jan. 1, 2014.

§ 256.053. Filing of [~~Written~~] Will With Application For Probate Generally Required

(a) An applicant for the probate of a [~~written~~] will shall file the will with the application if the will is in the applicant's control.

(b) A will filed under Subsection (a) must remain in the custody of the county clerk unless removed from the clerk's custody by a court order.

Derived from Probate Code § 81(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, §§ 23 & 24, eff. Jan. 1, 2014.

§ 256.054. Additional Application Requirements When No [~~Written~~] Will Is Produced.

In addition to the requirements for an application under Section 256.052, if an applicant for the probate of a [~~written~~] will cannot produce the will in court, the application must state:

(1) the reason the will cannot be produced;

(2) the contents of the will, as far as known; and

(3) the name, age, marital status, and address, if known, and the relationship to the testator, if any, of:

(A) each devisee;

(B) each person who would inherit as an heir of the testator in the absence of a valid will; and

(C) in the case of partial intestacy, each heir of the testator.

Derived from Probate Code § 81(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 25, eff. Jan. 1, 2014.

Subchapter C. Procedures for Second Application

§ 256.101. Procedure on Filing of Second Application when Original Application Has Not Been Heard

(a) If, after an application for the probate of a decedent's will or the appointment of a personal representative for the decedent's estate has been filed but before the application is heard, an application is filed for the probate of a will of the same decedent that has not previously been presented for probate, the court shall:

(1) hear both applications together; and

(2) determine:

(A) if both applications are for the probate of a will, which will should be admitted to probate, if either, or whether the decedent died intestate; or

(B) if only one application is for the probate of a will, whether the will should be admitted to probate or whether the decedent died intestate.

(b) The court may not sever or bifurcate the proceeding on the applications described in Subsection (a).

Derived from Probate Code § 83(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.31, eff. Jan. 1, 2014.

§ 256.102. Procedure on Filing of Second Application for Probate After First Will Has Been Admitted

If, after a decedent's will has been admitted to probate, an application is filed for the probate of a will of the same decedent that has not previously been presented for probate, the court shall determine:

(1) whether the former probate should be set aside; and

(2) if the former probate is to be set aside, whether:

(A) the other will should be admitted to probate; or

(B) the decedent died intestate.

Derived from Probate Code § 83(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 256.103. Procedure when Application for Probate Is Filed After Letters of Administration Have Been Granted

(a) A lawful will of a decedent that is discovered after letters of administration have been granted on the decedent's estate may be proved in the manner provided for the proof of wills.

(b) The court shall allow an executor named in a will described by Subsection (a) who is not disqualified to qualify and accept as executor. The court shall revoke the previously granted letters of administration.

(c) If an executor is not named in a will described by Subsection (a), or if the executor named is disqualified or dead, renounces the executorship, fails or is unable to accept and qualify before the 21st day after the date of the probate of the will, or fails to present the will for probate before the 31st day after the discovery of the will, the court, as in other cases, shall grant an administration with the will annexed of the testator's estate.

(d) An act performed by the first administrator before the executor described by Subsection (b) or the administrator with the will annexed described by Subsection (c) qualifies is as valid as if no will had been discovered.

Derived from Probate Code § 83(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Required Proof for Probate of Will

§ 256.151. General Proof Requirements

An applicant for the probate of a will must prove to the court's satisfaction that:

(1) the testator is dead;

(2) four years have not elapsed since the date of the testator's death and before the application;

(3) the court has jurisdiction and venue over the estate;

(4) citation has been served and returned in the manner and for the period required by this title; and

(5) the person for whom letters testamentary or of administration are sought is entitled by law to the letters and is not disqualified.

Derived from Probate Code § 88(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§§ 256.152–256.155

Sections 256.152–256.155 explain how to prove a written will which is physically produced in court. If the will is self-proved, no additional proof is needed. See §§ 251.051 (attested wills) and 251.052 (holographic wills).

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§ 256.152. Additional Proof Required for Probate of Will

(a) An applicant for the probate of a will must prove the following to the court's satisfaction, in addition to the proof required by Section 256.151, to obtain the probate:

(1) the testator did not revoke the will; and

(2) if the will is not self-proved as provided by this title, the testator:

(A) executed the will with the formalities and solemnities and under the circumstances required by law to make the will valid; and

(B) at the time of executing the will, was of sound mind and:

(i) was 18 years of age or older;

(ii) was or had been married; or

(iii) was 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) A will that is self-proved as provided by Subchapter C, Chapter 251, 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 is not required to have any additional proof that the will was executed with the formalities and solemnities and under the circumstances required to make the will valid.

(c) As an alternative to Subsection (b) [~~For purposes of Subsection (b)~~], a will executed in another state or a foreign country is considered self-proved without further evidence of the law of the other state or foreign country if the will, or an affidavit of the testator and attesting witnesses attached or annexed to the will, provides that:

(1) 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

(2) 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.

Derived from Probate Code § 84(a), 88(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.32, eff. Jan. 1, 2014. Subsec. (c) amended by Acts 2013, 83rd Leg., ch. 1136, § 26, eff. Jan. 1, 2014.

§ 256.153. Proof of Execution of [~~Authorized Methods of Proving~~] Attested [~~Written~~] Will

(a) An attested [~~written~~] will produced in court that is not self-proved as provided by this title may be proved in the manner provided by this section.

(b) A will described by Subsection (a) may be proved by the sworn testimony or affidavit of one or more of the subscribing witnesses to the will taken in open court.

(c) If all the witnesses to a will described by Subsection (a) are nonresidents of the county or the witnesses who are residents of the county are unable to attend court, the will may be proved:

(1) by the sworn testimony of one or more of the witnesses by written or oral deposition taken in accordance with Section 51.203 or the Texas Rules of Civil Procedure [~~in the same manner and under the same rules as depositions are taken in other civil actions~~];

(2) if no opposition in writing to the will is filed on or before the date set for the hearing on the will, by the sworn testimony or affidavit of two witnesses taken in open court, or by deposition as provided by Subdivision (1), to the signature or the handwriting evidenced by the signature of:

(A) one or more of the attesting witnesses; or

(B) the testator, if the testator signed the will; or

(3) if it is shown under oath to the court's satisfaction that, after a diligent search was made, only one witness can be found who can make the required proof, by the sworn testimony or affidavit of that witness taken in open court, or by deposition as provided by Subdivision (1), to a signature, or the handwriting evidenced by a signature, described by Subdivision (2).

(d) If none of the witnesses to a will described by Subsection (a) are living, or if each of the witnesses is a member of the armed forces or the armed forces reserves of the United States, an auxiliary of the armed forces or armed forces reserves, or the United States Maritime Service and is beyond the court's jurisdiction, the will may be proved:

(1) by two witnesses to the handwriting of one or both of the subscribing witnesses to the will or the testator, if the testator signed the will, by:

(A) sworn testimony or affidavit taken in open court; or

(B) written or oral deposition taken in accordance with Section 51.203 or the Texas Rules of Civil Procedure [~~in the same manner and under the same rules as depositions are taken in other civil actions~~]; or

(2) if it is shown under oath to the court's satisfaction that, after a diligent search was made, only one witness can be found who can make the required proof, by the sworn testimony or affidavit of that witness taken in open court, or by deposition as provided by Subdivision (1), to a signature or the handwriting described by Subdivision (1).

(e) A witness being deposed for purposes of proving the will as provided by Subsection (c) or (d) may testify by referring to a certified copy of the will, without the judge requiring the original will to be removed from the court's file and shown to the witness.

Derived from Probate Code § 84(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended and subsection (e) added by Acts 2013, 83rd Leg., ch. 1136, § 27, eff. Jan. 1, 2014.

§ 256.154. Proof of Execution [~~Authorized Methods~~] of [~~Proving~~] Holographic Will

(a) A will wholly in the handwriting of the testator that is not self-proved as provided by this title may be proved by two witnesses to the testator's handwriting. The evidence may be by:

(1) sworn testimony or affidavit taken in open court; or

(2) if the witnesses are nonresidents of the county or are residents who are unable to attend court, written or oral deposition taken in accordance with Section 51.203 or the Texas Rules of Civil Procedure [~~in the same manner and under the same rules as depositions are taken in other civil actions~~].

(b) A witness being deposed for purposes of proving the will as provided by Subsection (a)(2) may testify by referring to a certified copy of the will, without the judge requiring the original will to be removed from the court's file and shown to the witness.

Derived from Probate Code § 84(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 28, eff. Jan. 1, 2014.

§ 256.155. Procedures for Depositions when No Contest is Filed

(a) This section, rather than Sections 256.153(c) and (d) and 256.154 regarding the taking of depositions [~~under the same rules as depositions in other civil actions~~], applies if no contest has been filed with respect to an application for the probate of a will.

(b) Depositions for the purpose of establishing a will may be taken in the manner provided by Section 51.203 for the taking of depositions when there is no opposing party or attorney of record on whom notice and copies of interrogatories may be served.

Derived from Probate Code § 84(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsection (a) amended by Acts 2013, 83rd Leg., ch. 1136, § 29, eff. Jan. 1, 2014.

Statutes in Context
§ 256.156

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 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.).

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§ 256.156. Proof of [~~Written~~] Will Not Produced in Court

(a) A [~~written~~] will that cannot be produced in court must be proved in the same manner as provided in Section 256.153 for an attested [~~written~~] will or Section 256.154 for a holographic will, as applicable. The same amount and character of testimony is required to prove the [~~written~~] will not produced in court as is required to prove a [~~written~~] will produced in court.

(b) In addition to the proof required by Subsection (a):

(1) the cause of the nonproduction of a [~~written~~] will not produced in court must be proved, which must be sufficient to satisfy the court that the will cannot by any reasonable diligence be produced; and

(2) the contents of the will must be substantially proved by the testimony of a credible witness who has read either the original or a copy of the will, has heard the will read, or can identify a copy of the will.

Derived from Probate Code § 85.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 30, eff. Jan. 1, 2014.

§ 256.157. Testimony Regarding Probate to Be Committed to Writing

(a) Except as provided by Subsection (b), all testimony taken in open court on the hearing of an application to probate a will must be:

(1) committed to writing at the time the testimony is taken;

(2) subscribed and sworn to in open court by the witness; and

(3) filed by the clerk.

(b) In a contested case, the court, on the agreement of the parties or, if there is no agreement, on the court's own motion, may waive the requirements of Subsection (a).

Derived from Probate Code § 87.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter E. Admission of Will To, and Procedures Following, Probate

§ 256.201. Admission of Will to Probate

If the court is satisfied on the completion of hearing an application for the probate of a will that the will should be admitted to probate, the court shall enter an order admitting the will to probate. Certified copies of the will and the order admitting the will to probate, or of the record of the will and order, and the record of testimony, may be:

(1) recorded in other counties; and

(2) used in evidence, as the originals may be used, on the trial of the same matter in any other court when taken to that court by appeal or otherwise.

Derived from Probate Code § 89.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 256.202. Custody of Probated Will

An original will and the probate of the will shall be deposited in the office of the county clerk of the county in which the will was probated. The will and probate of the will shall remain in that office except during a time the will and the probate of the will are removed for inspection to another place on an order of the court where the will was probated. If that court orders the original will to be removed to another place for inspection:

(1) the person removing the will shall give a receipt for the will; and

(2) the court clerk shall make and retain a copy of the will.

Derived from Probate Code § 90.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 256.203. Establishing Contents of Will Not in Court's Custody

If for any reason a [~~written~~] will is not in the court's custody, the court shall find the contents of the will by written order. Certified copies of the contents as established by the order may be:

(1) recorded in other counties; and

(2) used in evidence, as certified copies of [~~written~~] wills in the custody of the court may be used.

Derived from Probate Code § 91.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 31, eff. Jan. 1, 2014.

Statutes in Context
§ 256.204

Section 256.204 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 § 22.017 have 2 years from the removal of their disabilities to begin the contest.

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§ 256.204. Period for Contest

(a) After a will is admitted to probate, an interested person may commence a suit to contest the validity thereof not later than the second anniversary of the date the will was admitted to probate, except that an

interested person may commence a suit to cancel a will for forgery or other fraud not later than the second anniversary of the date the forgery or fraud was discovered.

(b) Notwithstanding Subsection (a), an incapacitated person may commence the contest under that subsection on or before the second anniversary of the date the person's disabilities are removed.

Derived from Probate Code § 93.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 257. Probate of Will as Muniment of Title

Subchapter A. Authorization

§ 257.001. Probate of Will as Muniment of Title Authorized

Subchapter B. Application and Proof Requirements

§ 257.051. Contents of Application Generally
§ 257.052. Filing of [~~Written~~] Will With Application Generally Required
§ 257.053. Additional Application Requirements When No [~~Written~~] Will Is Produced
§ 257.054. Proof Required

Subchapter C. Order Admitting Will; Report

§ 257.101. Declaratory Judgment Construing Will
§ 257.102. Authority of Certain Persons Acting in Accordance With Order
§ 257.103. Report by Applicant After Probate

Chapter 257. Probate of Will as Muniment of Title

Statutes in Context
Chapter 257

Chapter 257 details 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 § 256.003. See also § 258.051 (heirs must receive notice of late probate).

Subchapter A. Authorization

§ 257.001. Probate of Will as Muniment of Title Authorized

A court may admit a will to probate as a muniment of title if the court is satisfied that the will should be admitted to probate and the court:

(1) is satisfied that the testator's estate does not owe an unpaid debt, other than any debt secured by a lien on real estate; or

(2) finds for another reason that there is no necessity for administration of the estate.

Derived from Probate Code § 89C(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Application and Proof Requirements

§ 257.051. Contents of Application Generally

(a) An application for the probate of a will as a muniment of title must state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

(1) each applicant's name and domicile;

(2) the testator's name, domicile, and, if known, age, on the date of the testator's death;

(3) the fact, time, and place of the testator's death;

(4) facts showing that the court with which the application is filed has venue;

(5) that the testator owned property, including a statement generally describing the property and the property's probable value;

(6) the date of the will;

(7) the name and residence of:

(A) any executor named in the will; and

(B) each subscribing witness to the will, if any;

(8) whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children;

(9) that the testator's estate does not owe an unpaid debt, other than any debt secured by a lien on real estate;

(10) whether a marriage of the testator was ever dissolved after the will was made and, if so, when and from whom; and

(11) whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee.

(b) If an applicant does not state or aver any matter required by Subsection (a) in the application, the application must state the reason the matter is not stated and averred.

Derived from Probate Code § 89A(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.33(a), eff. Jan. 1, 2014.

§ 257.052. Filing of [~~Written~~] Will With Application Generally Required

(a) An applicant for the probate of a [~~written~~] will as a muniment of title shall file the will with the application if the will is in the applicant's control.

(b) A will filed under Subsection (a) must remain in the custody of the county clerk unless removed from the clerk's custody by court order.

Derived from Probate Code § 89A(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014 . Amended by Acts 2013, 83rd Leg., ch. 1136, § 32, eff. Jan. 1, 2014.

§ 257.053. Additional Application Requirements When No [~~Written~~] Will Is Produced.

In addition to the requirements for an application under Section 257.051, if an applicant for the probate of a [~~written~~] will as a muniment of title cannot produce the will in court, the application must state:

(1) the reason the will cannot be produced;

(2) the contents of the will, to the extent known; and

(3) the name, age, marital status, and address, if known, and the relationship to the testator, if any, of:

(A) each devisee;

(B) each person who would inherit as an heir of the testator in the absence of a valid will; and

(C) in the case of partial intestacy, each heir of the testator.

Derived from Probate Code § 89A(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts. 2013, 83rd Leg., ch. 1136, § 33, eff. Jan. 1, 2014.

§ 257.054. Proof Required

An applicant for the probate of a will as a muniment of title must prove to the court's satisfaction that:

(1) the testator is dead;

(2) four years have not elapsed since the date of the testator's death and before the application;

(3) the court has jurisdiction and venue over the estate;

(4) citation has been served and returned in the manner and for the period required by this title;

(5) the testator's estate does not owe an unpaid debt, other than any debt secured by a lien on real estate;

(6) the testator did not revoke the will; and

(7) if the will is not self-proved in the manner provided by this title, the testator:

(A) executed the will with the formalities and solemnities and under the circumstances required by law to make the will valid; and

(B) at the time of executing the will was of sound mind and:

(i) was 18 years of age or older;

(ii) was or had been married; or

(iii) was 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.

Derived from Probate Code § 89B.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Order Admitting Will; Report

§ 257.101. Declaratory Judgment Construing Will

(a) On application and notice as provided by Chapter 37, Civil Practice and Remedies Code, the court may hear evidence and include in an order probating a will as a muniment of title a declaratory judgment:

(1) construing the will, if a question of construction of the will exists; or

(2) determining those persons who are entitled to receive property under the will and the persons' shares or interests in the estate, if a person who is entitled to property under the provisions of the will cannot be ascertained solely by reference to the will.

(b) A declaratory judgment under this section is conclusive in any suit between a person omitted from the judgment and a bona fide purchaser for value who purchased property after entry of the judgment without actual notice of the claim of the omitted person to an interest in the estate.

(c) A person who delivered the testator's property to a person declared to be entitled to the property under the declaratory judgment under this section or 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.

Derived from Probate Code § 89C(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 257.102. Authority of Certain Persons Acting in Accordance with Order

(a) An order admitting a will to probate as a muniment of title constitutes sufficient legal authority

for each person who owes money to the testator's estate, has custody of property, acts as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, or purchases from or otherwise deals with the estate, to pay or transfer without administration the applicable asset without liability to a person described in the will as entitled to receive the asset.

(b) A person who is entitled to property under the provisions of a will admitted to probate as a muniment of title is entitled to deal with and treat the property in the same manner as if the record of title to the property was vested in the person's name.

Derived from Probate Code § 89C(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 257.103. Report by Applicant After Probate

(a) Except as provided by Subsection (b), not later than the 180th day after the date a will is admitted to probate as a muniment of title, the applicant for the probate of the will shall file with the court clerk a sworn affidavit stating specifically the terms of the will that have been fulfilled and the terms that have not been fulfilled.

(b) The court may:

(1) waive the requirement under Subsection (a); or

(2) extend the time for filing the affidavit under Subsection (a).

(c) The failure of an applicant for probate of a will to file the affidavit required by Subsection (a) does not affect title to property passing under the terms of the will.

Derived from Probate Code § 89C(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 258. Citations and Notices Relating to Probate of Will

Subchapter A. Citations with Respect to Applications for Probate of Will

§ 258.001. Citation on Application for Probate of Will Produced in Court

§ 258.002. Citation on Application for Probate of Will Not Produced in Court

§ 258.003. Court Action Prohibited Before Service of Citation

Subchapter B. Notices with Respect to Application to Probate Will After the Period for Probate

§ 258.051. Notice to Heirs

§ 258.052. Appointment of Attorney Ad Litem

§ 258.053. Previously Probated Will

Subchapter C. Service by Publication or Other Substituted Service

§ 258.101. Service by Publication or Other Substituted Service

Chapter 258. Citations and Notices Relating to Probate of Will

Subchapter A. Citations with Respect to Applications for Probate of Will

Statutes in Context
Chapter 258, Subchapter A

Notice of an application for the probate of a written will produced in court and for letters of administration is served by posting under § 258.001. The notice of the action is merely placed on the courthouse door or a nearby location under § 51.053. 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 or a will more than 4 years after the testator's death (see § 258.051).

§ 258.001. Citation on Application for Probate of Will Produced in Court

(a) On the filing with the clerk of an application for the probate of a written will produced in court, the clerk shall issue a citation to all parties interested in the estate.

(b) The citation required by Subsection (a) shall be served by posting and must state:

(1) that the application has been filed;

(2) the nature of the application;

(3) the testator's name;

(4) the applicant's name;

(5) the time when the court will act on the application; and

(6) that any person interested in the estate may appear at the time stated in the citation to contest the application.

Derived from Probate Code § 128(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 258.002. Citation on Application for Probate of Will Not Produced in Court

(a) On the filing of an application for the probate of a written will that cannot be produced in court, the clerk shall issue a citation to all parties interested in the estate. The citation must:

(1) contain substantially the statements made in the application for probate;

(2) identify the court that will act on the application; and

(3) state the time and place of the court's action on the application.

(b) The citation required by Subsection (a) shall be served on the testator's heirs by personal service if the heirs are residents of this state and their addresses are known.

(c) Service of the citation required by Subsection (a) may be made by publication if:

(1) the heirs are not residents of this state;

(2) the names or addresses of the heirs are unknown; or

(3) the heirs are transient persons.

Derived from Probate Code § 128(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 258.003. Court Action Prohibited Before Service of Citation

A court may not act on an application for the probate of a will until service of citation has been made in the manner provided by this subchapter.

Derived from Probate Code § 128(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Notices with Respect to Application to Probate Will After the Period for Probate

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Statutes in Context
§ 258.051

See Statutes in Context to Chapter 258, Subchapter A.

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§ 258.051. Notice to Heirs

(a) Except as provided by Subsection (c), an applicant for the probate of a will under Section 256.003(a) 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.

(b) The notice required by Subsection (a) must:

(1) contain a statement that:

(A) the testator's property will pass to the testator's heirs if the will is not admitted to probate; and

(B) 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; and

(2) be given before the probate of the testator's will.

(c) Notice otherwise required by Subsection (a) is not required to be given to an heir who has delivered to the court an affidavit signed by the heir that:

(1) contains the statement described by Subsection (b)(1); and

(2) states that the heir does not object to the offer of the testator's will for probate.

Derived from Probate Code §§ 128B(a), (b), (c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 258.052. Appointment of Attorney Ad Litem

If an applicant described by Section 258.051(a) cannot, with reasonable diligence, ascertain the address of any of the testator's heirs, the court shall appoint an attorney ad litem to protect the interests of the testator's unknown heirs after an application for the probate of a will is made under Section 256.003(a).

Derived from Probate Code § 128B(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 258.053. Previously Probated Will

With respect to an application under Section 256.003(a) for the probate of a will of a testator who has had another will admitted to probate, this subchapter applies so as to require notice to the beneficiaries of the testator's probated will instead of to the testator's heirs.

Derived from Probate Code § 128B(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Service by Publication or Other Substituted Service

§ 258.101. Service by Publication or Other Substituted Service

Notwithstanding any other provision of this chapter, if an attempt to make service under 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.

Derived from Probate Code § 129A.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

SUBTITLE G. INITIAL APPOINTMENT OF PERSONAL REPRESENTATIVE AND OPENING OF ADMINISTRATION

Chapter 301. Application for Letters Testamentary or of Administration

Subchapter A. Period for Application for Letters

§ 301.001. Administration Before Death Void
§ 301.002. Period for Filing Application for Letters Testamentary or of Administration

Subchapter B. Application Requirements

§ 301.051. Eligible Applicants for Letters
§ 301.052. Contents of Application for Letters of Administration

Subchapter C. Opposition to Certain Applications

§ 301.101. Opposition to Application for Letters of Administration

Subchapter D. Required Proof for Issuance of Letters

§ 301.151. General Proof Requirements
§ 301.152. Additional Proof Required for Letters Testamentary
§ 301.153. Additional Proof Required for Letters of Administration; Effect of Finding No Necessity for Admin*is*tration Exists
§ 301.154. Proof Required when Letters Have Previously Been Granted
§ 301.155. Authorized Methods of Proof

Subchapter E. Prevention of Administration

§ 301.201. Method of Preventing Administration Requested by Creditor
§ 301.202. Suit on Bond
§ 301.203. Bond Secured by Lien

Chapter 301. Application for Letters Testamentary or of Administration

Subchapter A. Period for Application for Letters

§ 301.001. Administration Before Death Void

The administration of an estate of a living person is void.

Derived from Probate Code § 72(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 301.002

Section 301.002 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.

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§ 301.002. Period for Filing Application for Letters Testamentary or of Administration

(a) Except as provided by Subsection (b), an application for the grant of letters testamentary or of administration of an estate must be filed not later than the fourth anniversary of the decedent's death.

(b) This section does not apply if administration is necessary to receive or recover property due a decedent's estate.

Derived from Probate Code § 74.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Application Requirements

§ 301.051. Eligible Applicants for Letters

An executor named in a will or an interested person may file an application with the court for:

(1) the appointment of the executor named in the will; or

(2) the appointment of an administrator, if:

(A) there is a will, but:

(i) no executor is named in the will; or

(ii) the executor named in the will is disqualified, refuses to serve, is dead, or resigns; or

(B) there is no will.

Derived from Probate Code § 76.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 301.052

Section 301.052 enumerates the requirements of an application for letters of administration for an intestate decedent.

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§ 301.052. Contents of Application for Letters of Administration

An application for letters of administration when no will is alleged to exist must state:

(1) the applicant's name, domicile, and, if any, relationship to the decedent;

(2) the decedent's name and that the decedent died intestate;

(3) the fact, time, and place of the decedent's death;

(4) facts necessary to show that the court with which the application is filed has venue;

(5) whether the decedent owned property and, if so, include a statement of the property's probable value;

(6) the name, age, marital status, and address, if known, and the relationship to the decedent of each of the decedent's heirs;

(7) if known by the applicant at the time the applicant files the application, whether one or more children were born to or adopted by the decedent and, if so, the name, birth date, and place of birth of each child;

(8) if known by the applicant at the time the applicant files the application, whether the decedent was ever divorced and, if so, when and from whom;

(9) that a necessity exists for administration of the decedent's estate and an allegation of the facts that show that necessity; and

(10) that the applicant is not disqualified by law from acting as administrator.

Derived from Probate Code § 82.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Opposition to Certain Applications

§ 301.101. Opposition to Application for Letters of Administration

An interested person may, at any time before an application for letters of administration is granted, file an opposition to the application in writing and may apply for the grant of letters to the interested person or any other person. On the trial, the court, considering the applicable provisions of this code, shall grant letters to the person that seems best entitled to the letters without notice other than the notice given on the original application.

Derived from Probate Code § 179.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Required Proof for Issuance of Letters

Statutes in Context
§ 301.151

Section 301.151 enumerates the items which the applicant must prove to probate a will, receive letters testamentary or letters of administration.

§ 301.151. General Proof Requirements

An applicant for the issuance of letters testamentary or of administration of an estate must prove to the court's satisfaction that:

(1) the person whose estate is the subject of the application is dead;

(2) four years have not elapsed since the date of the decedent's death and before the application;

(3) the court has jurisdiction and venue over the estate;

(4) citation has been served and returned in the manner and for the period required by this title; and

(5) the person for whom letters testamentary or of administration are sought is entitled by law to the letters and is not disqualified.

Derived from Probate Code § 88(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 301.152. Additional Proof Required for Letters Testamentary

If letters testamentary are to be granted, it must appear to the court that:

(1) the proof required for the probate of the will has been made; and

(2) the person to whom the letters are to be granted is named as executor in the will.

Derived from Probate Code § 88(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 301.153. Additional Proof Required for Letters of Administration; Effect of Finding No Necessity for Administration Exists

(a) If letters of administration are to be granted, the applicant for the letters must prove to the court's satisfaction that a necessity for an administration of the estate exists.

(b) If an application is filed for letters of administration but the court finds that no necessity for an administration of the estate exists, the court shall recite in the court's order refusing the application that no necessity for an administration exists.

(c) A court order containing a recital that no necessity for an administration of the estate exists constitutes sufficient legal authority for each person who owes money, has custody of property, or acts as registrar or transfer agent of any evidence of interest, indebtedness, property, or right belonging to the estate, and to each person purchasing or otherwise dealing with the estate, for payment or transfer to the distributees.

(d) A distributee is entitled to enforce by suit the distributee's right to payment or transfer described by Subsection (c).

Derived from Probate Code §§ 88(d), 180.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 301.154. Proof Required when Letters Have Previously Been Granted

If letters testamentary or of administration have previously been granted with respect to an estate, an applicant for the granting of subsequent letters must show only that the person for whom the letters are sought is entitled by law to the letters and is not disqualified.

Derived from Probate Code § 88(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Contest
§ 301.155

Section 301.155 provides that any fact that must be provided, e.g., in applications for the issuance of letters, may be provided by live testimony, or if the witness is unavailable, by disposition on written questions.

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§ 301.155. Authorized Methods of Proof

A fact contained in an application for issuance of letters testamentary or of administration or any other fact required to be proved by this subchapter may be proved by the sworn testimony of a witness with personal knowledge of the fact that is:

(1) taken in open court; or

(2) if proved under oath to the satisfaction of the court that the witness is unavailable, taken by deposition on written questions in accordance with Section 51.203 or the Texas Rules of Civil Procedure.

New.

Added by Acts 2013, 83rd Leg., ch. 1136, § 34, eff. Jan. 1, 2014.

Subchapter E. Prevention of Administration

Statutes in Context
§ 301.201

If a creditor seeks an administration, § 301.201 provides a means for an interested person to defeat the application.

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§ 301.201. Method of Preventing Administration Requested by Creditor

(a) If a creditor files an application for letters of administration of an estate, another interested person who does not desire the administration can defeat the application by:

(1) paying the creditor's claim;

(2) proving to the court's satisfaction that the creditor's claim is fictitious, fraudulent, illegal, or barred by limitation; or

(3) executing a bond that is:

(A) payable to, and to be approved by, the judge in an amount that is twice the amount of the creditor's claim; and

(B) conditioned on the obligors paying the claim on the establishment of the claim by suit in any court in the county having jurisdiction of the amount.

(b) A bond executed and approved under Subsection (a)(3) must be filed with the county clerk.

Derived from Probate Code §§ 80(a), (b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 301.202. Suit on Bond

Any creditor for whose protection a bond is executed under Section 301.201(a)(3) may sue on the bond in the creditor's own name to recover the creditor's claim.

Derived from Probate Code § 80(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 301.203. Bond Secured by Lien

If a bond is executed and approved under Section 301.201(a)(3), a lien exists on all of the estate in the possession of the distributees, and those claiming under the distributees with notice of the lien, to secure the ultimate payment of the bond.

Derived from Probate Code § 80(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 303. Citations and Notices in General on Opening of Administration

§ 303.001. Citation on Application for Issuance of Letters of Administration

§ 303.002. Court Action Prohibited Before Service of Citation

§ 303.003. Service by Publication or Other Substituted Service

Chapter 303. Citations and Notices in General on Opening of Administration

§ 303.001. Citation on Application for Issuance of Letters of Administration

(a) On the filing with the clerk of an application for letters of administration, the clerk shall issue a citation to all parties interested in the estate.

(b) The citation required by Subsection (a) shall be served by posting and must state:

(1) that the application has been filed;

(2) the nature of the application;

(3) the decedent's name;

(4) the applicant's name;

(5) the time when the court will act on the application; and

(6) that any person interested in the estate may appear at the time stated in the citation to contest the application.

Derived from Probate Code § 128(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 303.002. Court Action Prohibited Before Service of Citation

A court may not act on an application for the issuance of letters of administration until service of citation has been made in the manner provided by this chapter.

Derived from Probate Code § 128(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 303.003. Service by Publication or Other Substituted Service

Notwithstanding any other provision of this chapter, if an attempt to make service under 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.

Derived from Probate Code § 129A.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 304. Persons Who May Serve as Personal Representatives

§ 304.001. Order of Persons Qualified to Serve as Personal Representative

§ 304.002. Renouncing Right to Serve as Personal Representative

§ 304.003. Persons Disqualified to Serve as Executor or Administrator

Chapter 304. Persons Who May Serve as Personal Representatives

Statutes in Context
§ 304.001

To serve as a personal representative of a decedent's estate, the person must be qualified under § 304.001 and not disqualified under § 304.003. Section 304.001 provides a list in priority order of the persons who are qualified to serve. Note that the court may appoint co-personal representatives.

§ 304.001. Order of Persons Qualified to Serve as Personal Representative

(a) The court shall grant letters testamentary or of administration to persons qualified to act, in the following order:

(1) the person named as executor in the decedent's will;

(2) the decedent's surviving spouse;

(3) the principal devisee of the decedent;

(4) any devisee of the decedent;

(5) the next of kin of the decedent;

(6) a creditor of the decedent;

(7) any person of good character residing in the county who applies for the letters; [~~and~~]

(8) any other person who is not disqualified under Section 304.003; and

(9) any appointed public probate administrator.

(b) For purposes of Subsection (a)(5), the decedent's next of kin:

(1) is determined in accordance with order of descent, with the person nearest in order of descent first, and so on; and

(2) includes a person and the person's descendants who legally adopted the decedent or who have been legally adopted by the decedent.

(c) If persons [~~applicants for letters testamentary or of administration~~] are equally entitled to letters testamentary or of administration [~~the letters~~], the court:

(1) shall grant the letters to the person [~~applicant~~] who, in the judgment of the court, is most likely to administer the estate advantageously; or

(2) may grant the letters to two or more of those persons [~~applicants~~].

Derived from Probate Code § 77.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsection (a) amended by Acts 2013, 83rd Leg., ch. 671, § 3, eff. Jan. 1, 2014. Subsec. (c) amended by Acts 2013, 83rd Leg., ch. 1136, § 35, eff. Jan. 1, 2014.

§ 304.002. Renouncing Right to Serve as Personal Representative

A decedent's surviving spouse, or, if there is no surviving spouse, the heirs or any one of the heirs of the decedent to the exclusion of any person not equally entitled to letters testamentary or of administration, may renounce the right to the letters in favor of another qualified person in open court or by a power of attorney

authenticated and filed with the county clerk of the county where the application for the letters is filed. After the right to the letters has been renounced, the court may grant the letters to the other qualified person.

Derived from Probate Code § 79.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 304.003

Section 304.003 enumerates the persons who are disqualified from serving as a personal representative. The disqualification of being a non-resident in § 304.003 is removed if the non-resident appoints a resident agent to accept service of process. For additional guidance regarding this agent, see §§ 56.001 & 56.002.

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§ 304.003. Persons Disqualified to Serve as Executor or Administrator

A person is not qualified to serve as an executor or administrator if the person is:

(1) incapacitated;

(2) a felon convicted under the laws of the United States or of any state of the United States unless, in accordance with law, the person has been pardoned or has had the person's civil rights restored;

(3) a nonresident of this state who:

(A) is a natural person or corporation; and

(B) has not:

(i) appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate; or

(ii) had that appointment filed with the court;

(4) a corporation not authorized to act as a fiduciary in this state; or

(5) a person whom the court finds unsuitable.

Derived from Probate Code § 78.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 305. Qualification of Personal Representatives

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Chapter 305. Qualification of Personal Representatives

Subchapter A. General Provisions

§ 305.001. Definitions

In this chapter:

(1) "Bond" means a bond required by this chapter to be given by a person appointed to serve as a personal representative.

(2) "Oath" means an oath required by this chapter to be taken by a person appointed to serve as a personal representative.

New.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 305.002

Section 305.002 explains that a personal representative is "qualified" after filing any required bond and taking the oath of office.

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§ 305.002. Manner of Qualification of Personal Representative

(a) A personal representative, other than an executor described by Subsection (b), is considered to have qualified when the representative has:

(1) taken and filed the oath prescribed by Subchapter B;

(2) filed [~~given~~] the required bond with the clerk; and

(3) obtained the judge's approval of the bond [~~; and~~

[~~(4) filed the bond with the clerk~~].

(b) An executor who is not required to give a bond is considered to have qualified when the executor has taken and filed the oath prescribed by Subchapter B.

Derived from Probate Code § 189.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsection (a) amended by Acts 2013, 83rd Leg., ch. 1136, § 36, eff. Jan. 1, 2014.

Statutes in Context
§ 305.003

The personal representative should take the oath and post any required bond within 20 days of the order granting letters under § 305.003.

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§ 305.003. Period for Taking Oath [~~and Giving Bond~~]

An oath may be taken and subscribed [~~and a bond may be given and approved~~] at any time before:

(1) the 21st day after the date of the order granting letters testamentary or of administration, as applicable; or

(2) the letters testamentary or of administration, as applicable, are revoked for a failure to qualify within the period allowed.

Derived from Probate Code § 192.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, eff. Jan. 1, 2014.

§ 305.004. Period for Giving Bond

(a) A bond may be filed with the clerk at any time before:

(1) the 21st day after:

(A) the date of the order granting letters testamentary or of administration, as applicable; or

(B) the date of any order modifying the bond requirement; or

(2) the date letters testamentary or of administration, as applicable, are revoked for a failure to qualify within the period allowed.

(b) The court shall act promptly to review a bond filed as provided by Subsection (a) and, if acceptable, shall approve the bond.

(c) If no action has been taken by the court on the bond before the 21st day after the date the bond is filed, the person appointed personal representative may file a motion requiring the judge of the court in which the bond was filed to specify on the record the reason or reasons for the judge's failure to act on the bond. The hearing on the motion must be held before the 11th day after the date the motion is filed.

New.

Added by Acts 2013, 83rd Leg., ch. 1136, § 38, eff. Jan. 1, 2014.

Subchapter B. Oaths

Statutes in Context
Chapter 305, Subchapter B

Subchapter B sets forth the oaths which personal representatives must take and file before receiving letters.

§ 305.051. Oath of Executor or Administrator with Will Annexed

Before the issuance of letters testamentary or letters of administration with the will annexed, the person named as executor or appointed as administrator with the will annexed shall take and subscribe an oath in substantially the following form:

I do solemnly swear that the writing offered for probate is the last will of _____ (insert name of testator), so far as I know or believe, and that I will well and truly perform all the duties of _____ (insert "executor of the will" or "administrator with the will annexed," as applicable) for the estate of _____ (insert name of testator).

Derived from Probate Code § 190(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.052. Oath of Administrator

Before the issuance of letters of administration, the person appointed as administrator shall take and subscribe an oath in substantially the following form:

I do solemnly swear that _____ (insert name of decedent), deceased, died _____ (insert "without leaving any lawful will" or "leaving a lawful will, but the executor named in the will is dead or has failed to offer the will for probate or to accept and qualify as executor, within the period required," as applicable), so far as I know or believe, and that I will well and truly perform all the duties of administrator of the estate of the deceased.

Derived from Probate Code § 190(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.053. Oath of Temporary Administrator

Before the issuance of temporary letters of administration, the person appointed as temporary administrator shall take and subscribe an oath in substantially the following form:

I do solemnly swear that I will well and truly perform the duties of temporary administrator of the estate of _____ (insert name of decedent), deceased, in accordance with the law, and with the order of the court appointing me as temporary administrator.

Derived from Probate Code § 190(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.054. Administration of Oath

An oath may be taken before any person authorized to administer oaths under the laws of this state.

Derived from Probate Code §§ 190(d), 192.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.055. Filing and Recording of Oath

An oath shall be:

(1) filed with the clerk of the court granting the letters testamentary or of administration, as applicable; and

(2) recorded in the judge's probate docket.

Derived from Probate Code § 190(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (2) amended by Acts 2011, 82nd Leg., ch. 90, § 8.012, eff. Jan. 1, 2014.

Subchapter C. General Provisions Relating to Bonds

Statutes in Context
§ 305.101

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 (§ 305.101(a)), (2) a corporate fiduciary is serving as the personal representative (§ 305.101(b)), or (3) the court waives bond for an independent executor (§ 401.005). 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 and the court proceedings to set the amount of the bond.

§ 305.101. Bond Generally Required; Exceptions

(a) Except as otherwise provided by this title, a person to whom letters testamentary or of administration will be issued must enter into a bond before issuance of the letters.

(b) Letters testamentary shall be issued without the requirement of a bond to a person named as executor in a will probated in a court of this state if:

(1) the will directs that no bond or security be required of the person; and

(2) the court finds that the person is qualified.

(c) A bond is not required if a personal representative is a corporate fiduciary.

Derived from Probate Code §§ 194, 195.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 305.102

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 § 305.102.

§ 305.102. Bond Required From Executor Otherwise Exempt

(a) This section applies only to an estate for which an executor was appointed under a will, but from whom no bond was required.

(b) A person who has a debt, claim, or demand against the estate, with respect to the justice of which the person or the person's agent or attorney has made an oath, or another person interested in the estate, whether in person or as the representative of another, may file a written complaint in the court where the will is probated.

(c) On the filing of the complaint, the court shall cite the executor to appear and show cause why the executor should not be required to give a bond.

(d) On hearing the complaint, the court shall enter an order requiring the executor to give a bond not later than the 10th day after the date of the order if it appears to the court that:

(1) the executor is wasting, mismanaging, or misapplying the estate; and

(2) as a result of conduct described by Subdivision (1):

(A) a creditor may probably lose the creditor's debt; or

(B) a person's interest in the estate may be diminished or lost.

(e) A bond required under this section must be:

(1) in an amount sufficient to protect the estate and the estate's creditors;

(2) payable to and approved by the judge; and

(3) conditioned that the executor:

(A) will well and truly administer the estate; and

(B) will not waste, mismanage, or misapply the estate.

(f) If the executor fails to give a bond required under this section on or before the 10th day after the date of the order and the judge has not extended the period for giving the bond, the judge, without citation, shall remove the executor and appoint a competent person in the executor's place who shall administer the estate according to the will and law. Before entering into the administration of the estate, the appointed person must:

(1) take the oath required of an administrator with the will annexed under Section 305.051; and

(2) give a bond in the manner and amount provided by this chapter for the issuance of original letters of administration.

Derived from Probate Code §§ 214, 215, 216, 217.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.103. Bonds of Joint Personal Representatives

If two or more persons are appointed as personal representatives of an estate and are required by this chapter or by the court to give a bond, the court may require:

(1) a separate bond from each person; or

(2) a joint bond from all of the persons.

Derived from Probate Code § 198.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.104. Bond of Married Person

(a) A married person appointed as a personal representative may execute a bond required by law:

(1) jointly with the person's spouse; or

(2) separately without the person's spouse.

(b) A bond executed by a married person binds the person's separate estate, but does not bind the person's spouse unless the spouse signed the bond.

Derived from Probate Code § 199.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.105. Bond of Married Person Under 18 Years of Age

Any bond required to be executed by a person who is under 18 years of age, is or has been married, and accepts and qualifies as an executor or administrator is as valid and binding for all purposes as if the person were of legal age.

Derived from Probate Code § 200.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.106. General Formalities

A bond required under Section 305.101(a) must:

(1) be conditioned as required by law;

(2) be payable to the judge and the judge's successors in office;

(3) bear the written approval of the judge in the judge's official capacity; and

(4) be executed and approved in accordance with this chapter.

Derived from Probate Code § 194.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.107. Subscription of Bond by Principals and Sureties

A bond required under Section 305.101 shall be subscribed by both principals and sureties.

Derived from Probate Code § 197.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.108. Form of Bond

The following form, or a form with the same substance, may be used for the bond of a personal representative:

The State of Texas
County of _____
Know all persons by these presents that we, _____ (insert name of each principal), as principal, and _____ (insert name of each surety), as sureties, are held and firmly bound unto the judge of _____ (insert reference to appropriate judge), and that judge's successors in office, in the sum of _____ dollars, conditioned that the above bound principal or principals, appointed as _____ (insert "executor of the last will and testament," "administrator with the will annexed of the estate," "administrator of the estate," or "temporary administrator of the estate," as applicable) of _____ (insert name of decedent), deceased, shall well and truly perform all of the duties required of the principal or principals by law under that appointment.

Derived from Probate Code § 196.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.109. Filing of Bond

A bond required under Section 305.101 shall be filed with the clerk after the court approves the bond.

Derived from Probate Code § 197.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.110. Failure to Give Bond

Another person may be appointed as personal representative to replace a personal representative who at any time fails to give a bond as required by the court in the period prescribed by this chapter.

Derived from Probate Code § 213.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.111. Bond Not Void on First Recovery

A personal representative's bond does not become void on the first recovery but may be put in suit and prosecuted from time to time until the entire amount of the bond has been recovered.

Derived from Probate Code § 218.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Amount of Bond and Associated Deposits

Statutes in Context
Chapter 305, Subchapter D

Personal representatives in Texas must post bond unless one of the exceptions in § 305.101 applies. The bond is to protect the estate creditors, beneficiaries, and heirs from the personal representative wasting, mismanaging, or misapplying the estate. Section 305.106 explains how the court establishes the amount of the bond and the methods for posting the bond.

§ 305.151. General Standard Regarding Amount of Bond

(a) The judge shall set the amount of a bond, in an amount considered sufficient to protect the estate and the estate's creditors, as provided by this chapter.

(b) Notwithstanding Subsection (a) or other provisions generally applicable to bonds of personal representatives, if the person to whom letters testamentary or of administration are granted is entitled to all of the decedent's estate after payment of debts, a bond shall be in an amount sufficient to protect creditors only.

Derived from Probate Code § 194, Subdivs. 1, 2.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.152. Evidentiary Hearing on Amount of Bond

Before setting the amount of a bond, the court shall hear evidence and determine:

(1) the amount of cash on hand and where that cash is deposited;

(2) 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 year;

(3) the revenue anticipated to be received in the succeeding 12 months from dividends, interest, rentals, or use of property belonging to the estate and the aggregate amount of any installments or periodic payments to be collected;

(4) the estimated value of certificates of stock, bonds, notes, or other securities of the estate and the name of the depository, if any, in which those assets are deposited;

(5) the face value of life insurance or other policies payable to the person on whose estate administration is sought or to the estate;

(6) the estimated value of other personal property owned by the estate; and

(7) the estimated amount of debts due and owing by the estate.

Derived from Probate Code § 194, Subdiv. 3.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.153. Specific Bond Amount

(a) Except as otherwise provided by this section, the judge shall set the bond in an amount equal to the sum of:

(1) the estimated value of all personal property belonging to the estate; and

(2) an additional amount to cover revenue anticipated to be derived during the succeeding 12 months from:

(A) interest and dividends;

(B) collectible claims;

(C) the aggregate amount of any installments or periodic payments, excluding income derived or to be derived from federal social security payments; and

(D) rentals for the use of property.

(b) The judge shall reduce the amount of the original bond under Subsection (a) in proportion to the amount of cash or the value of securities or other assets:

(1) authorized or required to be deposited by court order; or

(2) voluntarily deposited by the personal representative or the sureties on the representative's bond, as provided by Sections 305.155 and 305.156.

(c) A bond required to be given by a temporary administrator shall be in the amount that the judge directs.

Derived from Probate Code § 194, Subdivs. 4, 13.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.154. Agreement Regarding Deposit of Estate Assets

(a) A personal representative may agree with the surety or sureties on a bond, either corporate or personal, for the deposit of any cash and other estate assets in a depository described by Subsection (c), if the deposit is otherwise proper, in a manner that prevents the withdrawal of the cash or other assets without:

(1) the written consent of the surety or sureties; or

(2) a court order entered after notice to the surety or sureties as directed by the court.

(b) The court may require the action described by Subsection (a) if the court considers that action to be in the best interest of the estate.

(c) Cash and assets must be deposited under this section in a financial institution, as defined by Section 201.101, Finance Code, that:

(1) has its main office or a branch office in this state; and

(2) is qualified to act as a depository in this state under the laws of this state or the United States.

(d) An agreement under this section may not release the principal or sureties from liability, or change the liability of the principal or sureties, as established by the terms of the bond.

Derived from Probate Code § 194, Subdiv. 5.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.155. Deposit of Estate Assets on Terms Prescribed by Court

(a) Cash, securities, or other personal assets of an estate or to which the estate is entitled may or, if considered by the court to be in the best interest of the estate, shall, be deposited in one or more depositories described by Section 305.154(c) on terms prescribed by the court.

(b) The court in which the proceedings are pending may authorize or require additional estate assets currently on hand or that accrue during the pendency of the proceedings to be deposited as provided by Subsection (a) on:

(1) the court's own motion; or

(2) the written application of the personal representative or any other person interested in the estate.

(c) The amount of the bond required to be given by the personal representative shall be reduced in proportion to the amount of the cash and the value of the securities or other assets deposited under this section.

(d) Cash, securities, or other assets deposited under this section may be withdrawn in whole or in part from the depository only in accordance with a court order, and the amount of the personal representative's bond shall be increased in proportion to the amount of the cash and the value of the securities or other assets authorized to be withdrawn.

Derived from Probate Code § 194, Subdiv. 6.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.156. Deposits of Personal Representative

(a) Instead of giving a surety or sureties on a bond, or to reduce the amount of a bond, a personal representative may deposit the representative's own cash or securities acceptable to the court with a depository described by Subsection (b), if the deposit is otherwise proper.

(b) Cash or securities must be deposited under this section in:

(1) a depository described by Section 305.154(c); or

(2) any other corporate depository approved by the court.

(c) A deposit may be in an amount or value equal to the amount of the bond required or in a lesser amount or value, in which case the amount of the bond is reduced by the amount or value of the deposit.

(d) The amount of cash or securities on deposit may be increased or decreased, by court order from time to time, as the interest of the estate requires.

(e) A deposit of cash or securities made instead of a surety or sureties on a bond may be withdrawn or released only on order of a court having jurisdiction.

(f) A creditor has the same rights against a personal representative and deposits made under this section as are provided for recovery against sureties on a bond.

Derived from Probate Code § 194, Subdivs. 7, 8(b), (c), (d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.157. Receipt for Deposits of Personal Representative

(a) A depository that receives a deposit made under Section 305.156 instead of a surety or sureties on a bond shall issue a receipt for the deposit that:

(1) shows the amount of cash deposited or the amount and description of the securities deposited, as applicable; and

(2) states that the depository agrees to disburse or deliver the cash or securities only on receipt of a certified copy of an order of the court in which the proceedings are pending.

(b) A receipt issued by a depository under Subsection (a) shall be attached to the personal representative's bond and be delivered to and filed by the county clerk after approval by the judge.

Derived from Probate Code § 194, Subdiv. 8(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.158. Bond Required Instead of Deposits by Personal Representative

(a) The court may on its own motion or on the written application by the personal representative or any other person interested in the estate:

(1) require that an adequate bond be given instead of a deposit under Section 305.156; or

(2) authorize withdrawal of a deposit made under Section 305.156 and substitution of a bond with sureties.

(b) Not later than the 20th day after the date of entry of the court's motion or the date the personal representative is personally served with notice of the filing of an application by another person interested in the estate, the representative shall file a sworn statement showing the condition of the estate.

(c) A personal representative who fails to comply with Subsection (b) is subject to removal as in other cases.

(d) The personal representative's deposit under Section 305.156 may not be released or withdrawn until the court has:

(1) been satisfied as to the condition of the estate;

(2) determined the amount of the bond; and

(3) received and approved the bond.

Derived from Probate Code § 194, Subdiv. 8(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.159. Withdrawal of Deposits on Closing of Administration

(a) Any deposit of assets of the personal representative, the estate, or a surety that remains at the time an estate is closed shall be released by court order and paid to the person or persons entitled to the deposit.

(b) Except as provided by Subsection (c), a writ of attachment or garnishment does not lie against a deposit described by Subsection (a).

(c) A writ of attachment or garnishment may lie against a deposit described by Subsection (a) as to a claim of a creditor of the estate being administered or a person interested in the estate, including a distributee or ward, to the extent the court has ordered distribution.

Derived from Probate Code § 194, Subdiv. 9.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.160. Increased or Additional Bonds in Certain Circumstances

The provisions of this subchapter regarding the deposit of cash and securities govern, to the extent the provisions may be applicable, the court orders to be entered when:

(1) one of the following circumstances occurs:

(A) estate property has been authorized to be sold or rented;

(B) money has been borrowed on estate property; or

(C) real property, or an interest in real property, has been authorized to be leased for mineral development or subjected to unitization; and

(2) the general bond has been found to be insufficient.

Derived from Probate Code § 194, Subdiv. 14.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter E. Bond Sureties

§ 305.201. Personal or Authorized Corporate Sureties

(a) The surety or sureties on a bond may be personal or authorized corporate sureties.

(b) A bond with sureties who are individuals must have at least two sureties, each of whom must:

(1) execute an affidavit in the manner provided by this subchapter; and

(2) own property in this state, excluding property exempt by law, that the judge is satisfied is sufficient to qualify the person as a surety as required by law.

(c) A bond with an authorized corporate surety is only required to have one surety, except as provided by law.

Derived from Probate Code § 194, Subdivs. 10, 12.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,

2014.

§ 305.202. Sureties for Certain Bonds

(a) If the amount of a bond exceeds $50,000, the court may require that the bond be signed by:

(1) at least two authorized corporate sureties; or

(2) one authorized corporate surety and at least two good and sufficient personal sureties.

(b) The estate shall pay the cost of a bond with corporate sureties.

Derived from Probate Code § 194, Subdiv. 11.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.203. Affidavit of Personal Surety

(a) Before a judge may consider a bond with personal sureties, each person offered as surety must execute an affidavit stating the amount by which the person's assets that are reachable by creditors exceeds the person's liabilities, and each affidavit must be presented to the judge for consideration.

(b) The total worth of the personal sureties on a bond must equal at least twice the amount of the bond.

(c) An affidavit presented to and approved by the judge under this section shall be attached to and form part of the bond.

Derived from Probate Code § 201(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.204. Lien on Real Property Owned by Personal Sureties

(a) If a judge finds that the estimated value of personal property of the estate that cannot be deposited, as provided by Subchapter D, is such that personal sureties cannot be accepted without the creation of a specific lien on real property owned by each of the sureties, the judge shall enter an order requiring each surety to:

(1) designate real property that:

(A) is owned by the surety and located in this state;

(B) is subject to execution; and

(C) has a value that exceeds all liens and unpaid taxes by an amount at least equal to the amount of the bond; and

(2) give an adequate legal description of the real property designated under Subdivision (1).

(b) The surety shall incorporate the information required in the order under Subsection (a) in an affidavit. Following approval by the judge, the affidavit shall be attached to and form part of the bond.

(c) A lien arises as security for the performance of the obligation of the bond only on the real property designated in the affidavit.

(d) Before letters testamentary or of administration are issued to the personal representative whose bond includes an affidavit under this section, the court clerk shall mail a statement to the office of the county clerk of each county in which any real property designated in the affidavit is located. The statement must be signed by the court clerk and include:

(1) a sufficient description of the real property located in that county;

(2) the names of the principal and sureties on the bond;

(3) the amount of the bond; and

(4) the name of the estate and court in which the bond is given.

(e) Each county clerk who receives a statement required by Subsection (d) shall record the statement in the county deed records. Each recorded statement shall be indexed in a manner that permits the convenient determination of the existence and character of the liens described in the statements.

(f) The recording and indexing required by Subsection (e) constitutes constructive notice to all persons regarding the existence of the lien on real property located in the county, effective as of the date of the indexing.

(g) If each personal surety subject to a court order under this section does not comply with the order, the judge may require that the bond be signed by:

(1) an authorized corporate surety; or

(2) an authorized corporate surety and at least two personal sureties.

Derived from Probate Code §§ 201(b), 202.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.205. Subordination of Lien on Real Property Owned by Personal Sureties

(a) A personal surety required to create a lien on specific real property under Section 305.204 who wishes to lease the real property for mineral development may file a written application in the court in which the proceedings are pending requesting subordination of the lien to the proposed lease.

(b) The judge may enter an order granting the application.

(c) A certified copy of the order, filed and recorded in the deed records of the proper county, is sufficient to subordinate the lien to the rights of a lessee under the proposed lease.

Derived from Probate Code § 201(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.206. Release of Lien on Real Property Owned by Personal Sureties

(a) A personal surety who has given a lien under Section 305.204 may apply to the court to have the lien released.

(b) The court shall order the lien released if:

(1) the court is satisfied that the bond is sufficient without the lien; or

(2) sufficient other real or personal property of the surety is substituted on the same terms required for the lien that is to be released.

(c) If the personal surety does not offer a lien on other substituted property under Subsection (b)(2) and the court is not satisfied that the bond is sufficient without the substitution of other property, the court shall order the personal representative to appear and give a new bond.

(d) A certified copy of the court's order releasing the lien and describing the property that was subject to the lien has the effect of cancelling the lien if the order is filed with the county clerk of the county in which the property is located and recorded in the deed records of that county.

Derived from Probate Code §§ 211, 212.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.207. Deposits by Personal Surety

Instead of executing an affidavit under Section 305.203 or creating a lien under Section 305.204 when required, a personal surety may deposit the surety's own cash or securities instead of pledging real property as security. The deposit:

(1) must be made in the same manner a personal representative deposits the representative's own cash or securities; and

(2) is subject, to the extent applicable, to the provisions governing the same type of deposits made by personal representatives.

Derived from Probate Code § 194, Subdiv. 12.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter F. New Bonds

§ 305.251. Grounds for Requiring New Bond

(a) A personal representative may be required to give a new bond if:

(1) a surety on a bond dies, removes beyond the limits of this state, or becomes insolvent;

(2) in the court's opinion:

(A) the sureties on a bond are insufficient; or

(B) a bond is defective;

(3) the amount of a bond is insufficient;

(4) a surety on a bond petitions the court to be discharged from future liability on the bond; or

(5) a bond and the record of the bond have been lost or destroyed.

(b) Any person interested in the estate may have the personal representative cited to appear and show cause why the representative should not be required to give a new bond by filing a written application with the county clerk of the county in which the probate proceedings are pending. The application must allege that:

(1) the bond is insufficient or defective; or

(2) the bond and the record of the bond have been lost or destroyed.

Derived from Probate Code §§ 203, 204.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (a)(1) amended by Acts 2011, 82nd Leg., ch. 90, § 8.013, eff. Jan. 1, 2014.

§ 305.252. Court Order or Citation on New Bond

(a) When a judge becomes aware that a bond is in any respect insufficient or that a bond and the record of the bond have been lost or destroyed, the judge shall:

(1) without delay and without notice enter an order requiring the personal representative to give a new bond; or

(2) without delay have the representative cited to show cause why the representative should not be required to give a new bond.

(b) An order entered under Subsection (a)(1) must state:

(1) the reasons for requiring a new bond;

(2) the amount of the new bond; and

(3) the period within which the new bond must be given, which may not be earlier than the 10th day after the date of the order.

(c) A personal representative who opposes an order entered under Subsection (a)(1) may demand a hearing on the order. The hearing must be held before the expiration of the period within which the new bond must be given.

Derived from Probate Code §§ 205, 206(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.253. Show Cause Hearing on New Bond Requirement

(a) On the return of a citation ordering a personal representative to show cause why the representative should not be required to give a new bond, the judge shall, on the date specified for the hearing of the matter, inquire into the sufficiency of the reasons for requiring a new bond.

(b) If the judge is satisfied that a new bond should be required, the judge shall enter an order requiring a new bond. The order must state:

(1) the amount of the new bond; and

(2) the period within which the new bond must be given, which may not be later than the 20th day after the date of the order.

Derived from Probate Code § 206(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.254. Effect of Order Requiring New Bond

(a) An order requiring a personal representative to give a new bond has the effect of suspending the representative's powers.

(b) After the order is entered, the personal representative may not pay out any of the estate's money or take any other official action, except to preserve estate property, until the new bond is given and approved.

Derived from Probate Code § 207.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.255. New Bond in Decreased Amount

(a) A personal representative required to give a bond may at any time file with the clerk a written application requesting that the court reduce the amount of the bond.

(b) On the filing of an application under Subsection (a), the clerk shall promptly issue and have notice posted to all interested persons and the sureties on the bond. The notice must inform the interested persons and sureties of:

(1) the fact that the application has been filed;

(2) the nature of the application; and

(3) the time the judge will hear the application.

(c) The judge may permit the filing of a new bond in a reduced amount if:

(1) proof is submitted that a bond in an amount less than the bond in effect will be adequate to meet the requirements of law and protect the estate; and

(2) the judge approves an accounting filed at the time of the application.

Derived from Probate Code § 208.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.256. Request by Surety for New Bond

(a) A surety on a bond may at any time file with the clerk a petition requesting that the court in which the proceedings are pending:

(1) require the personal representative to give a new bond; and

(2) discharge the petitioner from all liability for the future acts of the representative.

(b) On the filing of a petition under Subsection (a), the personal representative shall be cited to appear and give a new bond.

Derived from Probate Code § 210.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 305.257. Discharge of Former Sureties on Execution of New Bond

When a new bond has been given and approved, the court shall enter an order discharging the sureties on the former bond from all liability for the future acts of the principal on the bond.

Derived from Probate Code § 209.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 306. Granting and Issuance of Letters

§ 306.001. Granting of Letters Testamentary
§ 306.002. Granting of Letters of Administration
§ 306.003. Order Granting Letters
§ 306.004. Issuance of Original Letters
§ 306.005. Form and Content of Letters
§ 306.006. Replacement and Other Additional Letters
§ 306.007. Effect of Letters or Certificate

Chapter 306. Granting and Issuance of Letters

Statutes in Context
Chapter 306

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 § 306.005. 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 § 307.001. 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.

Sections 306.001 – 306.002 enumerate 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*)).

§ 306.001. Granting of Letters Testamentary

(a) Before the 21st day after the date a will has been probated, the court shall grant letters testamentary, if permitted by law, to each executor appointed by the will who:

(1) is not disqualified; and

(2) is willing to accept the trust and qualify according to law.

(b) Failure of the court to issue letters testamentary within the period prescribed by this section does not

affect the validity of any letters testamentary issued in accordance with law after that period.

Derived from Probate Code §§ 178(a), (c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 306.002. Granting of Letters of Administration

(a) Subject to Subsection (b), the court hearing an application under Chapter 301 shall grant:

(1) the administration of a decedent's estate if the decedent died intestate; or

(2) the administration of the decedent's estate with the will annexed if the decedent died leaving a will but:

(A) the will does not name an executor; or

(B) the executor named in the will:

(i) is deceased;

(ii) fails to accept and qualify before the 21st day after the date the will is probated; or

(iii) fails to present the will for probate before the 31st day after the date of the decedent's death and the court finds there was no good cause for that failure.

(b) The court may not grant any administration of an estate unless a necessity for the administration exists, as determined by the court.

(c) The court may find other instances of necessity for an administration based on proof before the court, but a necessity is considered to exist if:

(1) there are two or more debts against the estate;

(2) there is a desire for the county court to partition the estate among the distributees; or

(3) the administration is necessary to receive or recover funds or other property due the estate.

Derived from Probate Code § 178(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 306.003. Order Granting Letters

When letters testamentary or of administration are granted, the court shall enter an order to that effect stating:

(1) the name of the decedent;

(2) the name of the person to whom the letters are granted;

(3) the amount of any required bond;

(4) the name of at least one but not more than three disinterested persons appointed to appraise the estate and return the appraisement to the court, if:

(A) any interested person applies to the court for the appointment of an appraiser; or

(B) the court considers an appraisement to be necessary; and

(5) that the clerk shall issue letters in accordance with the order when the person to whom the letters are granted has qualified according to law.

Derived from Probate Code § 181.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 306.004

The clerk will not issue letters until the personal representative qualifies, that is, posts any required bond and takes the oath of office. See § 305.002.

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§ 306.004. Issuance of Original Letters

When an executor or administrator has qualified in the manner required by law, the clerk of the court granting the letters testamentary or of administration shall promptly issue and deliver the letters to the executor or administrator. If more than one person qualifies as executor or administrator, the clerk shall issue the letters to each person who qualifies.

Derived from Probate Code § 182.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 306.005. Form and Content of Letters

Letters testamentary or of administration shall be in the form of a certificate of the clerk of the court granting the letters, attested by the court's seal, that states:

(1) the executor or administrator, as applicable, has qualified as executor or administrator in the manner required by law;

(2) the date of the qualification; and

(3) the name of the decedent.

Derived from Probate Code § 183.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 306.006. Replacement and Other Additional Letters

When letters testamentary or of administration have been destroyed or lost, the clerk shall issue other letters to replace the original letters, which have the same 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 the letters.

Derived from Probate Code § 187.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 306.007. Effect of Letters or Certificate

Letters testamentary or of administration or a certificate of the clerk of the court that granted the letters, under the court's seal, indicating that the letters have been issued, is sufficient evidence of:

(1) the appointment and qualification of the personal representative of an estate; and

(2) the date of qualification.

Derived from Probate Code § 186.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 307. Validity of Certain Acts of Executors and Administrators

§ 307.001. Rights of Good Faith Purchasers
§ 307.002. Joint Executors or Administrators

Chapter 307. Validity of Certain Acts of Executors and Administrators

§ 307.001. Rights of Good Faith Purchasers

(a) This section applies only to an act performed by a qualified executor or administrator in that capacity and in conformity with the law and the executor's or administrator's authority.

(b) An act continues to be valid for all intents and purposes in regard to the rights of an innocent purchaser who purchases any of the estate property from the executor or administrator for valuable consideration, in good faith, and without notice of any illegality in the title to the property, even if the act or the authority under which the act was performed is subsequently set aside, annulled, and declared invalid.

Derived from Probate Code § 188.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 307.002

Section 307.002 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.

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§ 307.002. Joint Executors or Administrators

(a) Except as provided by Subsection (b), if there is more than one executor or administrator of an estate at the same time, the acts of one of the executors or administrators in that capacity are valid as if all the executors or administrators had acted jointly. If one of the executors or administrators dies, resigns, or is removed, a co-executor or co-administrator of the estate shall proceed with the administration as if the death, resignation, or removal had not occurred.

(b) If there is more than one executor or administrator of an estate at the same time, all of the qualified executors or administrators who are acting in that capacity must join in the conveyance of real estate unless the court, after due hearing, authorizes fewer than all to act.

Derived from Probate Code § 240.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 308. Notice to Beneficiaries and Claimants

Subchapter A. Notice to Certain Beneficiaries After Probate of Will

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Subchapter B. Notice to Claimants

§ 308.051. Required Notice Regarding Presentment of Claims in General
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Chapter 308. Notice to Beneficiaries and Claimants

Subchapter A. Notice to Certain Beneficiaries After Probate of Will

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Statutes in Context
Chapter 308, Subchapter A

The 2007 Legislature overhauled the Probate Code predecessor to this Subchapter by adding a requirement for most will beneficiaries 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 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.

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§ 308.001. Definition

In this subchapter, "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 subchapter 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.

Derived from Probate Code § 128A(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.34, eff. Jan. 1, 2014.

§ 308.0015. Application

This subchapter does not apply to the probate of a will as a muniment of title.

Derived from Probate Code § 128A(a-1).

Added by Acts 2011, 82nd Leg., ch. 1338, § 2.35, eff. Jan. 1, 2014.

§ 308.002. Required Notice to Certain Beneficiaries After Probate of Will

(a) Except as provided by Subsection (c), 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 Section 308.003 to each beneficiary named in the will whose identity and address are known to the representative or, through reasonable diligence, can be ascertained. If, after the 60th day after the date of the order, the representative becomes aware of the identity and address of a beneficiary who was not given notice on or before the 60th day, the representative shall give the notice as soon as possible after becoming aware of that information.

(b) Notwithstanding the requirement under Subsection (a) that the personal representative give the notice to the beneficiary, the 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 representative is the trustee, in which case the representative shall, except as provided by Subsection (b-1), 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.

(b-1) The personal representative is not required to give the notice otherwise required by Subsection (b)(1) to a person eligible to receive trust income at the sole discretion of the trustee of a trust if:

(1) the 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.

(c) 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.

(d) The notice required by this section must be sent by registered or certified mail, return receipt requested.

Derived from Probate Code §§ 128A(b), (c), (d), (f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.36, eff. Jan. 1, 2014.

§ 308.003. Contents of Notice

The notice required by Section 308.002 must include:

(1) the name and address of the beneficiary to whom the notice is given or, for a beneficiary described by Section 308.002(b), 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 of 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.

Derived from Probate Code § 128A(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.37, eff. Jan. 1, 2014.

§ 308.004. Affidavit or Certificate

(a) 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 representative or a certificate signed by the representative's attorney stating:

(1) for each beneficiary to whom notice was required to be given under this subchapter, the name and address of the beneficiary to whom the representative gave the notice or, for a beneficiary described by Section 308.002(b), 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 Section 308.002(c)(2), (3), or (4);

(3) the name of each beneficiary whose identity or address could not be ascertained despite the representative's exercise of reasonable diligence; and

(4) any other information necessary to explain the representative's inability to give the notice to or for any beneficiary as required by this subchapter.

(b) The affidavit or certificate required by Subsection (a) may be included with any pleading or other document filed with the court clerk, including the inventory, appraisement, and list of claims, an affidavit in lieu of the inventory, appraisement, and list of claims, or an application for an extension of the deadline to file the inventory, appraisement, and list of claims or an affidavit in lieu of the inventory, appraisement, and list of claims, provided that the pleading or other document is filed not later than the date the affidavit or certificate is required to be filed under Subsection (a).

Derived from Probate Code §§ 128A(g), (h).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.38, eff. Jan. 1, 2014.

Subchapter B. Notice to Claimants

Statutes in Context
Chapter 308, Subchapter B

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 § 308.051(a)(2). 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 § 308.051(a)(1). 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 § 308.054.

4. Notice to Secured Creditors. See *Statutes in Context* to § 308.053.

§ 308.051. Required Notice Regarding Presentment of Claims in General

(a) Within one month after receiving letters testamentary or of administration, a personal representative of an estate shall provide notice requiring each person who has a claim against the estate to present the claim within the period prescribed by law by:

(1) having the notice published in a newspaper printed in the county in which the letters were issued; and

(2) if the decedent remitted or should have remitted taxes administered by the comptroller, sending the notice to the comptroller by certified or registered mail.

(b) Notice provided under Subsection (a) must include:

(1) the date the letters testamentary or of administration were issued to the personal representative;

(2) the address to which a claim 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).

(c) If a newspaper is not printed in the county in which the letters testamentary or of administration were issued, the notice must be posted and the return made and filed as otherwise required by this title.

Derived from Probate Code §§ 294(a), (c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 308.052. Proof of Publication

A copy of the published notice required by Section 308.051(a)(1), together with the publisher's affidavit, sworn to and subscribed before a proper officer, to the effect that the notice was published as provided in this title for the service of citation or notice by publication, shall be filed in the court in which the cause is pending.

Derived from Probate Code § 294(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 308.053

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.

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§ 308.053. Required Notice to Secured Creditor

(a) Within two months after receiving letters testamentary or of administration, a personal representative of an estate shall give notice of the issuance of the letters to each person the representative knows to have a claim for money against the estate that is secured by estate property.

(b) Within a reasonable period after a personal representative obtains actual knowledge of the existence of a person who has a secured claim for money against the estate and to whom notice was not previously given, the representative shall give notice to the person of the issuance of the letters testamentary or of administration.

(c) Notice provided under this section must be:

(1) sent by certified or registered mail, return receipt requested; and

(2) addressed to the record holder of the claim at the record holder's last known post office address.

(d) The following shall be filed with the clerk of the court in which the letters testamentary or of administration were issued:

(1) a copy of each notice and of each return receipt; and

(2) the personal representative's affidavit stating:

(A) that the notice was mailed as required by law; and

(B) the name of the person to whom the notice was mailed, if that name is not shown on the notice or receipt.

Derived from Probate Code § 295.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 308.054. Permissive Notice to Unsecured Creditor

(a) At any time before an estate administration is closed, a personal representative may give notice by certified or registered mail, return receipt requested, to an unsecured creditor who has a claim for money against the estate.

(b) Notice given under Subsection (a) must:

(1) expressly state that the creditor must present the claim before the 121st day [~~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; and

(2) include:

(A) the date the letters testamentary or of administration held by the personal representative were issued to the representative;

(B) the address to which the claim may be presented; and

(C) an instruction of the representative's choice that the claim be addressed in care of:

(i) the representative;

(ii) the representative's attorney; or

(iii) "Representative, Estate of _____" (naming the estate).

Derived from Probate Code § 294(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2013, 83rd Leg., ch. 1136, § 39, eff. Jan. 1, 2014.

§ 308.055. One Notice Sufficient

A personal representative is not required to give a notice required by Section 308.051 or 308.053 if another person also appointed as personal representative of the estate or a former personal representative of the estate has given that notice.

Derived from Probate Code § 296.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 308.056. Liability for Failure to Give Required Notice

A personal representative who fails to give a notice required by Section 308.051 or 308.053, or to cause the notice to be given, and the sureties on the representative's bond are liable for any damage a person suffers due to that neglect, unless it appears that the person otherwise had notice.

Derived from Probate Code § 297.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Requirements for Inventory, Appraisement, and List of Claims; Affidavit in Lieu of Inventory, Appraisement, and List of Claims

Subchapter A. Appraisers

§ 309.001. Appointment of Appraisers
§ 309.002. Appraisers' Fees
§ 309.003. Failure or Refusal to Act by Appraisers

Subchapter B. Requirements for Inventory, Appraisement, and List of Claims

§ 309.051. Inventory and Appraisement
§ 309.052. List of Claims
§ 309.053. Affidavit of Personal Representative
§ 309.054. Approval or Disapproval by the Court
§ 309.055. Failure of Joint Personal Representatives to File Inventory, Appraisement, and List of Claims or Affidavit in Lieu of Inventory, Appraisement, and List of Claims
§ 309.056. Affidavit in Lieu of Inventory, Appraisement, and List of Claims.
§ 309.057. Penalty for Failure to Timely File Inventory, Appraisment, and List of Claims or Affidavit In Lieu of

Subchapter C. Changes to Inventory, Appraisement, and List of Claims

§ 309.101. Discovery of Additional Property or Claims
§ 309.102. Additional Inventory and Appraisement or List of Claims
§ 309.103. Correction of Inventory, Appraisement, or List of Claims for Erroneous or Unjust Item
§ 309.104. Reappraisement

Subchapter D. Use of Inventory, Appraisement, and List of Claims as Evidence

§ 309.151. Use of Inventory, Appraisement, and List of Claims as Evidence

Chapter 309. Inventory, Appraisement, and List of Claims

Subchapter A. Appraisers

Statutes in Context
§ 309.001

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 § 309.051. The appraiser's fee is provided for in § 309.002.

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.

§ 309.001. Appointment of Appraisers

(a) At any time after letters testamentary or of administration are granted, the court, for good cause, on the court's own motion or on the motion of an interested party shall appoint at least one but not more than three disinterested persons who are residents of the county in which the letters were granted to appraise the estate property.

(b) At any time after letters testamentary or of administration are granted, the court, for good cause shown, on the court's own motion or on the motion of an interested person shall appoint at least one but not more than three disinterested persons who are residents of the county in which the letters were granted to appraise the estate property.

(c) If the court makes an appointment under Subsection (a) or (b) and part of the estate is located in a county other than the county in which the letters were granted, the court, if the court considers necessary, may appoint at least one but not more than three disinterested persons who are residents of the county in which the relevant part of the estate is located to appraise the estate property located in that county.

Derived from Probate Code § 248.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 309.002. Appraisers' Fees

An appraiser appointed by the court as herein authorized is entitled to receive compensation, payable out of the estate, of at least $5 for each day the appraiser actually serves in performing the appraiser's duties.

Derived from Probate Code § 253.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 309.003. Failure or Refusal to Act by Appraisers

If an appraiser appointed under Section 309.001 fails or refuses to act, the court by one or more similar orders shall remove the appraiser and appoint one or more other appraisers, as the case requires.

Derived from Probate Code § 249.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Requirements for Inventory, Appraisement, and List of Claims

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Statutes in Context
§ 309.051

The personal representative in both dependent and independent administrations must normally file an inventory, appraisement, 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.

See Estates Code § 309.056 for the possibility of using an affidavit in lieu of the inventory, appraisement, and list of claims.

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§ 309.051. Inventory and Appraisement

(a) Except as provided by Subsection (c) or Section 309.056 or unless a longer period is granted by the court, before the 91st day after the date the personal representative qualifies, the representative shall prepare and file with the court clerk a single written instrument that contains a verified, full, and detailed inventory of all estate property that has come into the representative's possession or of which the representative has knowledge. The inventory must:

(1) include:

(A) all estate real property located in this state; and

(B) all estate personal property regardless of where the property is located; and

(2) specify which portion of the property, if any, is separate property and which, if any, is community property.

(b) The personal representative shall:

(1) set out in the inventory the representative's appraisement of the fair market value on the date of the decedent's death of each item in the inventory; or

(2) if the court has appointed one or more appraisers for the estate:

(A) determine the fair market value of each item in the inventory with the assistance of the appraiser or appraisers; and

(B) set out that appraisement in the inventory.

(c) The court for good cause shown may require the personal representative to file the inventory and appraisement within a shorter period than the period prescribed by Subsection (a).

(d) The inventory, when approved by the court and filed with the court clerk, is for all purposes the inventory and appraisement of the estate referred to in this title.

Derived from Probate Code § 250.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2011, 82nd Leg., ch. 1338, § 2.40, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2011, 82nd Leg., ch. 91, § 8.014, eff. Jan. 1, 2014.Subsection (a) amended by Acts 2013, 83rd Leg., ch. 1136, § 40, eff. Jan. 1, 2014.

Statutes in Context
§ 309.052

The list of claims is part of the inventory and appraisement. 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.

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§ 309.052. List of Claims

A complete list of claims due or owing to the estate must be attached to the inventory and appraisement required by Section 309.051. The list of claims must state:

(1) the name and, if known, address of each person indebted to the estate; and

(2) regarding each claim:

(A) the nature of the debt, whether by note, bill, bond, or other written obligation, or by account or verbal contract;

(B) the date the debt was incurred;

(C) the date the debt was or is due;

(D) the amount of the claim, the rate of interest on the claim, and the period for which the claim bears interest; and

(E) whether the claim is separate property or community property.

Derived from Probate Code § 251.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.41, eff. Jan. 1, 2014.

Statutes in Context
§ 309.053

The inventory, appraisement, and list of claims must be supported by the personal representative's sworn affidavit.

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§ 309.053. Affidavit of Personal Representative

The personal representative shall attach to the inventory, appraisement, and list of claims the representative's affidavit, subscribed and sworn to before an officer in the county authorized by law to administer oaths, that the inventory, appraisement, and list of claims are a true and complete statement of the property and claims of the estate of which the representative has knowledge.

Derived from Probate Code § 252.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 309.054

The court will either approve or disapprove the inventory, appraisement, and list of claims under § 309.054.

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§ 309.054. Approval or Disapproval by the Court

(a) On the filing of the inventory, appraisement, and list of claims with the court clerk, the judge shall examine and approve or disapprove the inventory, appraisement, and list of claims.

(b) If the judge approves the inventory, appraisement, and list of claims, the judge shall enter an order to that effect.

(c) If the judge does not approve the inventory, appraisement, or list of claims, the judge:

(1) shall enter an order to that effect requiring the filing of another inventory, appraisement, or list of claims, whichever is not approved, within a period specified in the order not to exceed 20 days after the date the order is entered; and

(2) may, if considered necessary, appoint new appraisers.

Derived from Probate Code § 255.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 309.055. Failure of Joint Personal Representatives to File Inventory, Appraisement, and List of Claims or Affidavit in Lieu of Inventory, Appraisement, and List of Claims

(a) If more than one personal representative qualifies to serve, any one or more of the representatives, on the neglect of the other representatives, may make and file an inventory, appraisement, and list of claims or an affidavit in lieu of an inventory, appraisement, and list of claims.

(b) A personal representative who neglects to make or file an inventory, appraisement, and list of claims or an affidavit in lieu of an inventory, appraisement, and list of claims may not interfere with and does not have any power over the estate after another representative makes and files an inventory, appraisement, and list of claims or an affidavit in lieu of an inventory, appraisement, and list of claims.

(c) The personal representative who files the inventory, appraisement, and list of claims or the affidavit in lieu of an inventory, appraisement, and list of claims is entitled to the whole administration unless, before the 61st day after the date the representative files the inventory, appraisement, and list of claims or the affidavit in lieu of an inventory, appraisement, and list of claims, one or more delinquent representatives file with the court a written, sworn, and reasonable excuse that the court considers satisfactory. The court shall enter an order removing one or more delinquent representatives and revoking those representatives' letters if:

(1) an excuse is not filed; or

(2) the court does not consider the filed excuse sufficient.

Derived from Probate Code § 260.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.42, eff. Jan. 1, 2014.

Statutes in Context
§ 309.056

The 2011 Legislature authorized an independent executor or administrator to file an affidavit in lieu of the inventory, appraisement, and list of claims if no debts other than secured debts, taxes, and administration expenses remain by the inventory due date. This procedure keeps the decedent's property from being listed on the public record and thus helps with privacy concerns. 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.

The affidavit in lieu of inventory option is available even if the will requires the filing of

inventory as long as the will does not specifically prohibit the filing of an affidavit in lieu of inventory.

An executor cannot be held liable for the executor's decision to file either a traditional inventory or the affidavit in lieu of inventory.

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§ 309.056. Affidavit in Lieu of Inventory, Appraisement, and List of Claims

(a) In this section, "beneficiary" means a person, entity, state, governmental agency of the state, charitable organization, or trust entitled to receive property:

(1) 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; or

(2) as an heir of the decedent.

(b) Notwithstanding Sections 309.051 and 309.052, or any contrary provision in a decedent's will that does not specifically prohibit the filing of an affidavit described by this subsection, 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, appraisement, 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 and appraisement. The affidavit in lieu of the inventory, appraisement, and list of claims must be filed within the 90-day period prescribed by Section 309.051(a), unless the court grants an extension.

(c) If the independent executor files an affidavit in lieu of the inventory, appraisement, and list of claims as authorized under Subsection (b):

(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, appraisement, and list of claims from the independent executor on written request;

(2) the independent executor may provide a copy of the inventory, appraisement, 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), and the court, in its discretion, may compel the independent executor to provide a copy of the inventory, appraisement, and list of claims to the interested person or may deny the application.

(d) An independent executor is not liable for choosing to file:

(1) an affidavit under this section in lieu of filing an inventory, appraisement, and list of claims, if permitted by law; or

(2) an inventory, appraisement, and list of claims in lieu of filing an affidavit under this section.

Derived from Probate Code § 250.

Added by Acts 2011, 82nd Leg., R.S., ch. 1338, § 2.43, eff. Jan. 1, 2014. Subsections(b) amended and (d) added by Acts 2013, 83rd Leg., ch. 1136, § 41, eff. Jan. 1, 2014.

§ 309.057. Penalty for Failure to Timely File Inventory, Appraisment, and List of Claims or Affidavit in Lieu of

(a) This section applies only to a personal representative, including an independent executor or administrator, who does not file an inventory, appraisement, and list of claims or affidavit in lieu of the inventory, appraisement, and list of claims, as applicable, within the period prescribed by Section 309.051 or any extension granted by the court.

(b) Any person interested in the estate on written complaint, or the court on the court's own motion, may have a personal representative to whom this section applies cited to file the inventory, appraisement, and list of claims or affidavit in lieu of the inventory, appraisement, and list of claims, as applicable, and show cause for the failure to timely file.

(c) If the personal representative does not file the inventory, appraisement, and list of claims or affidavit in lieu of the inventory, appraisement, and list of claims, as applicable, after being cited or does not show good cause for the failure to timely file, the court on hearing may fine the representative in an amount not to exceed $1,000.

(d) The personal representative and the representative's sureties, if any, are liable for any fine imposed under this section and for all damages and costs sustained by the representative's failure. The fine, damages, and costs may be recovered in any court of competent jurisdiction.

New.

Added by Acts 2013, 83rd Leg., ch. 1136, § 42, eff. Jan. 1, 2014.

Subchapter C. Changes to Inventory, Appraisement, and List of Claims

§ 309.101. Discovery of Additional Property or Claims

(a) If after the filing of the inventory, appraisement, and list of claims the personal representative acquires possession or knowledge of property or claims of the estate not included in the inventory, appraisement, and list of claims the representative shall promptly file with the court clerk a verified, full, and detailed

supplemental inventory, appraisement, and list of claims.

(b) If after the filing of the affidavit in lieu of the inventory, appraisement, and list of claims the personal representative acquires possession or knowledge of property or claims of the estate not included in the inventory and appraisement given to the beneficiaries, the representative shall promptly file with the court clerk a supplemental affidavit in lieu of the inventory, appraisement, and list of claims stating that all beneficiaries have received a verified, full, and detailed supplemental inventory and appraisement.

Derived from Probate Code § 256.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.44, eff. Jan. 1, 2014.

§ 309.102. Additional Inventory and Appraisement or List of Claims

(a) On the written complaint of any interested person that property or claims of the estate have not been included in the filed inventory, appraisement, and list of claims, the personal representative shall be cited to appear before the court in which the cause is pending and show cause why the representative should not be required to make and file an additional inventory and appraisement or list of claims, or both, as applicable.

(b) After hearing the complaint, if the court is satisfied of the truth of the complaint, the court shall enter an order requiring the personal representative to make and file an additional inventory and appraisement or list of claims, or both, as applicable. The additional inventory and appraisement or list of claims:

(1) must be made and filed in the same manner as the original inventory and appraisement or list of claims within the period prescribed by the court, not to exceed 20 days after the date the order is entered; and

(2) may include only property or claims not previously included in the inventory and appraisement or list of claims.

Derived from Probate Code § 257.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Contest
§ 309.103

The appellate court will review an appeal of a court's finding of the correctness of an inventory using the abuse of discretion standard. *In re Estate of Walker*, 250 S.W.3d 212 (Tex. App.—Dallas 2008, pet. denied).

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§ 309.103. Correction of Inventory, Appraisement, or List of Claims for Erroneous or Unjust Item

(a) Any interested person who considers an inventory, appraisement, or list of claims or an affidavit in lieu of the inventory, appraisement, and list of claims [~~filed for the estate~~] to be erroneous or unjust in any particular may:

(1) file a written complaint setting forth the alleged erroneous or unjust item; and

(2) have the personal representative cited to appear before the court and show cause why the item should not be corrected.

(b) On the hearing of the complaint, if the court is satisfied from the evidence that the inventory, appraisement, or list of claims or an affidavit in lieu of the inventory, appraisement, and list of claims is erroneous or unjust as alleged in the complaint, the court shall enter an order:

(1) specifying the erroneous or unjust item and the corrections to be made; and

(2) if the complaint relates to an inventory, appraisement, or list of claims, appointing appraisers to make a new appraisement correcting the erroneous or unjust item and requiring the filing of the new appraisement before the 21st day after the date of the order.

(c) The court on the court's own motion or that of the personal representative may also have a new appraisement made for the purposes described by this section.

Derived from Probate Code § 258.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsections (a) and (b) amended by Acts 2013, 83rd Leg., ch. 1136, § 43, eff. Jan. 1, 2014.

§ 309.104. Reappraisement

(a) A reappraisement made, filed, and approved by the court replaces the original appraisement. Not more than one reappraisement may be made.

(b) Notwithstanding Subsection (a), an interested person may object to a reappraisement regardless of whether the court has approved the reappraisement. If the court finds that the reappraisement is erroneous or unjust, the court shall appraise the property on the basis of the evidence before the court.

Derived from Probate Code § 259.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Use of Inventory, Appraisement, and List of Claims as Evidence

§ 309.151. Use of Inventory, Appraisement, and List of Claims as Evidence

Each inventory, appraisement, and list of claims that has been made, filed, and approved in accordance with law, the record of the inventory, appraisement, and list of claims, or a copy of an original or the record that has been certified under the seal of the county court affixed by the clerk:

(1) may be given in evidence in any court of this state in any suit by or against the personal representative; and

(2) is not conclusive for or against the representative if it is shown that:

(A) any property or claim of the estate is not shown in the originals, the record, or the copies; or

(B) the value of the property or claim of the estate exceeded the value shown in the appraisement or list of claims.

Derived from Probate Code § 261.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 310. Allocation of Estate Income and Expenses

§ 310.001. Definition
§ 310.002. Applicability of Other Law
§ 310.003. Allocation of Expenses
§ 310.004. Income Determination and Distribution
§ 310.005. Treatment of Income Received by Trustee
§ 310.006. Frequency and Method of Determining Interests in Certain Estate Assets

Chapter 310. Allocation of Estate Income and Expenses

Statutes in Context
Chapter 310

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).

§ 310.001. Definition

In this chapter, "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 the debts, expenses, and taxes are paid.

Derived from Probate Code § 378B(h).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 310.002. Applicability of Other Law

Chapter 116, Property Code, controls to the extent of any conflict between this chapter and Chapter 116, Property Code.

Derived from Probate Code § 378B(i).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 310.003. Allocation of Expenses

(a) Except as provided by Section 310.004(a) and unless the will provides otherwise, all expenses incurred in connection with the settlement of a decedent's estate shall be charged against the principal of the estate, including:

(1) debts;

(2) funeral expenses;

(3) estate taxes and penalties relating to estate taxes; and

(4) family allowances.

(b) 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 the executor's discretion to be just and equitable.

Derived from Probate Code § 378B(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 310.004. Income Determination and Distribution

(a) Unless a 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:

(1) determined according to the rules applicable to a trustee under the Texas Trust Code (Subtitle B, Title 9, Property Code); and

(2) distributed as provided by Subsections (b) and (c) and by Chapter 116, Property Code.

(b) Income from property devised to a specific devisee shall be distributed to the devisee after reduction for:

(1) property taxes;

(2) other taxes, including taxes imposed on income that accrues during the period of administration and that is payable to the devisee;

(3) ordinary repairs;

(4) insurance premiums;

(5) interest accrued after the testator's death; and

(6) other expenses of management and operation of the property.

(c) 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.

Derived from Probate Code §§ 378B(b), (c), (d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 310.005. Treatment of Income Received by Trustee

Income received by a trustee under this chapter shall be treated as income of the trust as provided by Section 116.101, Property Code.

Derived from Probate Code § 378B(g).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 310.006. Frequency and Method of Determining Interests in Certain Estate Assets

Except as required by Sections 2055 and 2056, Internal Revenue Code of 1986 (26 U.S.C. Sections 2055 and 2056), the frequency and method of determining the beneficiaries' respective interests in the undistributed assets of an estate are in the sole and absolute discretion of the executor of the estate. The executor may consider all relevant factors, including administrative convenience and expense and the interests of the various beneficiaries of the estate, to reach a fair and equitable result among beneficiaries.

Derived from Probate Code § 378B(h).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

SUBTITLE H. CONTINUATION OF ADMINISTRATION

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§ 351.003. Certain Costs Adjudged Against Personal Representative

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§ 351.353. Annual Examination of Certain Estates; Bond of Personal Representative
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Chapter 351. Powers and Duties of Personal Representatives in General

Subchapter A. General Provisions

§ 351.001. Applicability of Common Law

The rights, powers, and duties of executors and administrators are governed by common law principles to the extent that those principles do not conflict with the statutes of this state.

Derived from Probate Code § 32.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 351.002

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.

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§ 351.002. Appeal Bond

(a) Except as provided by Subsection (b), an appeal bond is not required if an appeal is taken by an executor or administrator.

(b) An executor or administrator must give an appeal bond if the appeal personally concerns the executor or administrator.

Derived from Probate Code § 29.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.003. Certain Costs Adjudged Against Personal Representative

If a personal representative neglects to perform a required duty or is removed for cause, the representative and the sureties on the representative's bond are liable for:

(1) the costs of removal and other additional costs incurred that are not expenditures authorized by this title; and

(2) reasonable attorney's fees incurred in:

(A) removing the representative; or

(B) obtaining compliance regarding any statutory duty the representative has neglected.

Derived from Probate Code § 245.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. General Authority of Personal Representatives

Statutes in Context
§§ 351.051–351.052

Unlike an independent executor, a dependent executor must seek court approval before taking almost all actions with respect to the estate. Section 351.051 enumerates when court approval is needed while § 351.052 lists a few situations where the personal representative may act without court order.

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§ 351.051. Exercise of Authority Under Court Order

(a) A personal representative of an estate may renew or extend any obligation owed by or to the estate on application and order authorizing the renewal or extension. If a personal representative considers it in the interest of the estate, the representative may, on written application to the court and if authorized by court order:

(1) purchase or exchange property;

(2) take claims or property for the use and benefit of the estate in payment of a debt due or owed to the estate;

(3) compound bad or doubtful debts due or owed to the estate;

(4) make a compromise or 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 claim the real estate or personal property securing the claim:

(A) in full payment, liquidation, and satisfaction of the claim; and

(B) in consideration of cancellation of notes, deeds of trust, mortgages, chattel mortgages, or other evidences of liens securing the payment of the claim; or

(6) abandon the administration of burdensome or worthless estate property.

(b) Abandoned property may be foreclosed on by a mortgagee or other secured party or a trustee without further court order.

Derived from Probate Code § 234(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.052. Exercise of Authority Without Court Order

(a) A personal representative of an estate may, without application to or order of the court:

(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 estate property against fire, theft, and other hazards; or

(6) pay taxes, court costs, and bond premiums.

(b) A personal representative who is under court control may apply and obtain a court order if the representative has doubts regarding the propriety of the exercise of any power listed in Subsection (a).

Derived from Probate Code § 234(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.053. Authority to Serve Pending Appeal of Appointment

Pending an appeal from an order or judgment appointing an administrator or temporary administrator, the appointee shall continue to:

(1) act as administrator or temporary administrator; and

(2) prosecute any suit then pending in favor of the estate.

Derived from Probate Code § 28.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.054. Authority to Commence Suits

(a) An executor or administrator appointed in this state may commence a suit for:

(1) recovery of personal property, debts, or damages; or

(2) title to or possession of land, any right attached to or arising from that land, or an injury or damage done to that land.

(b) A judgment in a suit described by Subsection (a) is conclusive, but may be set aside by any interested person for fraud or collusion on the executor's or administrator's part.

Derived from Probate Code § 233A.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Possession and Care of Estate Property

Statutes in Context
§ 351.101

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).

§ 351.101. Duty of Care

An executor or administrator of an estate shall take care of estate property as a prudent person would take of that person's own property, and if any buildings belong to the estate, the executor or administrator shall keep those buildings in good repair, except for extraordinary casualties, unless directed by a court order not to do so.

Derived from Probate Code § 230.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 351.102

The personal representative has a duty to collect all of the decedent's property under § 351.102. This right is superior to that of the heirs or beneficiaries. See § 101.001.

§ 351.102. Possession of Personal Property and Records

(a) Immediately after receiving letters testamentary or of administration, the personal representative of an estate shall collect and take possession of the estate's personal property, record books, title papers, and other business papers.

(b) The personal representative shall deliver the property, books, and papers described by Subsection (a) that are in the representative's possession to the person or persons legally entitled to the property, books, and papers when:

(1) the administration of the estate is closed; or

(2) a successor personal representative receives letters testamentary or of administration.

Derived from Probate Code § 232.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.103. Possession of Property Held in Common Ownership

If an estate holds or owns any property in common or as part owner with another, the personal representative of the estate is entitled to possession of the property in common with the other part owner or owners in the same manner as other owners in common or joint owners are entitled to possession of the property.

Derived from Probate Code § 235.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.104. Administration of Partnership Interest

(a) If a decedent was a partner in a general partnership and the partnership agreement or articles of partnership provide that, on the death of a partner, the partner's personal representative is entitled to that partner's place in the partnership, a personal representative accordingly contracting to enter the partnership under the partnership agreement or articles of partnership is, to the extent allowed by law, liable to a third person only to the extent of:

(1) the deceased partner's capital in the partnership; and

(2) the estate's assets held by the representative.

(b) This section does not exonerate a personal representative from liability for the representative's negligence.

Derived from Probate Code § 238A.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 351.105

Section 351.105 permits corporate securities and other personal property to be held in the name of a nominee (e.g., a stock broker).

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§ 351.105. Holding of Stocks, Bonds, and Other Personal Property in Nominee's Name

(a) Unless otherwise provided by the will, a personal representative of an estate may cause stocks, bonds, and other personal property of the estate to be registered and held in the name of a nominee without mentioning the fiduciary relationship in any instrument or record constituting or evidencing title to that property. The representative is liable for the acts of the nominee with respect to property registered in this manner. The representative's records must at all times show the ownership of the property.

(b) Any property registered in the manner described by Subsection (a) shall be kept:

(1) in the possession and control of the personal representative at all times; and

(2) separate from the representative's individual property.

Derived from Probate Code § 398A.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Collection of Claims; Recovery of Property

Statutes in Context
Chapter 351, Subchapter D

Subchapter D provides the personal representative with guidance in collecting the decedent's property. This subchapter 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.

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§ 351.151. Ordinary Diligence Required

(a) If there is a reasonable prospect of collecting the claims or recovering the property of an estate, the personal representative of the estate shall use ordinary diligence to:

(1) collect all claims and debts due the estate; and

(2) recover possession of all property to which the estate has claim or title.

(b) If a personal representative wilfully neglects to use the ordinary diligence required under Subsection (a), the representative and the sureties on the representative's bond are liable, on the suit of any person interested in the estate, for the use of the estate, for the amount of those claims or the value of that property lost by the neglect.

Derived from Probate Code § 233(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.152. Contingent Interest for Certain Attorney's Fees; Court Approval

(a) Except as provided by Subsection (b) and subject only to the approval of the court in which the estate is being administered, a personal representative may convey or enter into a contract to convey for attorney services a contingent interest in any property sought to be recovered, not to exceed a one-third interest in the property.

(b) A personal representative, including an independent executor or independent administrator, may convey or enter into a contract to convey for attorney services a contingent interest in any property sought to be recovered under this subchapter in an amount that exceeds a one-third interest in the property 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 a 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 make the contract or conveyance meet the requirements of this section.

(c) In approving a contract or conveyance under this section, the court shall consider:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly;

(2) the fee customarily charged in the locality for similar legal services;

(3) the value of the property recovered or sought to be recovered by the personal representative under this subchapter;

(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 perform the services.

Derived from Probate Code §§ 233(b), (c), (d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.153. Recovery of Certain Expenses

On proof satisfactory to the court, a personal representative of an estate is entitled to all necessary and reasonable expenses incurred by the representative in:

(1) collecting or attempting to collect a claim or debt owed to the estate; or

(2) recovering or attempting to recover property to which the estate has a title or claim.

Derived from Probate Code § 233(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter E. Operation of Business

§ 351.201. Definition

In this subchapter, "business" includes a farm, ranch, or factory.

Derived from Probate Code § 238(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.202. Order Requiring Personal Representative to Operate Business

(a) 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 representative the powers to operate the business that the court determines are appropriate, after considering the factors listed in Subsection (b), 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 for any other lawful purpose; and

(3) the court determines that the operation of the business by the representative is in the best interest of the estate.

(b) In determining which powers to grant a personal representative in an order entered under Subsection (a), the court shall consider:

(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.

Derived from Probate Code §§ 238(b), (f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.203. Powers of Personal Representative Regarding Business

(a) A personal representative granted authority to operate a business in an order entered under Section 351.202(a) has the powers granted under Section 351.052, regardless of whether the order specifies that the representative has those powers, unless the order specifically provides that the representative does not have one or more of the powers listed in Section 351.052.

(b) In addition to the powers granted to the personal representative under Section 351.052, subject to any specific limitation on those powers in accordance with Subsection (a), an order entered under Section 351.202(a) may grant the 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 by 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 of the estate, but only to the extent that granting the power appears to be consistent with the speedy settlement of the estate; and

(5) any other power the court finds necessary with respect to the operation of the business.

(c) If the order entered under Section 351.202(a) gives the personal representative the power to purchase, sell, lease, or otherwise encumber property:

(1) the purchase, sale, lease, or encumbrance is governed by the terms of the order; and

(2) the representative is not required to comply with any other provision of this title regarding the purchase, sale, lease, or encumbrance, including any provision requiring citation or notice.

Derived from Probate Code §§ 238(c), (d), (e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.204. Fiduciary Duties of Personal Representative Regarding Business

(a) A personal representative who operates a business under an order entered under Section 351.202(a) has the same fiduciary duties as a representative who does not operate a business that is part of an estate.

(b) In operating a business under an order entered under Section 351.202(a), a personal representative shall consider:

(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.

(c) A personal representative who operates a business under an order entered under Section 351.202(a) shall report to the court with respect to the operation and condition of the business as part of the accounts required by Chapters 359 and 362, unless the court orders the reports regarding the business to be made more frequently or in a different manner or form.

Derived from Probate Code § 238(g).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.205. Real Property of Business; Notice

(a) A personal representative shall file a notice in the real property records of the county in which the real property is located before purchasing, selling, leasing, or otherwise encumbering any real property of the business in accordance with an order entered under Section 351.202(a).

(b) The notice filed under Subsection (a) must:

(1) state:

(A) the decedent's name;

(B) the county of the court in which the decedent's estate is pending;

(C) the cause number assigned to the pending estate; and

(D) that one or more orders have been entered under Section 351.202(A); and

(2) include a description of the property that is the subject of the purchase, sale, lease, or other encumbrance.

(c) For purposes of determining a personal representative's authority 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 the representative with respect to the transaction may rely on the notice filed under Subsection (a) and an order entered under Section 351.202(a) and filed as part of the estate records maintained by the clerk of the court in which the estate is pending.

Derived from Probate Code §§ 238(h), (i).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter F. Authority to Engage in Certain Borrowing

Statutes in Context
Chapter 351, Subchapter F

Chapter 351, Subchapter F, explains when and how a personal representative may borrow money for estate administration purposes.

§ 351.251. Mortgage or Pledge of Estate Property Authorized in Certain Circumstances

Under order of the court, a personal representative of an estate may mortgage or pledge by deed of trust or otherwise as security for an indebtedness any property of the estate as necessary for:

(1) the payment of any ad valorem, income, gift, estate, inheritance, or transfer taxes on the transfer of an estate or due from a decedent or the estate, regardless of whether those taxes are assessed by a state, a political subdivision of a state, the federal government, or a foreign country;

(2) the payment of expenses of administration, including amounts necessary for operation of a business, farm, or ranch owned by the estate;

(3) the payment of claims allowed and approved, or established by suit, against the estate; or

(4) the renewal and extension of an existing lien.

Derived from Probate Code § 329(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.252. Application; Order

(a) If necessary to borrow money for a purpose described by Section 351.251 or to create or extend a lien on estate property as security, the personal representative of the estate shall file a sworn application for that authority with the court. The application must state fully and in detail the circumstances that the representative believes make the granting of the authority necessary.

(b) On the filing of an application under Subsection (a), the clerk shall issue and have posted a citation to all interested persons, stating the nature of the application and requiring any interested person who chooses to do so to appear and show cause, if any, why the application should not be granted.

(c) If satisfied by the evidence adduced at the hearing on an application filed under Subsection (a) that it is in the interest of the estate to borrow money or to extend and renew an existing lien, the court shall issue an order to that effect that sets out the terms of the authority granted under the order.

(d) If a new lien is created on estate property, the court may require, for the protection of the estate and the creditors, that the personal representative's general bond be increased or an additional bond given, as for the sale of real property belonging to the estate.

Derived from Probate Code § 329(b), (c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.253. Term of Loan or Lien Extension

Except as otherwise provided by this section, the term of a loan or lien renewal authorized under Section 351.252 may not exceed a period of three years from the date original letters testamentary or of administration are granted to the personal representative of the affected estate. The court may authorize an extension of a lien renewed under Section 351.252 for not more than one additional year without further citation or notice.

Derived from Probate Code § 329(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter G. Payment of Income of Certain Estates During Administration

§ 351.301. Applicability of Subchapter

This subchapter applies only to the estate of a decedent that is being administered under the direction, control, and orders of a court in the exercise of the court's probate jurisdiction.

Derived from Probate Code § 239.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.302. Application and Order for Payment of Certain Estate Income

(a) On the application of the executor or administrator of an estate or of any interested party, and after notice of the application has been given by posting, the court may order and direct the executor or administrator to pay, or credit to the account of, those persons who the court finds will own the estate assets when administration on the estate is completed, and in the same proportions, that part of the annual net income received by or accruing to the estate that the court finds can conveniently be paid to those owners without prejudice to the rights of creditors, legatees, or other interested parties, if:

(1) it appears from evidence introduced at a hearing on the application, and the court finds, that the reasonable market value of the estate assets on hand at that time, excluding the annual income from the estate assets, is at least twice the aggregate amount of all unpaid debts, administration expenses, and legacies; and

(2) no estate creditor or legatee has appeared and objected.

(b) Except as otherwise provided by this title, nothing in this subchapter authorizes the court to order paid over to the owners of the estate any part of the principal of the estate.

Derived from Probate Code § 239.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.303. Treatment of Certain Amounts Received from Mineral Lease

For the purposes of this subchapter, bonuses, rentals, and royalties received for or from an oil, gas, or other mineral lease shall be treated as income rather than as principal.

Derived from Probate Code § 239.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter H. Certain Administered Estates

Statutes in Context
Chapter 351, Subchapter H

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.

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§ 351.351. Applicability

This subchapter does not apply to:

(1) the appointment of an independent executor or administrator under Section 401.002 or 401.003(a) [~~145(c), (d), or (e)~~]; or

(2) the appointment of a successor independent executor under Section 404.005 [~~154A~~]

Derived from Probate Code §§ 145(q), 154A(i).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.012, eff. Jan. 1, 2014.

§ 351.352. Ensuring Compliance with Law

A county or probate court shall use reasonable diligence to see that personal representatives of estates administered under court orders and other officers of the court perform the duty enjoined on them by law applicable to those estates.

Derived from Probate Code § 36(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.353. Annual Examination of Certain Estates; Bond of Personal Representative

For each estate administered under orders of a county or probate court, the judge shall, if the judge considers it necessary, annually examine the condition of the estate and the solvency of the bond of the estate's personal representative. If the judge finds the representative's bond is not sufficient to protect the estate, the judge shall require the representative to

execute a new bond in accordance with law. In each case, the judge, as provided by law, shall notify the representative and the sureties on the representative's bond.

Derived from Probate Code § 36(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.354. Judge's Liability

A judge is liable on the judge's bond to those damaged if damage or loss results to an estate administered under orders of a county or probate court from the gross neglect of the judge to use reasonable diligence in the performance of the judge's duty under this subchapter.

Derived from Probate Code § 36(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 351.355. Identifying Information

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

(b) The court shall maintain any information required under this section, and the information may not be filed with the clerk.

Derived from Probate Code § 36(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 352. Compensation and Expenses of Personal Representatives and Others

Subchapter A. Compensation of Personal Representatives

§ 352.001. Definition
§ 352.002. Standard Compensation
§ 352.003. Alternate Compensation
§ 352.004. Denial of Compensation

Subchapter B. Expenses of Personal Representatives and Others

§ 352.051. Expenses; Attorney's Fees
§ 352.052. Allowance for Defense of Will
§ 352.053. Expense Charges

Chapter 352. Compensation and Expenses of Personal Representatives and Others

Subchapter A. Compensation of Personal Representatives

Statutes in Context
Chapter 352, Subchapter A

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 this Subchapter 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.

§ 352.001. Definition

In this subchapter, "financial institution" means an organization authorized to engage in business under state or federal laws relating to financial institutions, including:

(1) a bank;
(2) a trust company;
(3) a savings bank;
(4) a building and loan association;
(5) a savings and loan company or association; and
(6) a credit union.

Derived from Probate Code § 241(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 352.002. Standard Compensation

(a) An executor, administrator, or temporary administrator a court finds to have taken care of and managed an estate in compliance with the standards of this title is entitled to receive a five percent commission on all amounts that the executor or administrator actually receives or pays out in cash in the administration of the estate.

(b) The commission described by Subsection (a):

(1) may not exceed, in the aggregate, more than five percent of the gross fair market value of the estate subject to administration; and

(2) is not allowed for:

(A) receiving funds belonging to the testator or intestate that were, at the time of the testator's or intestate's death, either on hand or held for the testator or intestate 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;

(B) collecting the proceeds of a life insurance policy; or

(C) paying out cash to an heir or legatee in that person's capacity as an heir or legatee.

Derived from Probate Code § 241(A).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 352.003. Alternate Compensation

(a) The court may allow an executor, administrator, or temporary administrator reasonable compensation for the executor's or administrator's services, including unusual efforts to collect funds or life insurance, if:

(1) the executor or administrator manages a farm, ranch, factory, or other business of the estate; or

(2) the compensation calculated under Section 352.002 is unreasonably low.

(b) The county court has jurisdiction to receive, consider, and act on applications from independent executors for purposes of this section.

Derived from Probate Code § 241(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 352.004. Denial of Compensation

The court may, on application of an interested person or on the court's own motion, wholly or partly deny a commission allowed by this subchapter 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 404.003 [~~149C~~] or Subchapter B, Chapter 361.

Derived from Probate Code § 241(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.45, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.013, eff. Jan. 1, 2014.

Subchapter B. Expenses of Personal Representatives and Others

Statutes in Context
§ 352.051

Section 352.051 allows the personal representative to be reimbursed for all necessary and reasonable expenses, including attorneys' fees, incurred in administering the estate.

§ 352.051. Expenses; Attorney's Fees

On proof satisfactory to the court, a personal representative of an estate is entitled to:

(1) necessary and reasonable expenses incurred by the representative in:

(A) preserving, safekeeping, and managing the estate;

(B) collecting or attempting to collect claims or debts; and

(C) recovering or attempting to recover property to which the estate has a title or claim; and

(2) reasonable attorney's fees necessarily incurred in connection with the proceedings and management of the estate.

Derived from Probate Code § 242.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 352.052

Section 352.052 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.

§ 352.052. Allowance for Defense of Will

(a) A person designated as executor in a will or an alleged will, or as administrator with the will or alleged will annexed, who, for the purpose of having the will or alleged will admitted to probate, defends the will or alleged will or prosecutes any proceeding in good faith and with just cause, whether or not successful, shall be allowed out of the estate the executor's or administrator's necessary expenses and disbursements in those proceedings, including reasonable attorney's fees.

(b) A person designated as a devisee in or beneficiary of a will or an alleged will, or as administrator with the will or alleged will annexed, who, for the purpose of having the will or alleged will admitted to probate, defends the will or alleged will or prosecutes any proceeding in good faith and with just cause, whether or not successful, may be allowed out of the estate the person's necessary expenses and disbursements in those proceedings, including reasonable attorney's fees.

Derived from Probate Code § 243.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 352.053. Expense Charges

(a) The court shall act on expense charges in the same manner as other claims against the estate.

(b) All expense charges shall be:

(1) made in writing, showing specifically each item of expense and the date of the expense;

(2) verified by the personal representative's affidavit;

(3) filed with the clerk; and

(4) entered on the claim docket.

Derived from Probate Code § 244.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 353. Exempt Property and Family Allowance

Subchapter A. General Provisions

§ 353.001. Treatment of Certain Children

Subchapter B. Exempt Property; Allowance in Lieu of Exempt Property

§ 353.051. Exempt Property to Be Set Aside
§ 353.052. Delivery of Exempt Property
§ 353.053. Allowance in Lieu of Exempt Property
§ 353.054. Payment of Allowance in Lieu of Exempt Property
§ 353.055. Method of Paying Allowance in Lieu of Exempt Property
§ 353.056. Sale of Property to Raise Funds for Allowance in Lieu of Exempt Property

Subchapter C. Family Allowance

§ 353.101. Family Allowance
§ 353.102. Amount and Method of Payment of Family Allowance
§ 353.103. Order Fixing Family Allowance
§ 353.104. Preference of Family Allowance
§ 353.105. Payment of Family Allowance
§ 353.106. Surviving Spouse or Minor Children May Take Personal Property for Family Allowance
§ 353.107. Sale of Estate Property to Raise Funds for Family Allowance

Subchapter D. Liens on and Disposition of Exempt Property and Property Taken as Allowance

§ 353.151. Liens
§ 353.152. Distribution of Exempt Property of Solvent Estate
§ 353.153. Title to Property of Insolvent Estate
§ 353.154. Certain Property Not Considered in Determining Solvency
§ 353.155. Exempt Property Liable for Certain Debts

Chapter 353. Exempt Property and Family Allowance

Subchapter A. General Provisions

§ 353.001. Treatment of Certain Children

For purposes of distributing exempt property and making a family allowance, a child is a child of his or her mother and a child of his or her father, as provided by Sections 201.051, 201.052, and 201.053.

Derived from Probate Code § 42(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Exempt Property; Allowance in Lieu of Exempt Property

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Statutes in Context
§ 353.051

The exempt property which the court sets aside includes the homestead as discussed in Chapter 102 as well as exempt personal property under Property Code §§ 42.001-42.005.

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§ 353.051. Exempt Property to Be Set Aside

(a) Unless an application and verified affidavit are filed as provided by Subsection (b), immediately after the inventory, appraisement, and list of claims of an estate are approved or after the affidavit in lieu of the inventory, appraisement, and list of claims is filed, the court by order shall set aside:

(1) the homestead for the use and benefit of the decedent's surviving spouse and minor children; and

(2) all other estate property that is exempt from execution or forced sale by the constitution and laws of this state for the use and benefit of the decedent's:

(A) surviving spouse and minor children;

(B) unmarried adult children remaining with the decedent's family; and

(C) each other adult child who is incapacitated.

(b) Before the inventory, appraisement, and list of claims of an estate are approved:

(1) the decedent's surviving spouse or any other person authorized to act on behalf of the decedent's minor children may apply to the court to

have exempt property, including the homestead, set aside by filing an application and a verified affidavit listing all property that the applicant claims is exempt; and

(2) any of the decedent's unmarried adult children remaining with the decedent's family, any other adult child of the decedent 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 property, other than the homestead, that the applicant claims is exempt.

(c) At a hearing on an application filed under Subsection (b), the applicant has the burden of proof by a preponderance of the evidence. The court shall set aside property of the decedent's estate that the court finds is exempt.

Derived from Probate Code § 271.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.01, eff. Jan. 1, 2014 and Acts 2011, 82nd Leg., ch. 810, § 2.01, eff. Jan. 1. 2014.

Statutes in Context
§ 353.052

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.

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§ 353.052. Delivery of Exempt Property

(a) The executor or administrator of an estate shall deliver, without delay, exempt property that has been set aside for the decedent's surviving spouse and children in accordance with this section.

(b) If there is a surviving spouse and there are no children of the decedent, or if all the children, including any adult incapacitated children, of the decedent are also the children of the surviving spouse, the executor or administrator shall deliver all exempt property to the surviving spouse.

(c) If there is a surviving spouse and there are children of the decedent who are not also children of the surviving spouse, the executor or administrator shall deliver the share of those children in exempt property, other than the homestead, to:

(1) the children, if the children are of legal age;

(2) the children's guardian, if the children are minors; or

(3) the guardian of each of the 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) If there is no surviving spouse and there are children of the decedent, the executor or administrator shall deliver exempt property, other than the homestead, to:

(1) the children, if the children are of legal age;

(2) the children's guardian, if the children are minors; or

(3) the guardian of each of the 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.

(e) In all cases, the executor or administrator shall deliver the homestead to:

(1) the decedent's surviving spouse, if there is a surviving spouse; or

(2) the guardian of the decedent's minor children, if there is not a surviving spouse.

Derived from Probate Code § 272.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 810, § 2.02, eff. Jan. 1, 2014.

Statutes in Context
§ 353.053

If the decedent did not have a homestead (e.g., the decedent lived in rental accommodations), then other property up to a value of $45,000 may be set aside instead. Likewise, if the decedent did not have exempt personal property, an allowance of up to $30,000 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 $30,000. "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.).

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§ 353.053. Allowance in Lieu of Exempt Property

(a) If all or any of the specific articles exempt from execution or forced sale by the constitution and laws of this state are not among the decedent's effects, the court shall make, in lieu of the articles not among the effects, a reasonable allowance to be paid to the decedent's surviving spouse and children as provided by Section 353.054.

(b) The allowance in lieu of a homestead may not exceed $45,000 [~~$15,000~~], and the allowance in lieu of other exempt property may not exceed $30,000 [~~$5,000~~], excluding the family allowance for the

support of the surviving spouse, minor children, and adult incapacitated children provided by Subchapter C.

Derived from Probate Code § 273.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2011, 82nd Leg., ch. 810, § 2.03, eff. Jan. 1, 2014 and Acts 2013, 83rd Leg., ch. 647, § 2.01, ef.. Jan. 1, 2014.

§ 353.054. Payment of Allowance in Lieu of Exempt Property

(a) The executor or administrator of an estate shall pay an allowance in lieu of exempt property in accordance with this section.

(b) If there is a surviving spouse and there are no children of the decedent, or if all the children, including any adult incapacitated children, of the decedent are also the children of the surviving spouse, the executor or administrator shall pay the entire allowance to the surviving spouse.

(c) If there is a surviving spouse and there are children of the decedent who are not also children of the surviving spouse, the executor or administrator shall pay the surviving spouse one-half of the entire allowance plus the shares of the decedent's children of whom the surviving spouse is the parent. The remaining shares must be paid to:

(1) the decedent's adult children of whom the surviving spouse is not a parent and who are not incapacitated;

(2) the guardian of the children of whom the surviving spouse is not a parent and who are minors; or

(3) the guardian or another appropriate person, as determined by the court, if there is no guardian, of each child who is an incapacitated adult.

(d) If there is no surviving spouse and there are children of the decedent, the executor or administrator shall divide the entire allowance equally among the children and pay the children's shares to:

(1) each of those children who are adults and who are not incapacitated;

(2) the guardian of each of those children who are minors; or

(3) the guardian or another appropriate person, as determined by the court, if there is no guardian, of each of those children who is an incapacitated adult.

Derived from Probate Code § 275.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 810, § 2.04, eff. Jan. 1, 2014.

§ 353.055. Method of Paying Allowance in Lieu of Exempt Property

(a) An allowance in lieu of any exempt property shall be paid in the manner selected by the decedent's surviving spouse or children of legal age, or by the guardian of the decedent's minor children, or by the guardian of each adult incapacitated child or other appropriate person, as determined by the court, if there is no guardian, as follows:

(1) in money out of estate funds that come into the executor's or administrator's possession;

(2) in any of the decedent's property or a part of the property chosen by those individuals at the appraisement; or

(3) part in money described by Subdivision (1) and part in property described by Subdivision (2).

(b) Property specifically devised to another may be taken as provided by Subsection (a) only if other available property is insufficient to pay the allowance.

Derived from Probate Code § 274.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2011, 82nd Leg., ch. 810, § 2.05, eff. Jan. 1, 2014.

§ 353.056. Sale of Property to Raise Funds for Allowance in Lieu of Exempt Property

(a) On the written application of the decedent's surviving spouse and children, or of a person authorized to represent any of those children, the court shall order the sale of estate property for cash in an amount that will be sufficient to raise the amount of the allowance provided under Section 353.053 or a portion of that amount, as necessary, if:

(1) the decedent had no property that the surviving spouse or children are willing to take for the allowance or the decedent had insufficient property; and

(2) there are not sufficient estate funds in the executor's or administrator's possession to pay the amount of the allowance or a portion of that amount, as applicable.

(b) Property specifically devised to another may be sold to raise cash as provided by Subsection (a) only if other available property is insufficient to pay the allowance.

Derived from Probate Code §§ 274, 276.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2011, 82nd Leg., ch. 810, § 2.06, eff. Jan. 1, 2014.

Subchapter C. Family Allowance

Statutes in Context
Chapter 353, Subchapter C

Chapter 353, Subchapter C, provides 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. There is no allowance for an adult unmarried child remaining with the family who is competent. In addition, there is no allowance for an adult incapacitated child if the decedent was not supporting this child when the decedent died.

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 *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 a satisfaction).

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§ 353.101. Family Allowance

(a) Unless an application and verified affidavit are filed as provided by Subsection (b), immediately after the inventory, appraisement, and list of claims of an estate are approved or after the affidavit in lieu of the inventory, appraisement and list of claims is filed, the court shall fix a family allowance for the support of the decedent's surviving spouse, minor children, and adult incapacitated children.

(b) Before the inventory, appraisement, and list of claims of an estate are approved or, if applicable, before the affidavit in lieu of the inventory, appraisement, and list of claims is filed, the decedent's surviving spouse or any other person authorized to act on behalf of the decedent's minor children or adult incapacitated children may apply to the court to have the court fix the family allowance by filing an application and a verified affidavit describing:

(1) the amount necessary for the maintenance of the surviving spouse, the decedent's minor children, and the decedent's adult incapacitated children for one year after the date of the decedent's death; and

(2) the surviving spouse's separate property and any property that the decedent's minor children or adult incapacitated children have in their own right.

(c) At a hearing on an application filed under Subsection (b), the applicant has the burden of proof by a preponderance of the evidence. The court shall fix a family allowance for the support of the decedent's surviving spouse, minor children, and adult incapacitated children.

(d) A family allowance may not be made for:

(1) the decedent's surviving spouse, if the surviving spouse has separate property adequate for the surviving spouse's maintenance;

(2) the decedent's minor children, if the minor children have property in their own right adequate for the children's maintenance; or

(3) any of the decedent's adult incapacitated children, if:

(A) the adult incapacitated child has property in the person's own right adequate for the person's maintenance; or

(B) at the time of the decedent's death, the decedent was not supporting the adult incapacitated child.

Derived from Probate Code §§ 286 & 288.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.47, eff. Jan. 1, 2014 and Acts 2011, 82nd Leg., ch. 810, § 2.07, eff. Jan. 1, 2014. Subsec. (d) amended by Acts 2013, 83rd Leg., ch. 1136, § 44, eff. Jan. 1, 2014.

Statutes in Context
§ 353.102

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.

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§ 353.102. Amount and Method of Payment of Family Allowance

(a) The amount of the family allowance must be sufficient for the maintenance of the decedent's surviving spouse, minor children, and adult incapacitated children for one year from the date of the decedent's death.

(b) The allowance must be fixed with regard to the facts or circumstances then existing and the facts and circumstances anticipated to exist during the first year after the decedent's death.

(c) The allowance may be paid in a lump sum or in installments, as ordered by the court.

Derived from Probate Code § 287.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2011, 82nd Leg., ch. 810, § 2.08, eff. Jan. 1, 2014.

§ 353.103. Order Fixing Family Allowance

When a family allowance has been fixed, the court shall enter an order that:

(1) states the amount of the allowance;

(2) provides how the allowance shall be payable; and

(3) directs the executor or administrator to pay the allowance in accordance with law.

Derived from Probate Code § 289.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 353.104

The family allowance has priority over the claims of other creditors except for the first $15,000 of funeral and last illness expenses. See § 355.102 (defining "Class 1" claims).

§ 353.104. Preference of Family Allowance

The family allowance made for the support of the decedent's surviving spouse, minor children, and adult incapacitated children shall be paid in preference to all other debts of or charges against the estate, other than Class 1 claims.

Derived from Probate Code § 290.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 810, § 2.09, eff. Jan. 1, 2014.

§ 353.105. Payment of Family Allowance

(a) The executor or administrator of an estate shall apportion and pay the family allowance in accordance with this section.

(b) If there is a surviving spouse and there are no minor children or adult incapacitated children of the decedent, the executor or administrator shall pay the entire family allowance to the surviving spouse.

(c) If there is a surviving spouse and all of the minor children and adult incapacitated children of the decedent are also the children of the surviving spouse, the executor or administrator shall pay the entire family allowance to the surviving spouse for use by the surviving spouse, the decedent's minor children, and adult incapacitated children.

(d) If there is a surviving spouse and some or all of the minor children or adult incapacitated children of the decedent are not also children of the surviving spouse, the executor or administrator shall pay:

(1) the portion of the entire family allowance necessary for the support of those minor children to the guardian of those children; and

(2) the portion of the entire family allowance necessary for the support of each of those adult incapacitated children 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.

(e) If there is no surviving spouse and there are minor children or adult incapacitated children of the decedent, the executor or administrator shall pay the family allowance:

(1) for the minor children, to the guardian of those children; and

(2) for each adult incapacitated child, 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.

Derived from Probate Code § 291.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 810, § 2.10, eff. Jan. 1, 2014.

§ 353.106. Surviving Spouse or Minor Children May Take Personal Property for Family Allowance

(a) A decedent's surviving spouse, the guardian of the decedent's minor children, or the guardian of an adult incapacitated child of the decedent or another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian, as applicable, is entitled to take, at the property's appraised value as shown by the appraisement, any of the estate's personal property in full or partial payment of the family allowance.

(b) Property specifically devised to another may be taken as provided by Subsection (a) only if other available property is insufficient to pay the allowance.

Derived from Probate Code § 292.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 810, §§ 2.11 & 2.12, eff. Jan. 1, 2014.

§ 353.107. Sale of Estate Property to Raise Funds for Family Allowance

(a) The court shall, as soon as the inventory, appraisement, and list of claims are returned and approved or the affidavit in lieu of the inventory, appraisement, and list of claims is filed, order the sale of estate property for cash in an amount that will be sufficient to raise the amount of the family allowance, or a portion of that amount, as necessary, if:

(1) the decedent had no personal property that the surviving spouse, the guardian of the decedent's minor children, or the guardian of the decedent's adult incapacitated child or other appropriate person acting on behalf of the adult incapacitated child is willing to take for the family allowance, or the decedent had insufficient personal property; and

(2) there are not sufficient estate funds in the executor's or administrator's possession to pay the amount of the family allowance or a portion of that amount, as applicable.

(b) Property specifically devised to another may be sold to raise cash as provided by Subsection (a) only if other available property is insufficient to pay the family allowance.

Derived from Probate Code §§ 292, 293.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.48, eff. Jan. 1, 2014 and Acts 2011, 82nd Leg., ch. 810, § 2.13, eff. Jan. 1, 2014.

Subchapter D. Liens on and Disposition of Exempt Property and Property Taken as Allowance

§ 353.151. Liens

(a) This section applies to all estates, whether solvent or insolvent.

(b) If property on which there is a valid subsisting lien or encumbrance is set aside as exempt for the surviving spouse or children or is appropriated to make an allowance in lieu of exempt property or for the support of the surviving spouse or children, the debts secured by the lien shall, if necessary, be either paid or continued against the property.

Derived from Probate Code § 277.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 353.152

If the estate is solvent, the exempt personal property passes to the heirs or beneficiaries. 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 § 353.101.

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§ 353.152. Distribution of Exempt Property of Solvent Estate

If on final settlement of an estate it appears that the estate is solvent, the exempt property, other than the homestead or any allowance made in lieu of the homestead, is subject to partition and distribution among the heirs of the decedent and the distributees in the same manner as other estate property.

Derived from Probate Code § 278.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 353.153

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. 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.

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§ 353.153. Title to Property of Insolvent Estate

If on final settlement an estate proves to be insolvent, the decedent's surviving spouse and children have absolute title to all property and allowances set aside or paid to them under this title. The property and allowances may not be taken for any of the estate debts except as provided by Section 353.155.

Derived from Probate Code § 279.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 353.154. Certain Property Not Considered in Determining Solvency

In determining whether an estate is solvent or insolvent, the exempt property set aside for the decedent's surviving spouse or children, any allowance made in lieu of that exempt property, and the family allowance under Subchapter C may not be estimated or considered as estate assets.

Derived from Probate Code § 280.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 353.155

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 § 355.102 (defining "Class 1" claims).

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§ 353.155. Exempt Property Liable for Certain Debts

The exempt property, other than the homestead or any allowance made in lieu of the homestead:

(1) is liable for the payment of Class 1 claims; and

(2) is not liable for any estate debts other than the claims described by Subdivision (1).

Derived from Probate Code § 281.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 354. Summary Proceedings for, or Withdrawal From Administration of, Certain Estates

Subchapter A. Summary Proceedings for Certain Small Estates

§ 354.001. Summary Proceedings for Certain Small Estates

Subchapter B. Withdrawal from Administration of Certain Estates

§ 354.051. Required Report on Condition of Estate

§ 354.052. Bond Required to Withdraw Estate from Administration
§ 354.053. Order for Delivery of Estate
§ 354.054. Order of Discharge
§ 354.055. Lien on Property of Estate Withdrawn from Administration
§ 354.056. Partition of Estate Withdrawn from Administration
§ 354.057. Creditors Entitled to Sue on Bond
§ 354.058. Creditors May Sue Distributees

Chapter 354. Summary Proceedings for, or Withdrawal from Administration of, Certain Estates

Subchapter A. Summary Proceedings for Certain Small Estates

Statutes in Context
§ 354.001

Section 354.001 provides for summary proceedings for certain insolvent estates even after a personal representative has been appointed. The statute refers to "claims of Classes 1 through 4" under § 355.102. Note that the predecessor Probate Code section to § 355.102 was amended many times since it was enacted in 1955 and thus the referenced claims are not the same as when the section originally took effect.

§ 354.001. Summary Proceedings for Certain Small Estates

(a) If, after a personal representative of an estate has filed the inventory, appraisement, and list of claims or the affidavit in lieu of the inventory, appraisement, and list of claims as provided by Chapter 309, it is established that the decedent's estate, excluding any homestead, exempt property, and family allowance to the decedent's surviving spouse, minor children, and adult incapacitated children, does not exceed the amount sufficient to pay the claims against the estate classified as Classes 1 through 4 under Section 355.102, the representative shall:

(1) on order of the court, pay those claims in the order provided and to the extent permitted by the assets of the estate subject to the payment of those claims; and

(2) after paying the claims in accordance with Subdivision (1), present to the court the representative's account with an application for the settlement and allowance of the account.

(b) On presentation of the personal representative's account and application under Subsection (a), the court, with or without notice, may adjust, correct, settle, allow, or disallow the account.

(c) If the court settles and allows the personal representative's account under Subsection (b), the court may:

(1) decree final distribution;
(2) discharge the representative; and
(3) close the administration.

Derived from Probate Code § 143.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Amended by Acts 2011, 82nd Leg., ch. 1338, § 2.49, eff. Jan. 1, 2014 and Acts 2011, 82nd Leg., ch. 810, § 2.14, eff. Jan. 1, 2014.

Subchapter B. Withdrawal from Administration of Certain Estates

Statutes in Context
Chapter 354

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.

§ 354.051. Required Report on Condition of Estate

At any time after the return of the inventory, appraisement, and list of claims of an estate required by Chapter 309, anyone entitled to a portion of the estate, by a written complaint filed in the court in which the case is pending, may have the estate's executor or administrator cited to appear and render under oath an exhibit of the condition of the estate.

Derived from Probate Code § 262.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 354.052. Bond Required to Withdraw Estate from Administration

After the executor or administrator has rendered the exhibit of the condition of the estate if required under Section 354.051, one or more persons entitled to the estate, or other persons for them, may execute and deliver a bond to the court. The bond must be:

(1) conditioned that the persons executing the bond shall:

(A) pay all unpaid debts against the estate that have been or are:

(i) allowed by the executor or administrator and approved by the court; or

(ii) established by suit against the estate; and

(B) pay to the executor or administrator any balance that the court in its judgment on the exhibit finds to be due the executor or administrator;

(2) payable to the judge and the judge's successors in office in an amount equal to at least twice the gross appraised value of the estate as

shown by the inventory, appraisement, and list of claims returned under Chapter 309; and

(3) approved by the court.

Derived from Probate Code § 263.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 354.053. Order for Delivery of Estate

On the giving and approval of the bond under Section 354.052, the court shall enter an order requiring the executor or administrator to promptly deliver to each person entitled to any portion of the estate that portion to which the person is entitled.

Derived from Probate Code § 264.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 354.054. Order of Discharge

After an estate has been withdrawn from administration under Section 354.053, the court shall enter an order:

(1) discharging the executor or administrator; and

(2) declaring the administration closed.

Derived from Probate Code § 265.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 354.055. Lien on Property of Estate Withdrawn from Administration

A lien exists on all of the estate withdrawn from administration under Section 354.053 and in the possession of the distributees and those claiming under the distributees with notice of that lien, to secure the ultimate payment of:

(1) the bond under Section 354.052; and

(2) debts and claims secured by the bond.

Derived from Probate Code § 266.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 354.056. Partition of Estate Withdrawn from Administration

On written application to the court, any person entitled to any portion of an estate withdrawn from administration under Section 354.053 may cause a partition and distribution of the estate to be made among those persons entitled to the estate in accordance with the provisions of this title that relate to the partition and distribution of an estate.

Derived from Probate Code § 267.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 354.057. Creditors Entitled to Sue on Bond

A creditor of an estate withdrawn from administration under Section 354.053 whose debt or claim against the estate is unpaid and not barred by limitation is entitled to:

(1) commence a suit in the person's own name on the bond under Section 354.052; and

(2) obtain a judgment on the bond for the debt or claim the creditor establishes against the estate.

Derived from Probate Code § 268.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 354.058. Creditors May Sue Distributees

(a) A creditor of an estate withdrawn from administration under Section 354.053 whose debt or claim against the estate is unpaid and not barred by limitation may sue:

(1) any distributee who has received any of the estate; or

(2) all the distributees jointly.

(b) A distributee is not liable for more than the distributee's just proportion according to the amount of the estate the distributee received in the distribution.

Derived from Probate Code § 269.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 355. Presentment and Payment of Claims

Subchapter A. Presentment of Claims Against Estates in General

§ 355.001. Presentment of Claim to Personal Representative
§ 355.002. Presentment of Claim to Clerk
§ 355.003. Inclusion of Attorney's Fees in Claim
§ 355.004. Affidavit Authenticating Claim for Money in General
§ 355.005. Affidavit Authenticating Claim of Corporation or Other Entity
§ 355.006. Lost or Destroyed Evidence Concerning Claim
§ 355.007. Waiver of Certain Defects of Form or Claims of Insufficiency
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Subchapter B. Action on Claims

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§ 355.059. Allowance and Approval Prohibited Without Affidavit
§ 355.060. Unsecured Claims Barred Under Certain Circumstances
§ 355.061. Allowing Barred Claim Prohibited: Court Disapproval
§ 355.062. Certain Actions on Claims With Lost or Destroyed Evidence Void
§ 355.063. Claims Not Allowed After Order for Partition and Distribution
§ 355.064. Suit on Rejected Claim
§ 355.065. Presentment of Claim Prerequisite for Judgment
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Subchapter C. Payment of Claims, Allowances, and Expenses

§ 355.101. Approval or Establishment of Claim Required for Payment
§ 355.102. Claims Classification; Priority of Payment
§ 355.103. Priority of Certain Payments
§ 355.104. Payment of Proceeds from Sale of Property Securing Debt
§ 355.105. Claimant's Petition for Allowance and Payment of Claim
§ 355.106. Order for Payment of Claim Obtained by Personal Representative
§ 355.107. Order for Payment of Claim Obtained by Creditor
§ 355.108. Payment When Assets Insufficient to Pay Claims of Same Class
§ 355.109. Abatement of Bequests
§ 355.110. Allocation of Funeral Expenses
§ 355.111. Payment of Court Costs Relating to Claim
§ 355.112. Joint Obligation for Payment of Certain Debts
§ 355.113. Liability for Nonpayment of Claim

Subchapter D. Presentment and Payment of Secured Claims for Money

§ 355.151. Option to Treat Claim as Matured Secured Claim or Preferred Debt and Lien
§ 355.152. Period for Specifying Treatment of Secured Claim
§ 355.153. Payment of Matured Secured Claim
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§ 355.155. Payment of Maturities on Preferred Debt and Lien
§ 355.156. Affidavit Required for Foreclosure
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§ 355.159. Manner of Foreclosure; Minimum Price
§ 355.160. Unsuccessful Foreclosure; Subsequent Application

Subchapter E. Claims Involving Personal Representatives

§ 355.201. Claim by Personal Representative
§ 355.202. Claims Against Personal Representatives
§ 355.203. Purchase of Claim by Personal Representative Prohibited

Chapter 355. Presentment and Payment of Claims

Subchapter A. Presentment of Claims Against Estates in General

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Statutes in Context
§ 355.001

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 § 355.001. (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.)

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§ 355.001. Presentment of Claim to Personal Representative

A claim may be presented to a personal representative of an estate at any time before the estate is closed if suit on the claim has not been barred by the general statutes of limitation.

Derived from Probate Code § 298(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.002. Presentment of Claim to Clerk

(a) A claim may also be presented by depositing the claim with the clerk with vouchers and the necessary exhibits and affidavit attached to the claim. On receiving a claim deposited under this subsection, the clerk shall advise the personal representative or the representative's attorney of the deposit of the claim by a letter mailed to the representative's last known address.

(b) A claim deposited under Subsection (a) is presumed to be rejected if the personal representative fails to act on the claim on or before the 30th day after the date the claim is deposited.

(c) Failure of the clerk to give the notice required under Subsection (a) does not affect the validity of the

presentment or the presumption of rejection because the personal representative does not act on the claim within the 30-day period prescribed by Subsection (b).

(d) The clerk shall enter a claim deposited under Subsection (a) on the claim docket.

Derived from Probate Code § 308.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.003. Inclusion of Attorney's Fees in Claim

If the instrument evidencing or supporting a claim provides for attorney's fees, the claimant may include as a part of the claim the portion of attorney's fees the claimant has paid or contracted to pay to an attorney to prepare, present, and collect the claim.

Derived from Probate Code § 307.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 355.004

The creditor must submit a sworn affidavit supporting the claim under § 355.004.

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§ 355.004. Affidavit Authenticating Claim for Money in General

(a) Except as provided by Section 355.005, a claim for money against an estate must be supported by an affidavit that states:

(1) that the claim is just;

(2) that all legal offsets, payments, and credits known to the affiant have been allowed; and

(3) if the claim is not founded on a written instrument or account, the facts on which the claim is founded.

(b) A photostatic copy of an exhibit or voucher necessary to prove a claim may be offered with and attached to the claim instead of attaching the original.

Derived from Probate Code § 301.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.005. Affidavit Authenticating Claim of Corporation or Other Entity

(a) An authorized officer or representative of a corporation or other entity shall make the affidavit required to authenticate a claim of the corporation or entity.

(b) In an affidavit made by an officer of a corporation, or by an executor, administrator, trustee, assignee, agent, representative, or attorney, it is sufficient to state that the affiant has made diligent inquiry and examination and believes the claim is just and that all legal offsets, payments, and credits made known to the affiant have been allowed.

Derived from Probate Code § 304.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.006. Lost or Destroyed Evidence Concerning Claim

If evidence of a claim is lost or destroyed, the claimant or an authorized representative or agent of the claimant may make an affidavit to the fact of the loss or destruction. The affidavit must state:

(1) the amount, date, and nature of the claim;

(2) the due date of the claim;

(3) that the claim is just;

(4) that all legal offsets, payments, and credits known to the affiant have been allowed; and

(5) that the claimant is still the owner of the claim.

Derived from Probate Code § 303.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.007. Waiver of Certain Defects of Form or Claims of Insufficiency

A defect of form or a claim of insufficiency of a presented exhibit or voucher is considered waived by the personal representative unless a written objection to the defect or insufficiency is made not later than the 30th day after the date the claim is presented and is filed with the county clerk.

Derived from Probate Code § 302.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 355.008

Section 355.008 provides that the statute of limitations is tolled when a creditor files or deposits a claim for money.

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§ 355.008. Effect on Statutes of Limitation of Presentment of or Suit on Claim

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 representative.

Derived from Probate Code § 299.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Action on Claims

Statutes in Context
§ 355.051

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 § 355.064. See also *Statutes in Context* to § 403.051.

3. Do Nothing. If the personal representative takes no action with respect to the claim within 30 days, the claim is deemed rejected. See § 355.052. This then triggers the running of the creditor's obligation in a dependent administration to bring suit within 90 days under § 355.064.

This section does not apply to independent administrations. See *Bunting v. Pearson*, 430 S.W.2d 470 (Tex. 1968).

§ 355.051. Allowance or Rejection of Claim

A personal representative of an estate shall, not later than the 30th day after the date an authenticated claim against the estate is presented to the representative, or deposited with the clerk as provided under Section 355.002, endorse on the claim, attach to the claim, or file with the clerk a memorandum signed by the representative stating:

(1) the date the claim was presented or deposited; and

(2) whether the representative allows or rejects the claim, or if the representative allows or rejects a part of the claim, the portion the representative allows or rejects.

Derived from Probate Code § 309.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 355.052

Section 355.052 does not apply to independent administrations. See *Bunting v. Pearson*, 430 S.W.2d 470 (Tex. 1968).

§ 355.052. Failure to Timely Allow or Reject Claim

The failure of a personal representative to timely allow or reject a claim under Section 355.051 constitutes a rejection of the claim. If the claim is established by suit after that rejection:

(1) the costs shall be taxed against the representative, individually; or

(2) 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.

Derived from Probate Code § 310.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.053. Claim Entered on Claim Docket

After a claim against an estate has been presented to the personal representative and allowed or rejected, wholly or partly, by the representative, the claim must be filed with the county clerk of the proper county. The clerk shall enter the claim on the claim docket.

Derived from Probate Code § 311.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.054. Contest of Claim

(a) A person interested in an estate may, at any time before the court has acted on a claim, appear and object in writing to the approval of the claim or any part of the claim.

(b) If a person objects under Subsection (a):

(1) the parties are entitled to process for witnesses; and

(2) the court shall hear evidence and render judgment as in ordinary suits.

Derived from Probate Code § 312(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.055. Court's Action on Claim

The court shall:

(1) act on each claim that has been allowed and entered on the claim docket for a period of 10 days either approving the claim wholly or partly or disapproving the claim; and

(2) concurrently classify the claim.

Derived from Probate Code § 312(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.056. Hearing on Certain Claims

(a) If a claim is properly authenticated and allowed but the court is not satisfied that the claim is just, the court shall:

(1) examine the claimant and the personal representative under oath; and

(2) hear other evidence necessary to determine the issue.

(b) If after conducting the examination and hearing the evidence under Subsection (a) the court is not convinced that the claim is just, the court shall disapprove the claim.

Derived from Probate Code § 312(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.057. Court Order Regarding Action on Claim

(a) The court acting on a claim shall state the exact action taken on the claim, whether the claim is approved or disapproved, or approved in part and disapproved in part, and the classification of the claim by endorsing on or attaching to the claim a written memorandum that is dated and officially signed.

(b) An order under Subsection (a) has the effect of a final judgment.

Derived from Probate Code § 312(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.058. Appeal of Court's Action on Claim

A claimant or any person interested in an estate who is dissatisfied with the court's action on a claim may appeal the action to the court of appeals in the manner other judgments of the county court in probate matters are appealed.

Derived from Probate Code § 312(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.059. Allowance and Approval Prohibited Without Affidavit

A personal representative of an 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 meets the applicable requirements of Sections 355.004(a) and 355.005.

Derived from Probate Code § 301.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.060. Unsecured Claims Barred Under Certain Circumstances

If a personal representative gives a notice permitted by Section 308.054 to an unsecured creditor for money and the creditor's claim is not presented before the 121st day [~~within four months~~] after the date of receipt of the notice, the claim is barred.

Derived from Probate Code § 298(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 45, eff. Jan. 1, 2014.

§ 355.061. Allowing Barred Claim Prohibited: Court Disapproval

(a) A personal representative may not allow a claim for money against a decedent or the decedent's estate if a suit on the claim is barred:

(1) under Section 355.060, 355.064, or 355.201(b); or

(2) by an applicable general statute of limitation.

(b) A claim for money that is allowed by the personal representative shall be disapproved if the court is satisfied that the claim is barred, including because the limitation has run.

Derived from Probate Code § 298(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.062. Certain Actions on Claims With Lost or Destroyed Evidence Void

(a) Before a claim the evidence for which is lost or destroyed is approved, the claim must be proved by disinterested testimony taken in open court or by oral or written deposition.

(b) The allowance or approval of a claim the evidence for which is lost or destroyed is void if the claim is:

(1) allowed or approved without the affidavit under Section 355.006; or

(2) approved without satisfactory proof.

Derived from Probate Code § 303.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.063. Claims Not Allowed After Order for Partition and Distribution

After an order for final partition and distribution of an estate has been made:

(1) a claim for money against the estate may not be allowed by a personal representative;

(2) a suit may not be commenced against the representative on a claim for money against the estate; and

(3) the owner of any claim that is not barred by the laws of limitation has a right of action on the claim against the heirs, devisees, or creditors of the estate, limited to the value of the property received by those heirs, devisees, or creditors in distributions from the estate.

Derived from Probate Code § 318.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 355.064

Section 355.064 does not apply to independent administrations. See *Bunting v. Pearson*, 430 S.W.2d 470 (Tex. 1968).

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§ 355.064. Suit on Rejected Claim

(a) A claim or part of a claim that has been rejected by the personal representative is barred unless not later than the 90th day after the date of rejection the claimant commences suit on the claim in the court of original probate jurisdiction in which the estate is pending.

(b) In a suit commenced on the rejected claim, the memorandum endorsed on or attached to the claim, or any other memorandum of rejection filed with respect to the claim, is taken to be true without further proof unless denied under oath.

Derived from Probate Code § 313.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 355.065

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.

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§ 355.065. Presentment of Claim Prerequisite for Judgment

A judgment may not be rendered in favor of a claimant on a claim for money that has not been:

(1) legally presented to the personal representative of an estate; and

(2) wholly or partly rejected by the representative or disapproved by the court.

Derived from Probate Code § 314.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.066. Judgment in Suit on Rejected Claim

No execution may issue on a rejected claim or part of a claim that is established by suit. The judgment in the suit shall be:

(1) filed in the court in which the estate is pending;

(2) entered on the claim docket;

(3) classified by the court; and

(4) handled as if originally allowed and approved in due course of administration.

Derived from Probate Code § 313.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Payment of Claims, Allowances, and Expenses

Statutes in Context
Chapter 355, Subchapter C

Sections 355.102 and 355.103 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 § 355.151(a)(2).

3. Homestead (or the allowance in lieu thereof). See § 353.155.

4. Funeral expenses and expenses of last sickness up to a combined total of $15,000. See §§ 355.103(a)(1) and 355.102 (Class 1).

5. Exempt personal property. See § 353.155.

6. Family allowance. See §§ 353.104 and 355.103(a)(2).

7. Administration and related expenses. See §§ 355.103(a)(3) and 355.102 (Class 2).

8. Secured creditor who elected matured secured claim status vis-à-vis the collateral only. See § 355.102 (Class 3).

9. Child support, both arrearages and accelerated amounts under Family Code § 154.015. See § 355.102 (Class 4).

10. Certain Texas tax claims. See § 355.102 (Class 5).

11. Confinement claims. See § 355.102 (Class 6) and Government Code § 501.017.

12. State medical assistance payments. See § 355.102 (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 § 355.102 (Class 8).

14. Beneficiaries and heirs. See § 355.109 for the abatement order of testamentary gifts.

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§ 355.101. Approval or Establishment of Claim Required for Payment

A claim or any part of a claim for money against an estate may not be paid until the claim or part of the claim has been approved by the court or established by the judgment of a court of competent jurisdiction.

Derived from Probate Code § 319.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.102. Claims Classification; Priority of Payment

(a) Claims against an estate shall be classified and have priority of payment as provided by this section.

(b) Class 1 claims are composed of funeral expenses and expenses of the decedent's last illness for a reasonable amount approved by the court, not to exceed a total of $15,000. Any excess shall be classified and paid as other unsecured claims.

(c) Class 2 claims are composed of expenses of administration, expenses incurred in preserving, safekeeping, and managing the estate, including fees and expenses awarded under Section 352.052, and unpaid expenses of administration awarded in a guardianship of the decedent.

(d) Class 3 claims are composed of each secured claim for money under Section 355.151(a)(1), including a tax lien, to the extent the claim can be paid out of the proceeds of the property subject to the mortgage or other lien. If more than one mortgage, lien, or security interest exists on the same property, the claims shall be paid in order of priority of the mortgage, lien, or security interest securing the debt.

(e) Class 4 claims are composed of 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.

(f) Class 5 claims are composed of claims for taxes, penalties, and interest due under Title 2, Tax Code, Chapter 2153, Occupations Code, 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.

(g) Class 6 claims are composed of claims for the cost of confinement established by the Texas Department of Criminal Justice under Section 501.017, Government Code.

(h) Class 7 claims are composed of 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.

(i) Class 8 claims are composed of any other claims not described by Subsections (b)-(h).

Derived from Probate Code § 322.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (g) amended by Acts 2011, 82nd Leg., ch. 90, § 8.015, eff. Jan. 1, 2014.

§ 355.103. Priority of Certain Payments

When a personal representative has estate funds in the representative's possession, the representative shall pay in the following order:

(1) funeral expenses and expenses of the decedent's last illness, in an amount not to exceed $15,000;

(2) allowances made to the decedent's surviving spouse and children, or to either the surviving spouse or children;

(3) expenses of administration and expenses incurred in preserving, safekeeping, and managing the estate; and

(4) other claims against the estate in the order of the claims' classifications.

Derived from Probate Code § 320(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.104. Payment of Proceeds from Sale of Property Securing Debt

(a) If a personal representative has the proceeds of a sale made to satisfy 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 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 representative shall pay the proceeds to the holders of the mortgages, liens, or security interests in the order of priority of the holders' mortgages, liens, or security interests.

(b) A holder of a mortgage, lien, or security interest, on proof of a personal representative's failure to pay proceeds under this section, may obtain an order from the court directing the payment to be made.

Derived from Probate Code § 320(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.105. Claimant's Petition for Allowance and Payment of Claim

A claimant whose claim has not been paid may:

(1) petition the court for determination of the claim at any time before the claim is barred by an applicable statute of limitations; and

(2) procure on due proof an order for the claim's allowance and payment from the estate.

Derived from Probate Code § 320(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.106. Order for Payment of Claim Obtained by Personal Representative

After the sixth month after the date letters testamentary or of administration are granted, the court may order a personal representative to pay any claim that is allowed and approved on application by the representative stating that the representative has no actual knowledge of any outstanding enforceable claim against the estate other than the claims already approved and classified by the court.

Derived from Probate Code § 320(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.107. Order for Payment of Claim Obtained by Creditor

(a) At any time after the first anniversary of the date letters testamentary are granted for an estate, a creditor of the estate whose claim or part of a claim has been approved by the court or established by suit may obtain an order directing that payment of the claim or part of the claim be made on written application and proof, except as provided by Subsection (b), showing that the estate has sufficient available funds.

(b) If the estate does not have available funds to pay a claim or part of a claim described by Subsection (a) and waiting for the estate to receive funds from other sources would unreasonably delay the payment, the court shall order the sale of estate property sufficient to make the payment.

(c) The personal representative of the estate must first be cited on a written application under Subsection (a) to appear and show cause why the order should not be made.

Derived from Probate Code § 326.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.108. Payment When Assets Insufficient to Pay Claims of Same Class

(a) If there are insufficient assets to pay all claims of the same class, other than secured claims for money, the claims in that class shall be paid pro rata, as directed by the court, and in the order directed.

(b) A personal representative may not be allowed to pay a claim under Subsection (a) other than with the pro rata amount of the estate funds that have come into the representative's possession, regardless of whether the estate is solvent or insolvent.

Derived from Probate Code § 321.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 355.109

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 § 355.109.

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§ 355.109. Abatement of Bequests

(a) Except as provided by Subsections (b), (c), and (d), 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 Subchapter D.

(c) A decedent's intent expressed in a will controls over the abatement of bequests provided by this section.

(d) This section does not apply to the payment of estate taxes under Subchapter A, Chapter 124.

Derived from Probate Code § 322B.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.110. Allocation of Funeral Expenses

A personal representative paying a claim for funeral expenses and for items incident to the funeral, such as a tombstone, grave marker, crypt, or burial plot:

(1) shall charge all of the claim to the decedent's estate; and

(2) may not charge any part of the claim to the community share of a surviving spouse.

Derived from Probate Code § 320A.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.111. Payment of Court Costs Relating to Claim

All costs incurred in the probate court with respect to a claim shall be taxed as follows:

(1) if the claim is allowed and approved, the estate shall pay the costs;

(2) if the claim is allowed but disapproved, the claimant shall pay the costs;

(3) if the claim is rejected but established by suit, the estate shall pay the costs;

(4) if the claim is rejected and not established by suit, the claimant shall pay the costs, except as provided by Section 355.052; and

(5) if the claim is rejected in part and the claimant fails, in a suit to establish the claim, to recover a judgment for a greater amount than was allowed or approved for the claim, the claimant shall pay all costs in the suit.

Derived from Probate Code § 315.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.112. Joint Obligation for Payment of Certain Debts

On the death of a person jointly bound with one or more other persons for the payment of a debt or for any other purpose, the decedent's estate shall be charged by virtue of the obligation in the same manner as if the obligors had been bound severally as well as jointly.

Derived from Probate Code § 323.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.113. Liability for Nonpayment of Claim

(a) A person or claimant, except the state treasury, entitled to payment from an estate of money the court orders to be paid is authorized to have execution issued against the estate property for the amount due, with interest and costs, if:

(1) the personal representative fails to pay the money on demand;

(2) estate funds are available to make the payment; and

(3) the person or claimant makes an affidavit of the demand for payment and the representative's failure to pay.

(b) The court may cite the personal representative and the sureties on the representative's bond to show cause why the representative and sureties should not be held liable under Subsection (a) for the debt, interest, costs, and damages:

(1) on return of the execution not satisfied; or

(2) on the affidavit of demand and failure to pay under Subsection (a).

(c) On the return of citation served under Subsection (b), the court shall render judgment against the cited personal representative and sureties, in favor of the claim holder, if good cause why the representative and sureties should not be held liable is not shown. The judgment must be for:

(1) the amount previously ordered to be paid or established by suit that remains unpaid, together with interest and costs; and

(2) 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.

(d) Damages ordered under Subsection (c)(2) may be collected in any court of competent jurisdiction.

Derived from Probate Code § 328.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Presentment and Payment of Secured Claims for Money

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Statutes in Context
Chapter 355, Subchapter D

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 § 355.152

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 § 355.154. Preferred debt and lien status is presumed unless the creditor affirmatively elects otherwise. See § 355.152.

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 § 355.153.

Because of the repeal of the common law doctrine of exoneration in 2005 by the Probate Code predecessor to Estates Code §§ 255.301–255.303, the Probate Code predecessor to § 355.153 was added 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.

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§ 355.151. Option to Treat Claim as Matured Secured Claim or Preferred Debt and Lien

(a) If a secured claim for money against an estate is presented, the claimant shall specify in the claim, in addition to all other matters required to be specified in the claim, whether the claimant desires to have the claim:

(1) allowed and approved as a matured secured claim to be paid in due course of administration, in which case the claim shall be paid in that manner if allowed and approved; or

(2) 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 case the claim shall be so allowed and approved if it is a valid lien.

(b) Notwithstanding Subsection (a)(2), the personal representative may pay a claim that the claimant desired to have allowed, approved, and fixed as a preferred debt and lien as described by Subsection (a)(2) before maturity if that payment is in the best interest of the estate.

Derived from Probate Code § 306(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.152. Period for Specifying Treatment of Secured Claim

(a) A secured creditor may present the creditor's claim for money and shall specify within the later of six months after the date letters testamentary or of administration are granted, or four months after the date notice required to be given under Section 308.053 is received, whether the claim is to be allowed and approved under Section 355.151(a)(1) or (2).

(b) A secured claim for money that is not presented within the period prescribed by Subsection (a) or that is presented without specifying how the claim is to be paid under Section 355.151 shall be treated as a claim to be paid in accordance with Section 355.151(a)(2).

Derived from Probate Code § 306(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.153. Payment of Matured Secured Claim

(a) A claim allowed and approved as a matured secured claim under Section 355.151(a)(1) shall be paid in due course of administration, and the secured creditor is not entitled to exercise any other remedy in a manner that prevents the preferential payment of claims and allowances described by Sections 355.103(1), (2), and (3).

(b) If a claim is allowed and approved as a matured secured claim under Section 355.151(a)(1) for a debt that would otherwise pass with the property securing the debt to one or more devisees in accordance with Section 255.301, the personal representative shall:

(1) collect from the devisees the amount of the debt; and

(2) pay that amount to the claimant in satisfaction of the claim.

(c) Each devisee's share of the debt under Subsection (b) is an amount equal to a fraction representing the devisee's ownership interest in the property securing the debt, multiplied by the amount of the debt.

(d) If the personal representative is unable to collect from the devisees an amount sufficient to pay the debt under Subsection (b), the representative shall, subject to Chapter 356, sell the property securing the debt. The representative shall:

(1) use the sale proceeds to pay the debt and any expenses associated with the sale; and

(2) 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.

(e) If the sale proceeds under Subsection (d) are insufficient to pay the debt and any expenses associated with the sale, the difference between the sale proceeds and the sum of the amount of the debt and the expenses associated with the sale shall be paid in the manner prescribed by Subsection (a).

Derived from Probate Code §§ 306(c), (c-1).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.154. Preferred Debt and Lien

When a claim for a debt is allowed and approved under Section 355.151(a)(2):

(1) a further claim for the debt may not be made against other estate assets;

(2) the debt thereafter remains a preferred lien against the property securing the debt; and

(3) the property remains security for the debt in any distribution or sale of the property before final maturity and payment of the debt.

Derived from Probate Code § 306(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.155. Payment of Maturities on Preferred Debt and Lien

(a) If property securing a debt for which a claim is allowed, approved, and fixed under Section 355.151(a)(2) is not sold or distributed within six months from the date letters testamentary or of administration are granted, the personal representative of the estate shall:

(1) promptly pay all maturities that have accrued on the debt according to the terms of the debt; and

(2) perform all the terms of any contract securing the debt.

(b) If the personal representative defaults in payment or performance under Subsection (a), on application of the claim holder, the court shall:

(1) 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;

(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 claim holder as provided by this subchapter.

Derived from Probate Code § 306(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.156. Affidavit Required for Foreclosure

An application by a claim holder under Section 355.155(b)(3) to foreclose the claim holder's mortgage, lien, or security interest on property securing a claim allowed, approved, and fixed under Section 355.151(a)(2) must be supported by the claim holder's affidavit that:

(1) describes the property or part of the property to be sold by foreclosure;

(2) describes the amounts of the claim holder'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 claim holder;

(5) contains a statement that the claim holder has no knowledge of the existence of any debt secured by the property other than those described by the application; and

(6) requests permission for the claim holder to foreclose the claim holder's mortgage, lien, or security interest.

Derived from Probate Code § 306(f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.157. Citation on Application

(a) The clerk shall issue citation on the filing of an application by:

(1) personal service to:

(A) the personal representative; and

(B) any person described by the application as having other debts secured by a mortgage, lien, or security interest against the property; and

(2) posting to any other person interested in the estate.

(b) A citation issued under Subsection (a) must require the person cited to appear and show cause why foreclosure should or should not be permitted.

Derived from Probate Code § 306(g).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.158. Hearing on Application

(a) The clerk shall immediately notify the judge when an application is filed. The judge shall schedule in writing a date for a hearing on the application.

(b) The judge may, by entry on the docket or otherwise, continue a hearing on an application 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 interested person must show good cause for the continuance.

(c) If the court finds at the hearing that there is a default in payment of maturities that have accrued on a debt described by Section 355.155(a) or performance under the contract securing the debt, the court shall:

(1) 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;

(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 claim holder as provided by Section 355.156.

(d) A person interested in the estate may appeal an order issued under Subsection (c)(3).

Derived from Probate Code §§ 306(h), (i)(1), (j).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.159. Manner of Foreclosure; Minimum Price

(a) When the court grants a claim holder the right of foreclosure at a hearing under Section 355.158, the court shall authorize the claim holder to foreclose the claim holder's mortgage, lien, or security interest:

(1) in accordance with the provisions of the document creating the mortgage, lien, or security interest; or

(2) in any other manner allowed by law.

(b) Based on the evidence presented at the hearing, the court may set 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 sets a minimum price, the property may not be sold at the foreclosure sale for a lower price.

Derived from Probate Code § 306(i)(2).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.160. Unsuccessful Foreclosure; Subsequent Application

If property that is the subject of a foreclosure sale authorized and conducted under this subchapter is not sold because no bid at the sale met the minimum price set by the court, the claim holder may file a subsequent application for foreclosure under Section 355.155(b)(3). The court may eliminate or modify the minimum price requirement and grant permission for another foreclosure sale.

Derived from Probate Code § 306(k).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter E. Claims Involving Personal Representatives

Statutes in Context
§ 355.201

Section 355.201 provides special rules for claims which a personal representative has against the estate the personal representative is administering.

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§ 355.201. Claim by Personal Representative

(a) The provisions of this chapter regarding the presentment of claims against a decedent's estate may not be construed to apply to any claim of a personal representative against the decedent.

(b) A personal representative holding a claim against the decedent shall file the claim in the court granting the letters testamentary or of administration, verified by affidavit as required in other cases, within six months after the date the representative qualifies, or the claim is barred.

(c) A claim by a personal representative that has been filed with the court within the required period shall be entered on the claim docket and acted on by the court in the same manner as in other cases.

(d) A personal representative may appeal a judgment of the court acting on a claim under this section as in other cases.

(e) The previous provisions regarding the presentment of claims may not be construed to apply to a claim:

(1) of any heir or devisee who claims in that capacity;

(2) that accrues against the estate after the granting of letters testamentary or of administration and for which the personal representative 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.

Derived from Probate Code § 317.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.202. Claims Against Personal Representatives

(a) The naming of an executor in a will does not extinguish a just claim that the decedent had against the person named as executor.

(b) If a personal representative is indebted to the decedent, the representative shall account for the debt in the same manner as if the debt were cash in the representative's possession.

(c) Notwithstanding Subsection (b), a personal representative is required to account for the debt only from the date the debt becomes due if the debt was not due at the time the representative received letters testamentary or of administration.

Derived from Probate Code § 316.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 355.203. Purchase of Claim by Personal Representative Prohibited

(a) It is unlawful, and cause for removal, for a personal representative, whether acting under appointment by will or court orders, to purchase a claim against the estate the representative represents for the representative's own use or any other purpose.

(b) On written complaint by a person interested in the estate and on satisfactory proof of a violation of Subsection (a), the court after citation and hearing:

(1) shall enter an order canceling the claim described by Subsection (a); and

(2) may remove the personal representative who is found to have violated Subsection (a).

(c) No part of a claim canceled under Subsection (b) may be paid out of the estate.

Derived from Probate Code § 324.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 356. Sale of Estate Property

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Chapter 356. Sale of Estate Property

Statutes in Context
Chapter 356

Chapter 356 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 § 356.002. 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 § 356.255.

Subchapter A. General Provisions

§ 356.001. Court Order Authorizing Sale

(a) Except as provided by this chapter, estate property may not be sold without a court order authorizing the sale.

(b) Except as otherwise specially provided by this chapter, the court may order estate property to be sold for cash or on credit, at public auction or privately, as the court considers most advantageous to the estate.

Derived from Probate Code § 331.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.002. Sale Authorized by Will

(a) Subject to Subsection (b), if a will authorizes the executor to sell the testator's property:

(1) a court order is not required to authorize the executor to sell the property; and

(2) the executor may sell the property:

(A) at public auction or privately as the executor considers to be in the best interest of the estate; and

(B) for cash or on credit terms determined by the executor.

(b) Any particular directions in the testator's will regarding the sale of estate property shall be followed unless the directions have been annulled or suspended by court order.

Derived from Probate Code § 332.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Certain Estate Property Required to be Sold

§ 356.051. Sale of Certain Personal Property Required

(a) After approval of the inventory, appraisement, and list of claims, the personal representative of an estate promptly shall apply for a court order to sell, at public auction or privately, for cash or on credit for a term not to exceed six months, all estate property that is liable to perish, waste, or deteriorate in value, or that will be an expense or disadvantage to the estate if kept.

(b) The following may not be included in a sale under Subsection (a):

(1) property exempt from forced sale;

(2) property that is the subject of a specific legacy; and

(3) personal property necessary to carry on a farm, ranch, factory, or other business that is thought best to operate.

(c) In determining whether to order the sale of an asset under Subsection (a), the court shall consider:

(1) the personal representative's duty to take care of and manage the estate in the manner a person of ordinary prudence, discretion, and intelligence would manage the person's own affairs; and

(2) whether the asset constitutes an asset that a trustee is authorized to invest under Subchapter F, Chapter 113, Property Code, or Chapter 117, Property Code.

Derived from Probate Code § 333.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Sale of Personal Property

§ 356.101. Order for Sale

(a) Except as provided by Subsection (b), on the application of the personal representative of an estate or any interested person, the court may order the sale of any estate personal property not required to be sold by Section 356.051, including livestock or growing or harvested crops, if the court finds that the sale of the property is in the estate's best interest to pay, from the proceeds of the sale:

(1) expenses of administration;

(2) the decedent's funeral expenses;

(3) expenses of the decedent's last illness;

(4) allowances; or

(5) claims against the estate.

(b) The court may not order under this section the sale of exempt property or property that is the subject of a specific legacy.

Derived from Probate Code § 334.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.102. Requirements for Application and Order

To the extent possible, an application and order for the sale of personal property under Section 356.101 must conform to the requirements under Subchapter F for an application and order for the sale of real estate.

Derived from Probate Code § 334.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.103. Sale at Public Auction

Unless the court directs otherwise, before estate personal property is sold at public auction, notice must be:

(1) issued by the personal representative of the estate; and

(2) posted in the manner notice is posted for original proceedings in probate.

Derived from Probate Code § 336.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.104. Sale on Credit

(a) Estate personal property may not be sold on credit at public auction for a term of more than six months from the date of sale.

(b) Estate personal property purchased on credit at public auction may not be delivered to the purchaser until the purchaser gives a note for the amount due, with good and solvent personal security. The requirement that security be provided may be waived if the property will not be delivered until the note, with interest, has been paid.

Derived from Probate Code § 337.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.105. Report; Evidence of Title

(a) A sale of estate personal property shall be reported to the court. The laws regulating the confirmation or disapproval of a sale of real estate apply to the sale, except that a conveyance is not required.

(b) The court's order confirming the sale of estate personal property:

(1) vests the right and title of the intestate's estate in the purchaser who has complied with the terms of the sale; and

(2) is prima facie evidence that all requirements of the law in making the sale have been met.

(c) The personal representative of an estate, on request, may issue a bill of sale without warranty to the purchaser of estate personal property as evidence of title. The purchaser shall pay for the issuance of the bill of sale.

Derived from Probate Code § 339.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Sale of Livestock

§ 356.151. Authority for Sale

(a) A personal representative of an estate who has possession of livestock and who considers selling the livestock to be necessary or to the estate's advantage 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:

(1) a bonded livestock commission merchant; or

(2) a bonded livestock auction commission merchant.

(b) The court may authorize the sale of livestock in the manner described by Subsection (a) on a written and sworn application by the personal representative or any person interested in the estate.

Derived from Probate Code § 335.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.152. Contents of Application; Hearing

(a) An application under Section 356.151 must:

(1) describe the livestock sought to be sold; and

(2) state why granting the application is necessary or to the estate's advantage.

(b) The court:

(1) shall promptly consider the application; and

(2) may hear evidence for or against the application, with or without notice, as the facts warrant.

Derived from Probate Code § 335.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.153. Grant of Application

If the court grants an application for the sale of livestock, the court shall:

(1) enter an order to that effect; and

(2) authorize delivery of the livestock to a commission merchant described by Section 356.151 for sale in the regular course of business.

Derived from Probate Code § 335.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.154. Report; Passage of Title

The personal representative of the estate shall promptly report to the court a sale of livestock authorized under this subchapter, supported by a verified copy of the commission merchant's account of the sale. A court order of confirmation is not required to pass title to the purchaser of the livestock.

Derived from Probate Code § 335.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.155. Commission Merchant Fees

A 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 livestock authorized under this subchapter.

Derived from Probate Code § 335.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter E. Sale of Mortgaged Property

§ 356.201. Application for Sale of Mortgaged Property

A creditor holding a claim that is secured by a valid mortgage or other lien and that has been allowed and

approved or established by suit may, by filing a written application, obtain from the court in which the estate is pending an order requiring that the property securing the lien, or as much of the property as is necessary to satisfy the claim, be sold.

Derived from Probate Code § 338.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.202. Citation

On the filing of an application under Section 356.201, the clerk shall issue a citation requiring the personal representative of the estate to appear and show cause why the application should not be granted.

Derived from Probate Code § 338.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.203. Order

The court may order the lien securing the claim of a creditor who files an application under Section 356.201 to be discharged out of general estate assets or refinanced if the discharge or refinance of the lien appears to the court to be advisable. Otherwise, the court shall grant the application and order that the property securing the lien be sold at public or private sale, as considered best, as in an ordinary sale of real estate.

Derived from Probate Code § 338.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter F. Sale of Real Property: Application and Order for Sale

§ 356.251. Application for Order of Sale

An application may be made to the court for an order to sell estate property if the sale appears necessary or advisable to:

(1) pay:

(A) expenses of administration;

(B) the decedent's funeral expenses;

(C) expenses of the decedent's last illness;

(D) allowances; and

(E) claims against the estate; or

(2) dispose of an interest in estate real property if selling the interest is considered in the estate's best interest.

Derived from Probate Code § 341.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.252. Contents of Application

An application for the sale of real estate must:

(1) be in writing;

(2) describe:

(A) the real estate sought to be sold; or

(B) the interest in or part of the real estate sought to be sold; and

(3) be accompanied by an exhibit, verified by an affidavit, showing:

(A) the estate's condition fully and in detail;

(B) the charges and claims that have been approved or established by suit or that have been rejected and may yet be established;

(C) the amount of each claim described by Paragraph (B);

(D) the estate property remaining on hand that is liable for the payment of the claims described by Paragraph (B); and

(E) any other facts showing the necessity for or advisability of the sale.

Derived from Probate Code § 342.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.253. Citation

On the filing of an application and exhibit described by Section 356.252, the clerk shall issue a citation to all persons interested in the estate. The citation must:

(1) describe the real estate or the interest in or part of the real estate sought to be sold;

(2) inform the interested persons of the right under Section 356.254 to file an opposition to the sale during the period prescribed by the court in the citation; and

(3) be served by posting.

Derived from Probate Code § 344.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.254. Opposition to Sale

During the period prescribed in a citation issued under Section 356.253, any person interested in the estate may file:

(1) a written opposition to the sale; or

(2) an application for the sale of other estate property.

Derived from Probate Code § 345.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.255. Hearing on Application and Any Opposition

(a) The clerk of the court in which an application for an order of sale is filed shall immediately call to the judge's attention any opposition to the sale that is filed during the period prescribed in the citation issued under Section 356.253. The court shall hold a hearing on the application if an opposition to the sale is filed during the period prescribed 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 prescribed in the

citation. The court may determine that a hearing on the application is necessary even if no opposition is filed during that period.

(c) If the court orders a hearing under Subsection (a) or (b), the court shall designate in writing a date and time for the hearing on the application and any opposition, together with the evidence pertaining to the application and any opposition. The clerk shall issue a notice of the date and time of the hearing to the applicant and to each person who files an opposition to the sale, if applicable.

(d) The judge, by entries on the docket, may continue a hearing held under this section from time to time until the judge is satisfied concerning the application.

Derived from Probate Code § 345A.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.256. Order

(a) The court shall order the sale of the estate property described in an application for an order of sale if the court is satisfied that the sale is necessary or advisable. Otherwise, the court may deny the application and, if the court considers it best, may order the sale of other estate property the sale of which would be more advantageous to the estate.

(b) An order for the sale of real estate under this section must specify:

(1) the property to be sold, including a description that identifies that property;

(2) whether the property is to be sold at public auction or private sale and, if at public auction, the time and place of the sale;

(3) the necessity or advisability of, and the purpose of, the sale;

(4) except in a case in which a personal representative was not required to give a general bond, that the court, after examining the general bond given by the representative, finds that:

(A) the bond is sufficient as required by law; or

(B) the bond is insufficient;

(5) if the court finds that the general bond is insufficient under Subdivision (4)(B), the amount of the necessary or increased bond, as applicable;

(6) that the sale is to be made and the report returned in accordance with law; and

(7) the terms of the sale.

Derived from Probate Code § 346.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.257. Sale for Payment of Debts

Estate real property selected to be sold for the payment of expenses or claims must be that property the sale of which the court considers most advantageous to the estate.

Derived from Probate Code § 340.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter G. Sale of Real Estate: Terms of Sale

§ 356.301. Permissible Terms

Real estate of an estate may be sold for cash, 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 estate's best interest.

Derived from Probate Code § 348(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.302. Sale on Credit

(a) The cash payment for real estate of an estate sold partly on credit may not be less than one-fifth of the purchase price. The purchaser shall execute a note for the deferred payments, payable in monthly, quarterly, semiannual, or annual installments, in amounts that appear to the court to be in the estate's best interest. The note must bear interest from the date at a rate of not less than four percent per year, payable as provided in the note.

(b) A note executed by a purchaser under Subsection (a) must be secured by a vendor's lien retained in the deed and in the note on the property sold, and be further secured by a 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.

(c) At the election of the holder of a note executed by a purchaser under Subsection (a), default in the payment of principal, interest, or any part of the principal or interest, when due matures the entire debt.

Derived from Probate Code § 348(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter H. Reconveyance of Real Estate Following Foreclosure

§ 356.351. Applicability of Subchapter

This subchapter applies only to real estate owned by an estate as a result of the foreclosure of a vendor's lien or mortgage belonging to the estate:

(1) by a judicial sale;

(2) by a foreclosure suit;

(3) through a sale under a deed of trust; or

(4) by acceptance of a deed in cancellation of a lien or mortgage owned by the estate.

Derived from Probate Code § 348(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.352. Application and Order for Reconveyance

On proper application and proof, the court may dispense with the requirements for a credit sale prescribed by Section 356.302 and order the reconveyance of foreclosed real estate to the former mortgage debtor or former owner if it appears to the court that:

(1) an application to redeem the real estate has been made by the former owner to a corporation or agency created by an Act of the United States Congress 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

(2) owning bonds of one of those federal or state corporations or agencies instead of the real estate would be in the estate's best interest.

Derived from Probate Code § 348(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.353. Exchange for Bonds

(a) If a court orders the reconveyance of foreclosed real estate as provided by Section 356.352, vendor's lien notes shall be reserved for the total amount of the indebtedness due or for the total amount of bonds that the corporation or agency to which the application to redeem the real estate was submitted as described by Section 356.352(1) is allowed to advance under the corporation's or agency's rules or regulations.

(b) On obtaining the order for reconveyance, it shall be proper for the personal representative of the estate to indorse and assign the reserved vendor's lien notes over to any one of the corporations or agencies described by Section 356.352(1) in exchange for bonds of that corporation or agency.

Derived from Probate Code § 348(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter I. Sale of Real Estate: Public Sale

§ 356.401. Required Notice

(a) Except as otherwise provided by Section 356.403(c), the personal representative of an estate shall advertise a public sale of real estate of the estate by a notice published in the county in which the estate is pending, as provided by this title for publication of notices or citations. The notice must:

(1) include a reference to the order of sale;

(2) include the time, place, and required terms of sale; and

(3) briefly describe the real estate to be sold.

(b) The notice required by Subsection (a) is not required to contain field notes, but if the real estate to be sold is rural property, the notice must include:

(1) the name of the original survey of the real estate;

(2) the number of acres comprising the real estate;

(3) the location of the real estate in the county; and

(4) any name by which the real estate is generally known.

Derived from Probate Code § 349(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.402. Method of Sale

A public sale of real estate of an estate shall be made at public auction to the highest bidder.

Derived from Probate Code § 349(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.403. Time and Place of Sale

(a) Except as provided by Subsection (c), a public sale of real estate of an estate shall be made at:

(1) the courthouse door in the county in which the proceedings are pending; or

(2) another place in that county at which sales of real estate are specifically authorized to be made.

(b) The sale must occur between 10 a.m. and 4 p.m. on the first Tuesday of the month after publication of notice has been completed.

(c) If the court considers it advisable, the court may order the sale to be made in the county in which the real estate is located, in which event notice shall be published both in that county and in the county in which the proceedings are pending.

Derived from Probate Code § 349(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.404. Continuance of Sale

(a) A public sale of real estate of an estate that is not completed on the day advertised may be continued from day to day by an oral public announcement of the continuance made at the conclusion of the sale each day.

(b) A continued sale must occur within the hours prescribed by Section 356.403(b).

(c) The continuance of a sale under this section shall be shown in the report of the sale made to the court.

Derived from Probate Code § 349(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.405. Failure of Bidder to Comply

(a) If a person bids off real estate of the estate offered for sale at public auction and fails to comply with the terms of the sale, the property shall be readvertised and sold without any further order.

(b) The person defaulting on a bid as described by Subsection (a) is liable for payment to the personal representative of the estate, for the estate's benefit, of:

(1) 10 percent of the amount of the bid; and

(2) the amount of any deficiency in price on the second sale.

(c) The personal representative may recover the amounts under Subsection (b) by suit in any court in the county in which the sale was made that has jurisdiction of the amount claimed.

Derived from Probate Code § 349(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter J. Sale of Real Estate: Private Sale

§ 356.451. Manner of Sale

A private sale of real estate of the estate shall be made in the manner the court directs in the order of sale. Unless the court directs otherwise, additional advertising, notice, or citation concerning the sale is not required.

Derived from Probate Code § 350.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter K. Sale of Easement or Right-of-Way

§ 356.501. Authorization

Easements and rights-of-way on, under, and over the land of an estate that is being administered under court order may be sold and conveyed regardless of whether the sale proceeds are required to pay charges or claims against the estate or for other lawful purposes.

Derived from Probate Code § 351.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.502. Procedure

The procedure for the sale of an easement or right-of-way authorized under Section 356.501 is the same as the procedure provided by law for a sale of estate real property at private sale.

Derived from Probate Code § 351.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter L. Confirmation of Sale of Real Property and Transfer of Title

§ 356.551. Report

A sale of estate real property shall be reported to the court ordering the sale not later than the 30th day after the date the sale is made. The report must:

(1) be sworn to, in writing, and filed with the clerk;

(2) include:

(A) the date of the order of sale;

(B) a description of the property sold;

(C) the time and place of sale;

(D) the purchaser's name;

(E) the amount for which each parcel of property or interest in property was sold;

(F) the terms of the sale;

(G) whether the sale was made at public auction or privately; and

(H) whether the purchaser is ready to comply with the order of sale; and

(3) be noted on the probate docket.

Derived from Probate Code § 353.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.552. Action of Court on Report of Sale

After the expiration of five days from the date a report of sale is filed under Section 356.551, the court shall:

(1) inquire into the manner in which the sale was made;

(2) hear evidence in support of or against the report; and

(3) determine the sufficiency or insufficiency of the personal representative's general bond, if any has been required and given.

Derived from Probate Code § 355.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.553. Confirmation of Sale when Bond Not Required

If the personal representative of an estate is not required by this title to give a general bond, the court may confirm the sale of estate real property in the manner provided by Section 356.556(a) if the court finds that the sale is satisfactory and made in accordance with law.

Derived from Probate Code § 354.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.554. Sufficiency of Bond

(a) If the personal representative of an estate is required by this title to give a general bond, before the court confirms any sale of real estate, the court shall

determine whether the bond is sufficient to protect the estate after the sale proceeds are received.

(b) If the court finds that the general bond is sufficient, the court may confirm the sale as provided by Section 356.556(a).

(c) If the court finds that the general bond is 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.

(d) An increase in the amount of the general bond, or the additional bond, as applicable under Subsection (c), must be equal to the sum of:

(1) the amount for which the real estate is sold; and

(2) any additional amount the court finds necessary and sets for the estate's protection.

Derived from Probate Code § 354.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.555. Increased or Additional Bond Not Required

Notwithstanding Sections 356.554(c) and (d), if 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 the secured claim 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 any cash paid to the personal representative of the estate in excess of the amount necessary to pay, liquidate, and satisfy the claim in full.

Derived from Probate Code § 354.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.556. Confirmation or Disapproval Order

(a) If the court is satisfied that a sale reported under Section 356.551 was for a fair price, properly made, and in conformity with law, and the court has approved any increased or additional bond that the court found necessary to protect the estate, the court shall enter an order:

(1) confirming the sale;

(2) showing conformity with this chapter;

(3) detailing the terms of the sale; and

(4) authorizing the personal representative to convey the property on the purchaser's compliance with the terms of the sale.

(b) If the court is not satisfied that the sale was for a fair price, properly made, and in conformity with law, the court shall enter an order setting aside the sale and ordering a new sale to be made, if necessary.

(c) The court's action in confirming or disapproving a report of a sale has the effect of a final judgment. Any person interested in the estate or in the sale is entitled to have an order entered under this section reviewed as in other final judgments in probate proceedings.

Derived from Probate Code § 355.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.557. Deed

Real estate of an estate that is sold shall be conveyed by a proper deed that refers to and identifies the court order confirming the sale. The deed:

(1) vests in the purchaser all right and title of the estate to, and all interest of the estate in, the property; and

(2) is prima facie evidence that the sale has met all applicable requirements of the law.

Derived from Probate Code § 356.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.558. Delivery of Deed

(a) After the court has confirmed a sale and the purchaser has complied with the terms of the sale, the personal representative of the estate shall promptly execute and deliver to the purchaser a proper deed conveying the property.

(b) If the sale is made partly on credit:

(1) the vendor's lien securing one or more purchase money notes must be expressly retained in the deed and may not be waived; and

(2) before actual delivery of the deed to the purchaser, the purchaser shall execute and deliver to the personal representative of the estate one or more vendor's lien notes, with or without personal sureties as ordered by the court, and a deed of trust or mortgage on the property as additional security for the payment of the notes.

(c) On completion of the transaction, the personal representative of the estate shall promptly file or cause to be filed and recorded the deed of trust or mortgage in the appropriate records in the county in which the land is located.

Derived from Probate Code § 357.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.559. Damages; Removal

(a) If the personal representative of an estate neglects to comply with Section 356.558, including to file the deed of trust securing a lien in the proper county, the representative and the sureties on the representative's bond shall, after complaint and citation, be held liable for the use of the estate and for all damages resulting from the representative's neglect, and the court may remove the representative.

(b) Damages under this section may be recovered in any court of competent jurisdiction.

Derived from Probate Code § 358.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter M. Procedure on Failure to Apply for Sale

§ 356.601. Failure to Apply for Sale

If the personal representative of an estate neglects to apply for an order to sell sufficient estate property to pay charges and claims against the estate that have been allowed and approved or established by suit, any interested person, on written application, may have the representative cited to appear and make a full exhibit of the estate's condition and show cause why a sale of the property should not be ordered.

Derived from Probate Code § 347.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.602. Court Order

On hearing an application under Section 356.601, if the court is satisfied that a sale of estate property is necessary or advisable to satisfy the charges and claims described by Section 356.601, the court shall enter an order of sale as provided by Section 356.256.

Derived from Probate Code § 347.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter N. Purchase of Property by Personal Representative

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Statutes in Context
Chapter 356, Subchapter N

Self-dealing is generally not allowed, that is, the personal representative may not purchase estate property. However, the personal representative may 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.

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§ 356.651. General Prohibition on Purchase

Except as otherwise provided by this subchapter, the personal representative of an estate may not purchase, directly or indirectly, any estate property sold by the representative or any co-representative of the estate.

Derived from Probate Code § 352(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.652. Exception: Authorization in Will

A personal representative of an estate may purchase estate property if the representative was appointed in a will that:

(1) has been admitted to probate; and
(2) expressly authorizes the sale.

Derived from Probate Code § 352(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.653. Exception: Executory Contract

A personal representative of a decedent's estate may purchase estate property in compliance with the terms of a written executory contract signed by the decedent, including:

(1) a contract for deed;
(2) an earnest money contract;
(3) a buy/sell agreement; and
(4) a stock purchase or redemption agreement.

Derived from Probate Code § 352(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.654. Exception: Best Interest of Estate

(a) Subject to Subsection (b), the personal representative of an estate, including an independent administrator, may purchase estate property on the court's determination that the sale is in the estate's best interest.

(b) Before purchasing estate property as authorized by Subsection (a), the personal representative shall give notice of the purchase by certified mail, return receipt requested, unless the court requires another form of notice, to:

(1) each distributee of the estate; and
(2) each creditor whose claim remains unsettled after being presented within six months of the date letters testamentary or of administration are originally granted.

(c) The court may require additional notice or allow for the waiver of the notice required for a sale made under this section.

Derived from Probate Code § 352(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 356.655. Purchase in Violation of Subchapter

(a) If a personal representative of an estate purchases estate property in violation of this subchapter, any person interested in the estate may file a written complaint with the court in which the proceedings are pending.

(b) On service of citation on the personal representative on a complaint filed under Subsection (a) and after hearing and proof, the court shall:

(1) declare the sale void;
(2) set aside the sale; and
(3) order the reconveyance of the property to the estate.

(c) The court shall adjudge against the personal representative all costs of the sale, protest, and suit found necessary.

Derived from Probate Code § 352(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 357. Renting Estate Property

Subchapter A. Rental and Return of Estate Property

§ 357.001. Renting Estate Property Without Court Order
§ 357.002. Renting Estate Property with Court Order
§ 357.003. Estate Property Rented on Credit
§ 357.004. Condition of Returned Estate Property
§ 357.005. Complaint for Failure to Rent

Subchapter B. Report on Rented Estate Property

§ 357.051. Reports Concerning Rentals
§ 357.052. Court Action on Report

Chapter 357. Renting Estate Property

Statutes in Context
Chapter 357

Chapter 357 provides guidance to the personal representative who wishes to rent estate property. Short-term leases are permitted without court order under § 357.001 while court permission is needed for leases more than one year in length. See § 357.002.

Subchapter A. Rental and Return of Estate Property

§ 357.001. Renting Estate Property Without Court Order

(a) The personal representative of an estate, without a court order, may rent any of the estate property for one year or less, at public auction or privately, as is considered to be in the best interest of the estate.

(b) On the sworn complaint of any person interested in the estate, the court shall require a personal representative who, without a court order, rents estate property to account to the estate for the reasonable value of the rent of the property, to be ascertained by the court on satisfactory evidence.

Derived from Probate Code §§ 359, 360.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 357.002. Renting Estate Property with Court Order

(a) The personal representative of an estate may, if the representative prefers, and shall, if the proposed rental period is more than one year, file a written application with the court setting forth the property the representative seeks to rent.

(b) If the court finds that granting an application filed under Subsection (a) is in the interest of the estate, the court shall grant the application and issue an order that:

(1) describes the property to be rented; and

(2) states whether the property will be rented 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.

(c) If, under Subsection (b), the court orders property to be rented at public auction, the court shall prescribe whether notice of the auction shall be published or posted.

Derived from Probate Code § 361.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2011, 82nd Leg., ch. 90, § 8.016, eff. Jan. 1, 2014.

§ 357.003. Estate Property Rented on Credit

Possession of estate property rented on credit may not be delivered until the renter executes and delivers to the personal representative a note with good personal security for the amount of the rent. If the property is delivered without the representative receiving the required security, the representative and the sureties on the representative's bond are liable for the full amount of the rent. When a rental is payable in installments, in advance of the period to which the installments relate, this section does not apply.

Derived from Probate Code § 363.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 357.004. Condition of Returned Estate Property

(a) Estate property that is rented, with or without a court order, must be returned to the estate's possession in as good a condition, except for reasonable wear and tear, as when the property was rented.

(b) The personal representative of an estate shall:

(1) ensure that rented estate property is returned in the condition required by Subsection (a);

(2) report to the court any damage to, or loss or destruction of, the property; and

(3) ask the court for the authority to take any necessary action.

(c) A personal representative who fails to act as required by this section and the sureties on the representative's bond are liable to the estate for any loss or damage suffered as a result of the representative's failure.

Derived from Probate Code § 364.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 357.005. Complaint for Failure to Rent

(a) Any person interested in an estate may:

(1) file a written and sworn complaint in the court in which the estate is pending; and

(2) have the personal representative cited to appear and show cause why the representative did not rent any estate property.

(b) The court, on hearing the complaint, shall issue an order that appears to be in the best interest of the estate.

Derived from Probate Code § 362.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Report on Rented Estate Property

§ 357.051. Reports Concerning Rentals

(a) A personal representative of an estate who rents estate property with an appraised value of $3,000 or more shall, not later than the 30th day after the date the property is rented, file with the court a sworn and written report stating:

(1) the property rented and the property's appraised value;

(2) the date the property was rented and whether the rental occurred at public auction or privately;

(3) the name of each person renting the property;

(4) the rental amount; and

(5) whether the rental was for cash or on credit and, if on credit, the length of time, the terms, and the security received for the credit.

(b) A personal representative of an estate who rents estate property with an appraised value of less than $3,000 may report the rental in the next annual or final account that must be filed as required by law.

Derived from Probate Code § 365.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 357.052. Court Action on Report

(a) At any time after the fifth day after the date the report of renting is filed, the court shall:

(1) examine the report; and

(2) by order approve and confirm the report if found just and reasonable.

(b) If the court disapproves the report, the estate is not bound and the court may order another offering for rent of the property that is the subject of the report, in the same manner and subject to the provisions of this chapter.

(c) If the court approves the report and it later appears that, by reason of any fault of the personal representative, the property was not rented for the property's reasonable value, the court shall have the representative and the sureties on the representative's bond appear and show cause why the reasonable value of the rent of the property should not be adjudged against the representative.

Derived from Probate Code § 366.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 358. Matters Relating to Mineral Properties

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Subchapter C. Mineral Leases at Private Sale

§ 358.101. Authorization for Leasing of Minerals at Private Sale
§ 358.102. Action of Court if Public Advertising Not Required

Subchapter D. Pooling or Unitization of Royalties or Minerals

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Subchapter E. Special Ancillary Instruments that May Be Executed Without Court Order

§ 358.201. Authorization for Execution of Agreements

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§ 358.251. Application to Show Cause
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Chapter 358. Matters Relating to Mineral Properties

Statutes in Context
Chapter 358

Chapter 358 provides the personal representative with guidance for dealing with mineral interests of the decedent's estate.

Subchapter A. General Provisions

§ 358.001. Definitions

In this chapter:

(1) "Gas" includes all liquid hydrocarbons in the gaseous phase in the reservoir.

(2) "Land" and "interest in land" include minerals or an interest in minerals in place.

(3) "Mineral development" includes exploration for, whether by geophysical or other means, drilling for, mining for, development of, operations in connection with, production of, and saving of oil, other liquid hydrocarbons, gas, gaseous elements, sulphur, metals, and all other minerals, whether solid or otherwise.

(4) "Property" includes land, minerals in place, whether solid, liquid, or gaseous, and an interest of any kind in that property, including a royalty interest, owned by an estate.

Derived from Probate Code § 367(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Mineral Leases After Public Notice

§ 358.051. Authorization for Leasing of Minerals

(a) The court in which probate proceedings on a decedent's estate are pending may authorize the personal representative of the estate, appointed and qualified under the laws of this state and acting solely under court orders, to make, execute, and deliver a lease, with or without a unitization clause or pooling provision, providing for the exploration for and development and production of oil, other liquid hydrocarbons, gas, metals and other solid minerals, and other minerals, or any of those minerals in place, belonging to the estate.

(b) A lease described by Subsection (a) must be made and entered into under and in conformity with this subchapter.

Derived from Probate Code §§ 367(b), (c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 358.052. Lease Application

(a) The personal representative of an estate shall file with the county clerk of the county in which the probate proceeding is pending a written application, addressed to the court or the judge of the court, for authority to lease estate property for mineral exploration and development, with or without a pooling provision or unitization clause.

(b) The lease application must:

(1) describe the property fully by reference to the amount of acreage, the survey name or number, or the abstract number, or by another method adequately identifying the property and the property's location in the county in which the property is situated;

(2) specify the interest thought to be owned by the estate, if less than the whole, but requesting authority to include all of the interest owned by the estate, if that is the intention; and

(3) set out the reasons the estate property described in the application should be leased.

(c) The lease application is not required to set out or suggest:

(1) the name of any proposed lessee; or

(2) the terms, provisions, or form of any desired lease.

Derived from Probate Code § 367(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 358.053. Scheduling of Hearing on Application; Continuance

(a) Immediately after the filing of a lease application under Section 358.052, the county clerk shall call the filing of the application to the court's attention, and the judge shall promptly make and enter a brief order designating the time and place for hearing the application.

(b) If the hearing is not held at the time originally designated by the court or by a timely continuance order entered, the hearing shall be continued automatically without further notice to the same time on the following day, other than Sundays and holidays on which the county courthouse is officially closed, and from day to day until the lease application is finally acted on and disposed of by court order. Notice of an automatic continuance is not required.

Derived from Probate Code § 367(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,

2014.

§ 358.054. Notice of Hearing on Application

(a) At least 10 days before the date set for the hearing on a lease application filed under Section 358.052, excluding the date of notice and the date set for the hearing, the personal representative shall give notice of the hearing by:

(1) publishing the notice in one issue of a newspaper of general circulation in the county in which the proceeding is pending; or

(2) if there is no newspaper described by Subdivision (1), posting the notice or having the notice posted.

(b) If notice is published, the date of notice is the date printed on the newspaper.

(c) The notice must:

(1) be dated;

(2) be directed to all persons interested in the estate;

(3) state the date on which the lease application was filed;

(4) 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; and

(5) state the time and place designated by the judge for the hearing.

Derived from Probate Code § 367(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 358.055. Requirements Regarding Order and Notice Mandatory

An order of the judge or court authorizing any act to be performed under a lease application filed under Section 358.052 is void in the absence of:

(1) a written order originally designating a time and place for hearing;

(2) a notice issued by the personal representative of the estate in compliance with the order described by Subdivision (1); and

(3) proof of the publication or posting of the notice as required under Section 358.054.

Derived from Probate Code § 367(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 358.056. Hearing on Application; Order

(a) At the time and place designated for the hearing under Section 358.053(a), or at the time to which the hearing is continued as provided by Section 358.053(b), the judge shall:

(1) hear a lease application filed under Section 358.052; and

(2) require proof as to the necessity or advisability of leasing for mineral development the property described in the application and the notice.

(b) The judge shall enter an order authorizing one or more leases affecting and covering the property or portions of property described in the application, with or without pooling provisions or unitization clauses, and with or without cash consideration if considered by the court to be in the best interest of the estate, if the judge is satisfied that:

(1) the application is in proper form;

(2) notice has been given in the manner and for the time required by law;

(3) proof of necessity or advisability of leasing is sufficient; and

(4) the application should be granted.

(c) The order must contain:

(1) the name of the lessee;

(2) any actual cash consideration to be paid by the lessee;

(3) a finding that the requirements of Subsection (b) have been satisfied; and

(4) one of the following findings:

(A) a finding that the personal representative is exempted by law from giving bond; or

(B) if the representative is not exempted by law from giving bond, a finding as to whether the representative's general bond on file is sufficient to protect the personal property on hand, including any cash bonus to be paid.

(d) If the court finds the general bond insufficient to meet the requirements of Subsection (c)(4)(B), the order must show the amount of increased or additional bond required to cover the deficiency.

(e) A complete exhibit copy, either written or printed, of each authorized lease must be set out in the order or attached to the order and incorporated by reference and made part of the order. The exhibit copy must show:

(1) the name of the lessee;

(2) the date of the lease;

(3) an adequate description of the property being leased;

(4) any delay rental to be paid to defer commencement of operations; and

(5) all other authorized terms and provisions.

(f) If the date of a lease does not appear in the exhibit copy of the lease or in the order, the date of the order is considered for all purposes to be the date of the lease.

(g) If the name or address of the depository bank for receiving rental is not shown in the exhibit copy of a lease, the estate's personal representative may insert that information, or cause that information to be inserted, in the lease at the time of the lease's execution or at any other time agreeable to the lessee or the lessee's successors or assignees.

Derived from Probate Code § 367(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 358.057. Making of Lease on Granting of Application

(a) If the court grants an application as provided by Section 358.056, the personal representative of the estate may make the lease or leases, as evidenced by the exhibit copies described by Section 358.056, in accordance with the order.

(b) The lease or leases must be made not later than the 30th day after the date of the order unless an extension is granted by the court on sworn application showing good cause.

(c) It is not necessary for the judge to make an order confirming the lease or leases.

Derived from Probate Code § 367(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 358.058. Bond Requirements

(a) Unless the personal representative of the estate is not required to give a general bond, a lease for which a cash consideration is required, although ordered, executed, and delivered, is not valid:

(1) unless the order authorizing the lease makes findings with respect to the general bond; and

(2) if the general bond has been found insufficient, unless and until:

(A) the bond has been increased or an additional bond given, as required by the order, with the sureties required by law; and

(B) the increased bond or additional bond has been approved by the judge and filed with the clerk of the court in which the proceedings are pending.

(b) If two or more leases of different land are authorized by the same order, the general bond must be increased, or additional bonds given, to cover all of the leases.

Derived from Probate Code § 367(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 358.059. Term of Lease Binding

(a) A lease executed and delivered in compliance with this subchapter is valid and binding on the property or interest in property owned by the estate and covered by the lease for the full term provided by the lease, subject only to the lease's terms and conditions, even if the primary term extends beyond the date the estate is closed in accordance with law.

(b) The authorized primary term of the lease may not exceed five years, subject to the lease terms and provisions extending the lease beyond the primary term by:

(1) paying production;

(2) bona fide drilling or reworking operations, whether in or on the same well or wells or an additional well or wells, without a cessation of operations of more than 60 consecutive days before production has been restored or obtained; or

(3) a shut-in gas well.

Derived from Probate Code § 367(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 358.060. Amendment of Lease Regarding Effect of Shut-In Gas Well

(a) An oil, gas, and mineral lease executed by a personal representative under the former Texas Probate Code or this code 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 part of the land covered by the lease continues the lease in effect after the lease's five-year primary term.

(b) The personal representative, with the approval of the court, shall execute the instrument according to the terms and conditions prescribed by the instrument.

Derived from Probate Code § 367(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Mineral Leases at Private Sale

§ 358.101. Authorization for Leasing of Minerals at Private Sale

(a) Notwithstanding the mandatory requirements of Subchapter B for setting a time and place for hearing of a lease application filed under Section 358.052 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 court's opinion, facts are set out in the application required by Subchapter B sufficient to show that it would be more advantageous to the estate that a lease be made privately and without compliance with those mandatory requirements.

(b) Leases authorized by this section may include pooling provisions or unitization clauses as in other cases.

Derived from Probate Code § 368(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 358.102. Action of Court if Public Advertising Not Required

(a) At any time after the fifth day and before the 11th day after the filing date of an application to lease at private sale and without an order setting the hearing time and place, the court shall:

(1) hear the application;

(2) inquire into the manner in which the proposed lease has been or will be made; and

(3) hear evidence for or against the application.

(b) 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 the lease without the necessity of advertising, notice, or citation. The order must comply in all other respects with the requirements essential to the validity of mineral leases as set out in Subchapter B, as if advertising or notice were required.

(c) The issuance of an order confirming a lease or leases made at private sale is not required, but such a lease is not valid until any increased or additional bond required by the court has been approved by the court and filed with the court clerk.

Derived from Probate Code § 368(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Pooling or Unitization of Royalties or Minerals

§ 358.151. Authorization for Pooling or Unitization

(a) If an existing lease or leases on property owned by an estate being administered do not adequately provide for pooling or unitization, the court in which the proceedings are pending may, in the manner provided by this subchapter, authorize the commitment of royalty or mineral interests in oil, liquid hydrocarbons, gas, gaseous elements, and other minerals, or any one or more of them, owned by the estate, to agreements that provide for the operation of areas as a pool or unit for the exploration for, development of, and production of all of those minerals, if the court finds that:

(1) the pool or unit to which the agreement relates will be operated in a manner that protects correlative rights or prevents the physical or economic waste of oil, liquid hydrocarbons, gas, gaseous elements, or other minerals subject to the agreement; and

(2) it is in the best interest of the estate to execute the agreement.

(b) An agreement authorized under Subsection (a) may, among other things, provide that:

(1) operations incident to the drilling of or production from a well on any portion of a pool or unit shall be considered 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 continues in effect in its entirety as long as:

(A) oil, gas, or other minerals subject to the agreement are produced in paying quantities from any part of the pooled or unitized area;

(B) operations are conducted as provided in the lease on any part of the pooled or unitized area; or

(C) 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 under 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 considered 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 land or leases committed to the agreement, and that royalties are not required to be paid on the gas returned; and

(6) gas obtained from other sources or other land may be injected into a formation underlying any land or leases committed to the agreement, and that royalties are not required to be paid on the gas injected when the gas is produced from the unit.

Derived from Probate Code §§ 369(a), (b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 358.152. Pooling or Unitization Application

(a) The personal representative of an estate shall file with the county clerk of the county in which the probate proceeding is pending a written application for authority to:

(1) enter into pooling or unitization agreements supplementing, amending, or otherwise relating to any existing lease or leases covering property owned by the estate; or

(2) commit royalties or other interests in minerals, whether or not subject to a lease, to a pooling or unitization agreement.

(b) The pooling or unitization application must also:

(1) sufficiently describe the property as required in an original lease application;

(2) describe briefly any lease or leases to which the interest of the estate is subject; and

(3) set out the reasons the proposed agreement concerning the property should be entered into.

(c) A copy of the proposed agreement must be attached to the application and made a part of the application by reference.

(d) The agreement may not be recorded in the judge's probate docket.

(e) Immediately after the pooling or unitization application is filed, the clerk shall call the application to the judge's attention.

Derived from Probate Code § 369(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (d) amended by Acts 2011, 82nd Leg., ch. 90, § 8.017, eff. Jan. 1, 2014.

§ 358.153. Notice Not Required

Notice by advertising, citation, or otherwise of the filing of a pooling or unitization application under Section 358.152 is not required.

Derived from Probate Code § 369(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 358.154. Hearing on Application

(a) The judge may hold a hearing on a pooling or unitization application filed under Section 358.152 at any time agreeable to the parties to the proposed agreement.

(b) The judge shall hear evidence and determine to the judge's satisfaction whether it is in the best interest of the estate that the proposed agreement be authorized.

(c) The hearing may be continued from day to day and from time to time as the court finds necessary.

Derived from Probate Code § 369(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 358.155. Action of Court and Contents of Order

(a) The court shall enter an order setting out the court's findings and authorizing execution of the proposed pooling or unitization agreement, with or without payment of cash consideration according to the agreement, if the court finds that:

(1) the pool or unit to which the agreement relates will be operated in a manner that protects correlative rights or prevents the physical or economic waste of oil, liquid hydrocarbons, gas, gaseous elements, or other minerals subject to the agreement;

(2) it is in the best interest of the estate that the agreement be executed; and

(3) the agreement conforms substantially with the permissible provisions of Section 358.151.

(b) If cash consideration is to be paid for the agreement, the court shall also make findings as to the necessity of increased or additional bond, as in the making of leases on payment of the cash bonus for the lease. Such an agreement is not valid until any required increased or additional bond has been approved by the judge and filed with the clerk.

(c) If the effective date of the agreement is not stipulated in the agreement, the effective date of the agreement is the date of the court's order.

Derived from Probate Code § 369(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter E. Special Ancillary Instruments that May be Executed Without Court Order

§ 358.201. Authorization for Execution of Agreements

As to any mineral lease or pooling or unitization agreement, executed on behalf of an estate before January 1, 1956, or on or after that date under the provisions of the former Texas Probate Code or this code, or executed by a former owner of land, minerals, or royalty affected by the lease or agreement, the personal representative of the estate being administered may, without further court order and without consideration, execute:

(1) division orders;

(2) transfer orders;

(3) instruments of correction;

(4) instruments designating depository banks for the receipt of delay rentals or shut-in gas well royalty to accrue or become payable under the terms of the lease; and

(5) similar instruments relating to the lease or agreement and the property covered by the lease or agreement.

Derived from Probate Code § 370.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter F. Procedure if Personal Representative of Estate Neglects to Apply for Authority

§ 358.251. Application to Show Cause

If the personal representative of an estate neglects to apply for authority to subject estate property to a lease for mineral development, pooling, or unitization, or to commit royalty or another interest in minerals to pooling or unitization, any person interested in the estate may, on written application filed with the county clerk, have the representative cited to show cause why it is not in the best interest of the estate to make such a lease or enter into such an agreement.

Derived from Probate Code § 371.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 358.252. Hearing on Application

(a) The county clerk shall immediately call the filing of an application under Section 358.251 to the attention of the judge of the court in which the probate proceedings are pending.

(b) The judge shall set a time and place for a hearing on the application, and the personal representative of the estate shall be cited to appear and show cause why the execution of a lease or agreement described by Section 358.251 should not be ordered.

Derived from Probate Code § 371.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 358.253. Order

On a hearing conducted under Section 358.252, if satisfied from the evidence that it would be in the best interest of the estate, the court shall enter an order requiring the personal representative promptly to file an application to subject the estate property to a lease for mineral development, with or without pooling or unitization provisions, or to commit royalty or other minerals to pooling or unitization, as appropriate.

Derived from Probate Code § 371.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 358.254. Procedure to be Followed After Entry of Order

After entry of an order under Section 358.253, the procedure prescribed with respect to an original lease application, or with respect to an original application for authority to commit royalty or minerals to pooling or unitization, whichever is appropriate, shall be followed.

Derived from Probate Code § 371.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 359. Annual Account and Other Exhibits and Reports

Subchapter A. Annual Account and Other Exhibits

§ 359.001. Account of Estate Required
§ 359.002. Annual Account Required Until Estate Closed
§ 359.003. Supporting Vouchers and Other Documents Attached to Account
§ 359.004. Method of Proof for Securities and Other Assets
§ 359.005. Verification of Account
§ 359.006. Additional Accounts

Subchapter B. Action on Annual Account

§ 359.051. Filing and Consideration of Annual Account
§ 359.052. Correction of Annual Account
§ 359.053. Order for Payment of Claims in Full
§ 359.054. Order for Pro Rata Payment of Claims

Subchapter C. Penalties

§ 359.101. Penalty for Failure to File Annual Account
§ 359.102. Penalty for Failure to File Exhibit or Report

Chapter 359. Annual Account and Other Exhibits and Reports

Statutes in Context
Chapter 359

Chapter 359 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.

Subchapter A. Annual Account and Other Exhibits

§ 359.001. Account of Estate Required

(a) On the expiration of 12 months from the date a personal representative qualifies and receives letters testamentary or of administration to administer a decedent's estate under court order, the representative shall file with the court an account consisting of a written exhibit made under oath that lists all claims against the estate presented to the representative during the period covered by the account. The exhibit must specify:

(1) the claims allowed by the representative;

(2) the claims paid by the representative;

(3) the claims rejected by the representative and the date the claims were rejected; and

(4) the claims for which a lawsuit has been filed and the status of that lawsuit.

(b) The account must:

(1) show all property that has come to the personal representative's knowledge or into the representative's possession that was not previously listed or inventoried as estate property;

(2) show any changes in estate property that have not been previously reported;

(3) provide a complete account of receipts and disbursements for the period covered by the account, including the source and nature of the receipts and disbursements, with separate listings for principal and income receipts;

(4) provide a complete, accurate, and detailed description of:

(A) the property being administered;

(B) the condition of the property and the use being made of the property; and

(C) if rented, the terms on which and the price for which the property was rented;

(5) show the cash balance on hand and the name and location of the depository where the balance is kept;

(6) show any other cash held in a savings account or other manner that was deposited subject to court order and the name and location of the depository for that cash;

(7) provide a detailed description of the personal property of the estate that shows how and where the property is held for safekeeping;

(8) provide a statement that during the period covered by the account all tax returns due have been filed and all taxes due and owing have been paid, including:

(A) a complete account of the amount of the taxes;

(B) the date the taxes were paid; and

(C) the governmental entity to which the taxes were paid;

(9) if on the filing of the account a tax return due to be filed or any taxes due to be paid are delinquent, provide the reasons for, and include a description of, the delinquency; and

(10) provide a statement that the representative has paid all the required bond premiums for the accounting period.

(c) For bonds, notes, and other securities, the description required by Subsection (b)(7) must include:

(1) the names of the obligor and obligee or, if payable to bearer, a statement that the bond, note, or other security is payable to bearer;

(2) the date of issue and maturity;

(3) the interest rate;

(4) the serial number or other identifying numbers;

(5) the manner in which the property is secured; and

(6) other information necessary to fully identify the bond, note, or other security.

Derived from Probate Code § 399(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 359.002. Annual Account Required Until Estate Closed

(a) Each personal representative of the estate of a decedent shall continue to file an annual account conforming to the essential requirements of Section 359.001 regarding changes in the estate assets occurring since the date the most recent previous account was filed.

(b) The annual account must be filed in a manner that allows the court or an interested person to ascertain the true condition of the estate, with respect to money, securities, and other property, by adding to the balances forwarded from the most recent previous account the amounts received during the period covered by the account and subtracting the disbursements made during that period.

(c) The description of property sufficiently described in an inventory or previous account may be made in the annual account by reference to that description.

Derived from Probate Code § 399(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 359.003. Supporting Vouchers and Other Documents Attached to Account

(a) The personal representative of an estate shall attach to each annual account:

(1) a voucher for each item of credit claimed in the account or, to support the item in the absence of the voucher, other evidence satisfactory to the court;

(2) an official letter from the bank or other depository where the estate money on hand is deposited that shows the amounts in general or special deposits; and

(3) proof of the existence and possession of:

(A) securities owned by the estate or shown by the account; and

(B) other assets held by a depository subject to court order.

(b) An original voucher submitted to the court may on application be returned to the personal representative after approval of the account.

(c) The court may require:

(1) additional evidence of the existence and custody of the securities and other personal property as the court considers proper; and

(2) the personal representative at any time to exhibit the securities and other personal property to the court or another person designated by the court at the place where the securities and other personal property are held for safekeeping.

Derived from Probate Code § 399(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 359.004. Method of Proof for Securities and Other Assets

(a) The proof required by Section 359.003(a)(3) must be by:

(1) an official letter from the bank or other depository where the securities or other assets are held for safekeeping, and if the depository is the personal representative, the official letter must be signed by a representative of the depository other than the one verifying the account;

(2) a certificate of an authorized representative of a corporation that is surety on the personal representative's bonds;

(3) a certificate of the clerk or a deputy clerk of a court of record in this state; or

(4) an affidavit of any other reputable person designated by the court on request of the personal representative or other interested party.

(b) The certificate or affidavit described by Subsection (a) must:

(1) state that the affiant has examined the assets that the personal representative exhibited to the affiant as assets of the estate;

(2) describe the assets by reference to the account or in another manner that sufficiently identifies the assets exhibited; and

(3) state the time and the place the assets were exhibited.

(c) Instead of attaching a certificate or an affidavit, the personal representative may exhibit the securities to the judge, who shall endorse on the account, or include in the judge's order with respect to the account, a statement that the securities shown in the account as on hand were exhibited to the judge and that the securities were the same as those shown in the account, or note any variance.

(d) If the securities are exhibited at a location other than where the securities are deposited for safekeeping, that exhibit is at the personal representative's own expense and risk.

Derived from Probate Code § 399(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 359.005. Verification of Account

The personal representative shall attach to the annual account the representative's affidavit that the account contains a correct and complete statement of the matters to which it relates.

Derived from Probate Code § 399(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 359.006. Additional Accounts

(a) At any time after the expiration of 15 months from the date original letters testamentary or of administration are granted to an executor or administrator, an interested person may file a written complaint in the court in which the estate is pending to have the representative cited to appear and make a written exhibit under oath that sets forth fully, in connection with previous exhibits, the condition of the estate.

(b) If it appears to the court, from the exhibit or other evidence, that the executor or administrator has estate funds in the representative's possession that are subject to distribution among the creditors of the estate, the court shall order the funds to be paid out to the creditors in accordance with this title.

(c) A personal representative may voluntarily present to the court the exhibit described by Subsection (a). If the representative has any estate funds in the representative's possession that are subject to distribution among the creditors of the estate, the court shall issue an order similar to the order entered under Subsection (b).

Derived from Probate Code § 402.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Action on Annual Account

§ 359.051. Filing and Consideration of Annual Account

(a) The personal representative of an estate shall file an annual account with the county clerk. The county clerk shall promptly note the filing on the judge's docket.

(b) At any time after the account has remained on file for 10 days following the date the account is filed, the judge shall consider the account and may continue the hearing on the account until fully advised on all account items.

(c) The court may not approve the account unless possession of cash, listed securities, or other assets held in safekeeping or on deposit under court order has been proven as required by law.

Derived from Probate Code §§ 401(a), (b), (c), (d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 359.052. Correction of Annual Account

(a) If the court finds an annual account is incorrect, the account must be corrected.

(b) The court by order shall approve an annual account that is corrected to the satisfaction of the court and shall act with respect to unpaid claims in accordance with Sections 359.053 and 359.054.

Derived from Probate Code § 401(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 359.053. Order for Payment of Claims in Full

After approval of an annual account as provided by Section 359.052, if it appears to the court from the exhibit or other evidence that the estate is wholly solvent and that the personal representative has in the representative's possession sufficient funds to pay every character of claims against the estate, the court shall order immediate payment of all claims allowed and approved or established by judgment.

Derived from Probate Code § 401(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 359.054. Order for Pro Rata Payment of Claims

After approval of an annual account as provided by Section 359.052, if it appears to the court from the account or other evidence that the funds on hand are not sufficient to pay every character of claims against the estate or if the estate is insolvent and the personal representative has any funds on hand, the court shall order the funds to be applied:

(1) first to the payment of any unpaid claims having a preference in the order of their priority; and

(2) then to the pro rata payment of the other claims allowed and approved or established by final judgment, considering:

(A) claims that were presented before the first anniversary of the date administration was granted; and

(B) claims that are in litigation or on which a lawsuit may be filed.

Derived from Probate Code § 401(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Penalties

§ 359.101. Penalty for Failure to File Annual Account

(a) If the personal representative of an estate does not file an annual account required by Section 359.001 or 359.002, any person interested in the estate on written complaint, or the court on the court's own motion, may have the representative cited to file the account and show cause for the failure.

(b) If the personal representative does not file the account after being cited or does not show good cause for the failure, the court on hearing may:

(1) revoke the representative's letters testamentary or of administration; and

(2) fine the representative in an amount not to exceed $500.

(c) The personal representative and the representative's sureties are liable for any fine imposed and for all damages and costs sustained by the representative's failure. The fine, damages, and costs may be recovered in any court of competent jurisdiction.

Derived from Probate Code § 400.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 359.102. Penalty for Failure to File Exhibit or Report

(a) If a personal representative does not file an exhibit or report required by this title, any person interested in the estate on written complaint filed with the court clerk may have the representative cited to appear and show cause why the representative should not file the exhibit or report.

(b) On hearing, the court may:

(1) order the personal representative to file the exhibit or report; and

(2) unless good cause is shown for the failure, revoke the representative's letters testamentary or of administration and fine the representative in an amount not to exceed $1,000.

Derived from Probate Code § 403.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

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Chapter 360. Partition and Distribution of Estate

Subchapter A. Application for Partition and Distribution

Statutes in Context
Chapter 360, Subchapter A

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.

§ 360.001. General Application

(a) At any time after the first anniversary of the date original letters testamentary or of administration are granted, an executor, administrator, heir, or devisee of a decedent's estate, by written application filed in the court in which the estate is pending, may request the partition and distribution of the estate.

(b) An application under Subsection (a) must state:

(1) the decedent's name;

(2) the name and residence of each person entitled to a share of the estate and whether the person is an adult or a minor;

(3) if the applicant does not know a fact required by Subdivision (2); and

(4) the reasons why the estate should be partitioned and distributed.

Derived from Probate Code §§ 373(a), (b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 360.002. Application for Partial Distribution

(a) At any time after original letters testamentary or of administration are granted and the inventory, appraisement, and list of claims are filed and approved, an executor, administrator, heir, or devisee of a decedent's estate, by written application filed in the court in which the estate is pending, may request a distribution of any portion of the estate.

(b) All interested parties, including known creditors, must be personally cited as in other distributions.

(c) Except as provided by Subsection (d), the court, on proper citation and hearing, may distribute any portion of the estate the court considers advisable.

(d) If a distribution is to be made to one or more heirs or devisees, but not to all heirs or devisees, the court shall require a refunding bond in an amount determined by the court to be filed with the court, unless a written waiver of the bond requirement is filed with the court by all interested parties. On approving the bond, if required, the court shall order the distribution of the relevant portion of the estate.

(e) This section applies to corpus as well as income, notwithstanding any other provision of this title.

Derived from Probate Code § 373(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Citation

§ 360.051. Citation of Interested Persons

(a) On the filing of the application, the clerk shall issue a citation that:

(1) states:

(A) the decedent's name; and

(B) the date the court will hear the application; and

(2) requires all persons interested in the estate to appear and show cause why the estate should not be partitioned and distributed.

(b) A citation under this section must be:

(1) personally served on each person residing in the state who is entitled to a share of the estate and whose address is known; and

(2) served by publication on any person entitled to a share of the estate:

(A) whose identity or address is not known;

(B) who is not a resident of this state; or

(C) who is a resident of this state but is absent from this state.

Derived from Probate Code § 374.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 360.052. Citation of Executor or Administrator

When a person other than the executor or administrator applies for partition and distribution, the executor or administrator must also be cited to appear and answer the application and file in court a verified exhibit and account of the condition of the estate, as in the case of a final settlement.

Derived from Probate Code § 375.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Proceedings; Expenses

§ 360.101. Hearing on Application

(a) At the hearing on an application for partition and distribution, the court shall determine:

(1) the residue of the estate that is subject to partition and distribution;

(2) the persons entitled by law to partition and distribution and those persons' respective shares; and

(3) whether an advancement has been made to any of the persons described by Subdivision (2), and if so, the nature and value of the advancement.

(b) For purposes of Subsection (a)(1), the residue of the estate is determined by deducting from the entire assets of the estate remaining on hand:

(1) the amount of all debts and expenses that:

(A) have been approved or established by judgment but not paid; or

(B) may be established by judgment in the future; and

(2) the probable future expenses of administration.

(c) If an advancement described by Subsection (a)(3) has been made, the court shall require the advancement to be placed in hotchpotch as required by the law governing intestate succession.

Derived from Probate Code § 377.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 360.102. Court Decree

If the court determines that the estate should be partitioned and distributed, the court shall enter a decree stating:

(1) the name and address, if known, of each person entitled to a share of the estate, specifying:

(A) which of those persons are known to be minors;

(B) the name of the minors' guardian or guardian ad litem; and

(C) the name of the attorney appointed to represent those persons who are unknown or who are not residents of this state;

(2) the proportional part of the estate to which each person is entitled;

(3) a full description of all the estate to be distributed; and

(4) that the executor or administrator must retain possession of a sufficient amount of money or property to pay all debts, taxes, and expenses of administration and specifying the amount of money or the property to be retained.

Derived from Probate Code § 378.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 360.103. Expenses of Partition

(a) The distributees shall pay the expense of the estate's partition pro rata.

(b) The portion of the estate allotted to a distributee is liable for the distributee's portion of the partition expense, and, if not paid, the court may order execution for the expense in the names of the persons entitled to payment of the expense.

Derived from Probate Code § 387.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Partition and Distribution if Estate Property is Capable of Division

§ 360.151. Appointment of Commissioners

If the estate does not consist entirely of money or debts due to the estate and the court has not previously determined that the estate is incapable of partition, the court shall appoint three or more discreet and disinterested persons as commissioners to make a partition and distribution of the estate.

Derived from Probate Code § 380(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 360.152. Writ of Partition

(a) When commissioners are appointed under Section 360.151, the clerk shall issue a writ of partition directed to the commissioners, commanding the commissioners to:

(1) proceed promptly to make the partition and distribution in accordance with the court decree; and

(2) return the writ, with the commissioners' proceedings under the writ, on a date stated in the writ.

(b) A copy of the court decree must accompany the writ.

(c) The writ must be served by:

(1) delivering the writ and the accompanying copy of the court decree to one of the commissioners; and

(2) notifying the other commissioners, verbally or otherwise, of the commissioners' appointment.

(d) Service under Subsection (c) may be made by any person.

Derived from Probate Code § 380(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 360.153. Partition by Commissioners

(a) The commissioners shall make a fair, just, and impartial partition and distribution of the estate in the following order and manner:

(1) if the real estate is capable of being divided without manifest injury to all or any of the distributees, the commissioners shall partition and distribute the land or other property by allotting to each distributee:

(A) a share in each parcel;

(B) shares in one or more parcels; or

(C) one or more parcels separately, with or without the addition of a share of other parcels;

(2) if the real estate is not capable of a fair, just, and equal division in kind, but may be made capable of a fair, just, and equal division in kind by allotting to one or more of the distributees a proportion of the money or other personal property to supply the deficiency, the commissioners may make, as nearly as possible, an equal division of the real estate and supply the deficiency of any share from the money or other personal property; and

(3) the commissioners shall:

(A) make a like division in kind, as nearly as possible, of the money and other personal property; and

(B) determine by lot, among equal shares, to whom each share shall belong.

(b) The commissioners shall allot the land or other property under Subsection (a)(1) in the manner described by that subsection that is most in the interest of the distributees.

Derived from Probate Code § 380(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 360.154. Commissioners' Report

(a) After dividing all or any part of the estate, at least a majority of the commissioners shall make a written, sworn report to the court that:

(1) states the property divided by the commissioners; and

(2) describes in particular the property allotted to each distributee and the value of that property.

(b) If real estate was divided, the report must also contain a general plat of the land with:

(1) the division lines plainly set down; and

(2) the number of acres in each share.

Derived from Probate Code § 380(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 360.155. Court Action on Commissioners' Report

(a) On the return of a commissioners' report under Section 360.154, the court shall:

(1) examine the report carefully; and

(2) hear:

(A) all exceptions and objections to the report; and

(B) all evidence in favor of or against the report.

(b) If the report is informal, the court shall have the informality corrected.

(c) If the division appears to have been fairly made according to law and no valid exceptions are taken to the division, the court shall approve the division and enter a decree vesting title in the distributees of the distributees' respective shares or portions of the property as set apart to the distributees by the commissioners.

(d) If the division does not appear to have been fairly made according to law or a valid exception is taken to the division, the court may:

(1) set aside the report and division; and

(2) order a new partition to be made.

Derived from Probate Code § 380(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 360.156. Delivery of Property

When the commissioners' report has been approved and ordered to be recorded, the court shall order the executor or administrator to deliver to the distributees on demand the distributees' respective shares of the estate, including all the title deeds and documents belonging to the distributees.

Derived from Probate Code § 380(f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 360.157. Commissioners' Fees

A commissioner who partitions and distributes an estate under this subchapter is entitled to $5 for each day the commissioner necessarily engages in performing the commissioner's duties, to be taxed and paid as other costs in cases of partition.

Derived from Probate Code § 380(g).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter E. Partition and Distribution if Estate Property Is Incapable of Division

§ 360.201. Court Finding

If, in the court's opinion, all or part of an estate is not capable of a fair and equal partition and distribution, the court shall make a special written finding specifying the property incapable of division.

Derived from Probate Code § 381(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 360.202. Sale of Estate Property

(a) When the court has found that all or part of an estate is not capable of fair and equal division, the court shall order the sale of all estate property not capable of fair and equal division.

(b) The sale must be made by the executor or administrator in the manner provided for the sale of real estate to satisfy estate debts.

(c) The court shall distribute the proceeds collected from the sale to the persons entitled to the proceeds.

(d) A distributee who buys property at the sale is required to pay or secure only the amount by which the distributee's bid exceeds the amount of the distributee's share of the property.

Derived from Probate Code §§ 381(b), (c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 360.203. Applicability of Provisions Relating to Sale of Real Estate

The provisions of this title relating to reports of sales of real estate, the giving of an increased general or additional bond on the sale of real estate, and the vesting of title to property sold by decree or by deed apply to sales made under this subchapter.

Derived from Probate Code § 381(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter F. Certain Types of Estate Property

§ 360.251. Estate Consisting Only of Money or Debts

If the estate to be distributed consists only of money or debts due to the estate, the court shall:

(1) set the amount to which each distributee is entitled; and

(2) order the executor or administrator to pay and deliver that amount.

Derived from Probate Code § 379.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 360.252. Estate Property Located in Another County

(a) If any portion of the estate to be partitioned is located in another county and cannot be fairly partitioned without prejudice to the distributees' interests, the commissioners may report those facts to the court in writing.

(b) On the making of a report under Subsection (a), if the court is satisfied that the property cannot be fairly divided or that the sale of the property would be more advantageous to the distributees, the court may order a sale of the property. The sale must be conducted in the manner provided by Subchapter E for the sale of property that is not capable of fair and equal division.

(c) If the court is not satisfied that the property cannot be fairly and advantageously divided, or that the sale of the property would be more advantageous to the distributees, the court may appoint three or more commissioners in each county in which the property is located. If the court appoints commissioners under this subsection, the proceedings under Subchapter D for partition by commissioners must be followed.

Derived from Probate Code § 382.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 360.253. Community Property

(a) If a spouse dies leaving community property, the surviving spouse, at any time after letters testamentary or of administration have been granted and an inventory, appraisement, and list of claims of the estate have been returned or an affidavit in lieu of the inventory, appraisement, and list of claims has been filed, may apply in writing to the court that granted the letters for a partition of the community property.

(b) The surviving spouse shall execute and deliver a bond to the judge of the court described by Subsection (a). The bond must be:

(1) with a corporate surety or at least two good and sufficient personal sureties;

(2) payable to and approved by the judge;

(3) in an amount equal to the value of the surviving spouse's interest in the community property; and

(4) conditioned for the payment of half of all debts existing against the community property.

(c) The court shall proceed to partition the community property into two equal moieties, one to be delivered to the surviving spouse and the other to be delivered to the executor or administrator of the deceased spouse's estate.

(d) If a partition is made under this section:

(1) a lien exists on the property delivered to the surviving spouse to secure the payment of the bond required under Subsection (b); and

(2) any creditor of the community estate:

(A) may sue in the creditor's own name on the bond; and

(B) is entitled:

(i) to have judgment on the bond for half of the debt the creditor establishes; and

(ii) to be paid by the executor or administrator of the deceased spouse's estate for the other half.

(e) The provisions of this title relating to the partition and distribution of an estate apply to a partition under this section to the extent applicable.

Derived from Probate Code § 385.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2011, 82nd Leg., ch. 823, § 2.50, eff. Jan. 1, 2014.

§ 360.254. Jointly Owned Property

(a) A person who has a joint interest with a decedent's estate in any property may apply to the court that granted letters testamentary or of administration on the estate for a partition of the property.

(b) On application under Subsection (a), the court shall partition the property between the applicant and the decedent's estate.

(c) The provisions of this title relating to the partition and distribution of an estate govern a partition under this section to the extent applicable.

Derived from Probate Code § 386.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter G. Enforcement

§ 360.301. Liability for Failure to Deliver Estate Property

(a) If an executor or administrator neglects, when demanded, to deliver a portion of an estate ordered to be delivered to a person entitled to that portion, the person may file with the court clerk a written complaint alleging:

(1) the fact of the neglect;

(2) the date of the person's demand; and

(3) other relevant facts.

(b) On the filing of a complaint under Subsection (a), the court clerk shall issue a citation to be served personally on the executor or administrator. The citation must:

(1) apprise the executor or administrator of the complaint; and

(2) cite the executor or administrator to appear before the court and answer, if the executor or administrator desires, at the time designated in the citation.

(c) If at the hearing the court finds that the citation was properly served and returned and that the executor or administrator is guilty of the neglect alleged, the court shall enter an order to that effect.

(d) An executor or administrator found guilty under Subsection (c) is liable to the complainant for damages at the rate of 10 percent of the amount or the appraised value of the portion of the estate neglectfully withheld, per month, for each month or fraction of a month that the portion is or has been neglectfully withheld after the date of demand. Damages under this subsection may be recovered in any court of competent jurisdiction.

Derived from Probate Code § 384.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 361. Death, Resignation, or Removal of Personal Representatives; Appointment of Successors

Subchapter A. Resignation of Personal Representative

§ 361.001. Resignation Application
§ 361.002. Immediate Appointment of Successor; Discharge And Release
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Chapter 361. Death, Resignation, or Removal of Personal Representatives; Appointment of Successors

Subchapter A. Resignation of Personal Representative

Statutes in Context
Chapter 361, Subchapter A

Chapter 361, Subchapter A, addresses issues regarding the resignation of a personal representative.

§ 361.001. Resignation Application

A personal representative who wishes to resign the representative's trust shall file a written application with the court clerk, accompanied by a complete and verified exhibit and final account showing the true condition of the estate entrusted to the representative's care.

Derived from Probate Code § 221(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 361.002. Immediate Appointment of Successor; Discharge and Release

(a) If the necessity exists, the court may immediately accept the resignation of a personal representative and appoint a successor representative.

(b) The court may not discharge a person whose resignation is accepted under Subsection (a), or release

the person or the sureties on the person's bond, until a final order has been issued or judgment has been rendered on the final account required under Section 361.001.

Derived from Probate Code § 221(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 361.003. Hearing Date; Citation

(a) When an application to resign as personal representative is filed under Section 361.001, supported by the exhibit and final account required under that section, the court clerk shall bring the application to the judge's attention and the judge shall set a date for a hearing on the matter.

(b) After a hearing is set under Subsection (a), the clerk shall issue a citation to all interested persons, showing:

(1) that an application that complies with Section 361.001 has been filed; and

(2) the time and place set for the hearing at which the interested persons may appear and contest the exhibit and final account supporting the application.

(c) Unless the court directs that the citation under Subsection (b) be published, the citation must be posted.

Derived from Probate Code § 221(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 361.004. Hearing

(a) At the time set for the hearing under Section 361.003, unless the court continues the hearing, and if the court finds that the citation required under that section has been properly issued and served, the court shall:

(1) examine the exhibit and final account required by Section 361.001;

(2) hear all evidence for and against the exhibit and final account; and

(3) if necessary, restate and audit and settle the exhibit and final account.

(b) If the court is satisfied that the matters entrusted to the personal representative applying to resign have been handled and accounted for in accordance with the law, the court shall:

(1) enter an order approving the exhibit and final account; and

(2) require that any estate property remaining in the applicant's possession be delivered to the persons entitled by law to receive the property.

Derived from Probate Code § 221(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 361.005. Requirements for Discharge

(a) A personal representative applying to resign may not be discharged until:

(1) the resignation application has been heard;

(2) the exhibit and final account required under Section 361.001 have been examined, settled, and approved; and

(3) the applicant has satisfied the court that the applicant has:

(A) delivered any estate property remaining in the applicant's possession; or

(B) complied with all lawful orders of the court with relation to the applicant's trust as representative.

(b) When a personal representative applying to resign has fully complied with the orders of the court, the court shall enter an order:

(1) accepting the resignation; and

(2) discharging the applicant, and, if the applicant is under bond, the applicant's sureties.

Derived from Probate Code §§ 221(e), (f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Removal and Reinstatement of Personal Representative

Statutes in Context
Chapter 361, Subchapter B

Sections 361.051 – 361.054 explain how a court may remove a personal representative from office. Section 361.051 enumerates when the removal may occur without notice to the personal representative while § 361.052 lists the circumstances where notice to the personal representative is needed before the court may issue an order of removal. See also § 404.003 (removal of independent executor). Reinstatement is thereafter possible under § 361.054.

§ 361.051. Removal Without Notice

The court, on the court's own motion or on the motion of any interested person, and without notice, may remove a personal representative appointed under this title who:

(1) neglects to qualify in the manner and time required by law;

(2) fails to return, before the 91st day after the date the representative qualifies, an inventory of the estate property and a list of claims that have come to the representative's knowledge, unless that deadline is extended by court order;

(3) if required, fails to give a new bond within the time prescribed;

(4) is absent from the state for a consecutive period of three or more months without the court's permission, or moves out of state;

(5) cannot be served with notices or other processes because:

(A) the representative's whereabouts are unknown;

(B) the representative is eluding service; or

(C) the 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

(6) subject to Section 361.054(a), has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or part of the property entrusted to the representative's care.

Derived from Probate Code § 222(a)(1).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 361.052. Removal With Notice

The court may remove a personal representative on the court's own motion, or on the complaint of any interested person, after the representative has been cited by personal service to answer at a time and place fixed in the notice, if:

(1) sufficient grounds appear to support a belief that the representative has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or part of the property entrusted to the representative's care;

(2) the representative fails to return any account required by law to be made;

(3) the representative fails to obey a proper order of the court that has jurisdiction with respect to the performance of the representative's duties;

(4) the representative is proved to have been guilty of gross misconduct, or mismanagement in the performance of the representative's duties;

(5) the representative:

(A) becomes incapacitated;

(B) is sentenced to the penitentiary; or

(C) from any other cause, becomes incapable of properly performing the duties of the representative's trust; or

(6) the representative, as executor or administrator, fails to:

(A) make a final settlement by the third anniversary of the date letters testamentary or of administration are granted, unless that period is extended by the court on a showing of sufficient cause supported by oath; or

(B) timely file the affidavit or certificate required by Section 308.004.

Derived from Probate Code § 222(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 361.053. Removal Order

An order removing a personal representative must:

(1) state the cause of the removal;

(2) require that, if the removed representative has been personally served with citation, any letters testamentary or of administration issued to the removed representative be surrendered, and that, regardless of whether the letters have been delivered, all the letters be canceled of record; and

(3) require the removed representative to deliver any estate property in the representative's possession to the persons entitled to the property or to the person who has been appointed and has qualified as successor representative.

Derived from Probate Code § 222(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 361.054. Removal and Reinstatement of Personal Representative Under Certain Circumstances

(a) The court may remove a personal representative under Section 361.051(6) only on the presentation of clear and convincing evidence given under oath.

(b) Not later than the 10th day after the date the court signs the order of removal, a personal representative who is removed under Section 361.051(6) may file an application with the court for a hearing to determine whether the representative should be reinstated.

(c) On the filing of an application under Subsection (b), the court clerk shall issue to the applicant and to the successor representative of the decedent's estate a notice stating:

(1) that an application for reinstatement has been filed;

(2) the name of the decedent from whose estate the applicant was removed as personal representative; and

(3) the name of the applicant for reinstatement.

(d) The notice required by Subsection (c) must cite all persons interested in the estate to appear at the time and place stated in the notice if the persons wish to contest the application.

(e) If, at the conclusion of a hearing under this section, the court is satisfied by a preponderance of the evidence that the personal representative applying for reinstatement did not engage in the conduct that directly led to the applicant's removal, the court shall:

(1) set aside any order appointing a successor representative; and

(2) enter an order reinstating the applicant as personal representative of the estate.

(f) 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 estate property.

Derived from Probate Code §§ 222(a)(2), 222A.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Appointment of Successor Representative

Statutes in Context
Chapter 361, Subchapter C

Chapter 361, Subchapter C, explains how the court will appoint a replacement personal representative if the currently serving representative dies, resigns, or is removed. This Subchapter also handles a variety of other situations where a replacement may be appropriate.

§ 361.101. Requirements for Revocation of Letters

Except as otherwise expressly provided by this title, the court may revoke letters testamentary or of administration and grant other letters only:

(1) on application; and

(2) after personal service of citation on the person, if living, whose letters are sought to be revoked, requiring the person to appear and show cause why the application should not be granted.

Derived from Probate Code § 220(f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 361.102. Appointment Because of Death, Resignation, or Removal

(a) If a person appointed as personal representative fails to qualify or, after qualifying, dies, resigns, or is removed, the court may, on application, appoint a successor representative if the appointment of a successor is necessary. The appointment may be made before a final accounting is filed or before any action on a final accounting is taken. In the event of death, the legal representatives of the deceased personal representative shall account for, pay, and deliver all estate property that was entrusted to the deceased personal representative's care to the persons legally entitled to receive the property, at the time and in the manner ordered by the court.

(b) The court may appoint a successor representative under this section without citation or notice if the court finds that the immediate appointment of a successor representative is necessary.

Derived from Probate Code § 220(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 361.103. Appointment Because of Existence of Prior Right

If letters testamentary or of administration have been granted to a person and another person applies for letters, the court shall revoke the initial letters and grant letters to the second applicant if the second applicant:

(1) is qualified;

(2) has a prior right to the letters; and

(3) has not waived the prior right to the letters.

Derived from Probate Code § 220(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 361.104. Appointment when Named Executor Becomes an Adult

(a) A person named as executor in a will who was not an adult when the will was probated is entitled to have letters testamentary or of administration that were granted to another person revoked and appropriate letters granted to the named executor on proof that the named executor has become an adult and is not otherwise disqualified.

(b) This subsection applies only if a will names two or more persons as executor. A person named as an executor in the will who was a minor when the will was probated may, on becoming an adult, qualify and receive letters if:

(1) letters have been issued only to the named executors in the will who were adults when the will was probated; and

(2) the person is not otherwise disqualified from receiving letters.

Derived from Probate Code § 220(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 361.105. Appointment of Formerly Sick or Absent Executor

(a) This section applies only to a person named as executor in a will who was sick or absent from the state when the testator died or the will was proved and, as a result, could not:

(1) present the will for probate before the 31st day after the date of the testator's death; or

(2) accept and qualify as executor before the 21st day after the date the will is probated.

(b) A person to whom this section applies may accept and qualify as executor before the 61st day after the date the person returns to the state or recovers from illness if proof is presented to the court that the person was ill or absent.

(c) If a person accepts and qualifies as executor under Subsection (b) and letters testamentary or of administration have been issued to another person, the court shall revoke the other person's letters.

Derived from Probate Code § 220(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 361.106. Appointment when Will Discovered After Grant of Administration

If, after letters of administration have been issued, it is discovered that the decedent left a lawful will, the court shall revoke the letters of administration and issue proper letters to any persons entitled to the letters.

Derived from Probate Code § 220(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,

2014.

Subchapter D. Procedures After Death, Resignation, or Removal of Personal Representative

§ 361.151. Payment to Estate While Office of Personal Representative Is Vacant

(a) A debtor, obligor, or payor may pay or tender money or another thing of value falling due to an estate while the office of personal representative of the estate is vacant to the court clerk for the credit of the estate.

(b) Payment or tender under Subsection (a) discharges the debtor, obligor, or payor of the obligation for all purposes to the extent and purpose of the payment or tender.

(c) If the court clerk accepts payment or tender under this section, the court clerk shall issue a receipt for the payment or tender.

Derived from Probate Code § 220(g).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 361.152. Further Administration with or Without Notice or Will Annexed

(a) If an estate is unrepresented as a result of the death, removal, or resignation of the estate's personal representative, and on application by a qualified person interested in the estate, the court shall grant further administration of the estate if necessary, and with the will annexed if there is a will.

(b) An appointment under Subsection (a) shall be made on notice and after a hearing, as in the case of an original appointment, except that, if the court finds that the immediate appointment of a successor representative is necessary, the court may appoint the successor on application but without citation or notice.

Derived from Probate Code § 223.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 361.153. Rights, Powers, and Duties of Successor Representative

(a) If a personal representative of an estate not administered succeeds another personal representative, the successor representative has all rights, powers, and duties of the predecessor, other than those rights and powers conferred on the predecessor by will that are different from those conferred by this title on personal representatives generally. Subject to that exception, the successor representative shall administer the estate as if the successor's administration were a continuation of the former administration.

(b) A successor representative shall account for all the estate property that came into the predecessor's possession, and is entitled to any order or remedy that the court has the power to give to enforce the delivery of the estate property and the liability of the predecessor's sureties for any portion of the estate property that is not delivered. The successor is not required to account for any portion of the estate property that the successor failed to recover after due diligence.

(c) In addition to the powers granted under Subsections (a) and (b), a successor representative may:

(1) make himself or herself, and may be made, a party to a suit prosecuted by or against the successor's predecessors;

(2) settle with the predecessor, and receive and give a receipt for any portion of the estate property that remains in the predecessor's possession; or

(3) commence a suit on the bond or bonds of the predecessor, in the successor's own name and capacity, for all the estate property that:

(A) came into the predecessor's possession; and

(B) has not been accounted for by the predecessor.

Derived from Probate Code §§ 224, 225.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 361.154. Successor Executor Also Succeeds to Prior Rights and Duties

An executor who accepts appointment and qualifies after letters of administration have been granted on the estate shall, in the manner prescribed by Section 361.153, succeed to the previous administrator, and shall administer the estate as if the executor's administration were a continuation of the former administration, subject to any legal directions of the testator with respect to the estate that are contained in the will.

Derived from Probate Code § 226.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 361.155. Successor Representative to Return Inventory, Appraisement, and List of Claims or Affidavit in Lieu of Inventory, Appraisement, and List of Claims

(a) An appointee who has qualified to succeed a former personal representative, before the 91st day after the date the personal representative qualifies, 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, in the manner provided for an original appointee, and shall also return additional inventories, appraisements, and lists of claims and additional affidavits in the manner provided for an original appointee.

(b) Except as otherwise provided by this subsection, an appointee who files an inventory, appraisement, and list of claims under Subsection (a) shall set out in the inventory the appointee's

appraisement of the fair market value of each item in the inventory on the date of the appointee's qualification. If an inventory, appraisement, and list of claims has not been filed by any former personal representative, the appointee shall set out the inventory as provided by Sections 309.051 and 309.052.

(c) On the application of any person interested in the estate, the court shall, in an order appointing a successor representative of an estate, appoint appraisers as in an original appointment.

Derived from Probate Code § 227.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 823, §§ 2.51 & 2.52, eff. Jan. 1, 2014. Subsecs. (b) amended and (c) added by Acts 2013, 83rd Leg., ch. 1136, § 46, eff. Jan. 1, 2014.

Chapter 362. Closing Administration of Estate

Subchapter A. Settling and Closing Estate

§ 362.001. Settling and Closing Administration of Estate
§ 362.002. Compelling Settlement of Estate
§ 362.003. Verified Account Required
§ 362.004. Contents of Account
§ 362.005. Citation and Notice on Presentation of Account
§ 362.006. Examination of and Hearing on Account
§ 362.007. Delivery of Certain Property to Guardian
§ 362.008. Certain Debts Excluded From Settlement Computation
§ 362.009. Money Due to Estate Pending Final Discharge
§ 362.010. Payment of Inheritance Taxes Required
§ 362.011. Partition And Distribution of Estate; Deposit In Court's Registry
§ 362.012. Discharge of Personal Representative When No Estate Property Remains
§ 362.013. Discharge of Personal Representative When Estate Fully Administered

Subchapter B. Failure of Personal Representative to Act

§ 362.051. Failure to Present Account
§ 362.052. Liability for Failure to Deliver Estate Property

Chapter 362. Closing Administration of Estate

Statutes in Context
Chapter 362

Chapter 362 explains how a dependent administration is closed.

Subchapter A. Settling and Closing Estate

§ 362.001. Settling and Closing Administration of Estate

The administration of an estate shall be settled and closed when:

(1) all the debts known to exist against the estate have been paid, or have been paid to the extent permitted by the assets in the personal representative's possession; and

(2) no further need for administration exists.

Derived from Probate Code § 404.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 362.002. Compelling Settlement of Estate

A person interested in the administration of an estate for which letters testamentary or of administration have been granted may proceed, after any period of time, to compel settlement of the estate if it does not appear from the record that the administration of the estate has been closed.

Derived from Probate Code §92.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 362.003. Verified Account Required

The personal representative of an estate shall present to the court the representative's verified account for final settlement when the administration of the estate is to be settled and closed.

Derived from Probate Code § 405.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 362.004. Contents of Account

(a) Except as provided by Subsection (b), it is sufficient for an account for final settlement to:

(1) refer to the inventory without describing each item of property in detail; and

(2) refer to and adopt any proceeding had in the administration concerning a sale, renting, leasing for mineral development, or any other transaction on behalf of the estate, including an exhibit, account, or voucher previously filed and approved, without restating the particular items thereof.

(b) An account for final settlement must be accompanied by proper vouchers supporting each item included in the account for which the personal representative has not already accounted and, either by

reference to any proceeding described by Subsection (a) or by a statement of the facts, must show:

(1) the estate property that has come into the representative's possession and the disposition of that property;

(2) the debts that have been paid;

(3) any debts and expenses still owing by the estate;

(4) any estate property still in the representative's possession;

(5) the persons entitled to receive that estate and, for each of those persons:

(A) the person's relationship to the decedent;

(B) the person's residence, if known; and

(C) whether the person is an adult or a minor and, if the person is a minor, the name of each of the minor's guardians, if any;

(6) any advancement or payment made by the representative from that estate to any person entitled to receive part of that estate;

(7) the tax returns due that have been filed and the taxes due and owing that have been paid, including:

(A) a complete account of the amount of taxes;

(B) the date the taxes were paid; and

(C) the governmental entity to which the taxes were paid;

(8) if on the filing of the account a tax return due to be filed or any taxes due to be paid are delinquent, the reasons for, and include a description of, the delinquency; and

(9) that the representative has paid all required bond premiums.

Derived from Probate Code § 405.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 362.005. Citation and Notice on Presentation of Account

(a) On the presentation of an account for final settlement by a temporary or permanent personal representative, the county clerk shall issue citation to the persons and in the manner provided by Subsection (b) [~~Subsections (c) and (d)~~].

(b) Citation issued under Subsection (a) must:

(1) contain:

(A) [~~(1)~~] a statement that an account for final settlement has been presented;

(B) [~~(2)~~] the time and place the court will consider the account; and

(C) [~~(3)~~] a statement requiring the person cited to appear and contest the account, if the person wishes to contest the account; and

(2) be given[~~. [(c) The personal representative shall give notice~~] to each heir or beneficiary of the decedent by certified mail, return receipt requested, unless the court by written order directs another method of service [~~type of notice~~] to be given[~~. The notice must include a copy of the account for final settlement~~].

(c) The personal representative shall also provide to each person entitled to citation under Subsection (b) a copy of the account for final settlement either by:

(1) certified mail, return receipt requested; or

(2) electronic delivery, including facsimile or e-mail.

(d) The court by written order shall require additional notice if the court considers the additional notice necessary.

(e) The court may allow the waiver of citation [~~notice~~] of an account for final settlement in a proceeding concerning a decedent's estate.

(f) The personal representative shall file an affidavit sworn to by the personal representative or a certificate signed by the personal representative's attorney stating:

(1) that the citation was given as required by this section;

(2) the name of each person to whom the citation was given, if the person's name is not shown on the proof of delivery;

(3) the name of each person executing a waiver of citation; and

(4) that each person entitled to citation was provided a copy of the account for final settlement, indicating the method of delivery for each person.

Derived from Probate Code § 407.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 47, eff. Jan 1, 2014.

§ 362.006. Examination of and Hearing on Account

(a) On the court's satisfaction that citation has been properly served on all persons interested in the estate, the court shall examine the account for final settlement and the accompanying vouchers.

(b) After hearing all exceptions or objections to the account for final settlement and accompanying vouchers and the evidence in support of or against the account, the court shall audit and settle the account and, if necessary, restate the account.

Derived from Probate Code § 408(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 362.007. Delivery of Certain Property to Guardian

The court may permit a resident personal representative who has possession of any of a ward's estate to deliver the estate to a qualified and acting guardian of the ward.

Derived from Probate Code § 405A.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 362.008. Certain Debts Excluded from Settlement Computation

In the settlement of any of the accounts of the personal representative, 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.

Derived from Probate Code § 412.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 362.009. Money Due to Estate Pending Final Discharge

Money or another thing of value that becomes due to the estate while an account for final settlement is pending may be paid, delivered, or tendered to the personal representative until the order of final discharge of the representative is entered in the judge's probate docket. The representative shall issue a receipt for the money or other thing of value to the obligor or payor. On issuance of the receipt, the obligor or payor is discharged of the obligation for all purposes.

Derived from Probate Code § 409.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 90, § 8.018, eff. Jan. 1, 2014.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 362.010. Payment of Inheritance Taxes Required

A personal representative's account for final settlement of an estate may not be approved, and the estate may not be closed, unless the 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 representative's possession have been paid.

Derived from Probate Code § 410.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 362.011

Property passing to an unknown or missing person may be turned over to the court's registry. This causes a problem because a court is ill-equipped to store grandmother's china and dad's lawnmower. The court is required to order the representative to convert all the assets to cash and then deposit the cash. This procedure, however, could cause irreparable loss to family heirlooms, farms, ranches, homes, and businesses.

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§ 362.011. Partition and Distribution of Estate; Deposit In Court's Registry

(a) If, on final settlement of an estate, any of the estate remains in the personal representative's possession, the court shall order that a partition and distribution be made among the persons entitled to receive that part of the estate.

(b) The court shall order the personal representative to convert into money any remaining nonmonetary assets to which a person who is unknown or missing is entitled. The procedures in Chapter 356 apply to the conversion of nonmonetary assets under this subsection.

(c) The court shall order the personal representative to deposit in an account in the court's registry all money, including the proceeds of any conversion under Subsection (b), to which a person who is unknown or missing is entitled. The court shall hold money deposited in an account under this subsection until the court renders:

(1) an order requiring money in the account to be paid to the previously unknown or missing person who is entitled to the money; or

(2) another order regarding the disposition of the money.

Derived from Probate Code § 408(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 48, eff. Jan. 1, 2014.

§ 362.012. Discharge of Personal Representative when No Estate Property Remains

The court shall enter an order discharging a personal representative from the representative's trust and closing the estate if, on final settlement of the estate, none of the estate remains in the representative's possession.

Derived from Probate Code § 408(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 362.013. Discharge of Personal Representative when Estate Fully Administered

The court shall enter an order discharging a personal representative from the representative's trust and declaring the estate closed when:

(1) the representative has fully administered the estate in accordance with this title and the court's orders;

(2) the representative's account for final settlement has been approved; and

(3) the representative has:

(A) delivered all of the estate remaining in the representative's possession to the person or persons entitled to receive that part of the estate; and

(B) with respect to the portion of the estate distributable to an unknown or missing person, complied with an order of the court under Section 362.011.

Derived from Probate Code § 408(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 49, eff. Jan. 1, 2014.

Subchapter B. Failure of Personal Representative to Act

§ 362.051. Failure to Present Account

(a) The court, on the court's own motion or on the written complaint of anyone interested in a decedent's estate that has been administered, shall have the personal representative who is charged with the duty of presenting an account for final settlement cited to appear and present the account within the time specified in the citation if the representative failed or neglected to present the account at the proper time.

(b) On or after the fourth anniversary of the date the court clerk last issues letters testamentary or of administration for a decedent's estate, the court may close the estate without an account for final settlement and without appointing a successor personal representative if:

(1) the whereabouts of the personal representative and heirs of the decedent are unknown; and

(2) a complaint has not been filed by anyone interested in the decedent's estate.

Derived from Probate Code § 406.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 362.052. Liability for Failure to Deliver Estate Property

(a) On the final settlement of an estate, if the personal representative neglects on demand to deliver a portion of the estate or any money in the representative's possession ordered to be delivered to a person entitled to that property, the person may file with the court clerk a written complaint alleging:

(1) the fact of the neglect;

(2) the date of the person's demand; and

(3) other relevant facts.

(b) On the filing of a complaint under Subsection (a), the court clerk shall issue a citation to be served personally on the personal representative. The citation must:

(1) apprise the representative of the complaint; and

(2) cite the representative to appear before the court and answer, if the representative desires, at a time designated in the citation.

(c) If at the hearing the court finds that the citation was properly served and returned, and that the personal representative is guilty of the neglect charged, the court shall enter an order to that effect.

(d) A personal representative found guilty under Subsection (c) is liable to the person who filed the complaint under Subsection (a) for damages at the rate of 10 percent of the amount of the money or the appraised value of the portion of the estate neglectfully withheld, per month, for each month or fraction of a month that the money or portion of the estate is or has been neglectfully withheld after the date of demand. Damages under this subsection may be recovered in any court of competent jurisdiction.

Derived from Probate Code § 414.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

SUBTITLE I. INDEPENDENT ADMINISTRATION

Chapter 401. Creation

§ 401.001. Expression of Testator's Intent in Will
§ 401.002. Creation in Testate Estate by Agreement
§ 401.003. Creation in Intestate Estate by Agreement
§ 401.004. Means of Establishing Distributee Consent
§ 401.005. Bond; Waiver of Bond
§ 401.006. Granting Power of Sale by Agreement
§ 401.007. No Liability of Judge
§ 401.008. Person Declining to Serve

Chapter 401. Creation

Statutes in Context
Chapter 401

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, appraisement, and list of claims, the personal representative administers the estate without court involvement.

Chapter 401 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 any required inventory, appraisement, and list of claims of my estate." See § 401.001. (2) If the testator did not specify the executor to be independent, all of the

beneficiaries may agree under § 401.002. However, if the will expressly prohibits independent administration, the court will not authorize independent administration. See § 401.001(b). (3) If the decedent died intestate, the heirs may agree to an independent administration under § 401.003.

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§ 401.001. Expression of Testator's Intent in Will

(a) Any person capable of making a will may provide in the person's will that no other action shall be had in the probate court in relation to the settlement of the person's estate than the probating and recording of the will and the return of any required [~~an~~] inventory, appraisement, and list of claims of the person's estate.

(b) Any person capable of making a will may provide in the person's will that no independent administration of his or her estate may be allowed. In such case the person's estate, if administered, shall be administered and settled under the direction of the probate court as other estates are required to be settled and not as an independent administration.

Derived from Probate Code § 145(b), (o).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2013, 83rd Leg., ch. 1136, § 50, eff. Jan. 1, 2014.

§ 401.002. Creation in Testate Estate by Agreement

(a) Except as provided in Section 401.001(b), if a decedent's will names an executor but the will does not provide for independent administration as provided in Section 401.001(a), 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 probate 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, appraisement, and list of claims of the decedent's estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent executor, unless the court finds that it would not be in the best interest of the estate to do so.

(b) Except as provided in Section 401.001(b), 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 the executor's 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 probate 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, appraisement, and list of claims of the decedent's estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

Derived from Probate Code § 145(c), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 401.003. Creation in Intestate Estate by Agreement

(a) 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 probate 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 probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

(b) 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 202, to constitute all of the decedent's heirs.

Derived from Probate Code § 145(c), (g).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 401.004. Means of Establishing Distributee Consent

(a) This section applies to the creation of an independent administration under Section 401.002 or 401.003.

(b) 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.

(c) If a distributee is an incapacitated person, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the probate 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 interest of the incapacitated person, then, notwithstanding

anything to the contrary in Section 401.002 or 401.003, the court may not enter an order granting independent administration of the estate. If a distributee who is an incapacitated person has no guardian of the person, the probate court may appoint a guardian ad litem to make application on behalf of the incapacitated person if the 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.

(d) If a trust is created in the decedent's will <u>or if the decedent's will devises property to a trustee as described by Section 254.001</u>, the person or class of persons <u>entitled to receive property outright from the trust on the decedent's death</u> <u>and those</u> 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 Section 401.002, be considered to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the 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 on the termination of the 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.

(e) 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 Section 401.002 or 401.003, be considered 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.

(f) 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 Section 401.002 and under Subsection (c), 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.

(g) In the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees under Section 401.002 or 401.003 and under Subsection (c), it shall be presumed that no distributee living at the time the application for independent administration is filed shall subsequently disclaim any portion of the distributee's interest in the decedent's estate.

(h) If a distributee of a decedent's estate dies and if by virtue of the distributee's death the distributee's share of the decedent's estate becomes payable to the distributee's estate, the deceased distributee's personal representative may sign the application for independent administration of the decedent's estate under Section 401.002 or 401.003 and under Subsection (c).

Derived from Probate Code § 145(f), (i), (j), (k), (l), (m), (n).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014. Subsec. (d) amended by Acts 2013, 83rd Leg., ch. 1136, § 51, eff. Jan. 1, 2014.

§ 401.005. Bond; Waiver of Bond

(a) If an independent administration of a decedent's estate is created under Section 401.002 or 401.003, then, unless the probate court waives 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 the judge's 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.

(b) This section does not repeal any other section of this title.

Derived from Probate Code § 145(p).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

Statutes in Context
§ 401.006

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. Protections 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 § 356.251.

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§ 401.006. 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 401.002 or 401.003 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.

Derived from Probate Code § 145A.

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 52, eff. Jan. 1, 2014.

§ 401.007. No Liability of Judge

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 under Section 401.002 or 401.003. Section 351.354 does not apply to the appointment of an independent executor under Section 401.002 or 401.003.

Derived from Probate Code § 145(q).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 401.008. Person Declining to Serve

A person who declines to serve or resigns as independent executor 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.

Derived from Probate Code § 145(r).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

Chapter 402. Administration

Subchapter A. General Provisions

§ 402.001. General Scope and Exercise of Powers
§ 402.002. Independent Executors May Act Without Court Approval

Subchapter B. Power of Sale

§ 402.051. Definition of Independent Executor
§ 402.052. Power of Sale of Estate Property Generally
§ 402.053. Protection of Person Purchasing Estate Property
§ 402.054. No Limitation on Other Action

Chapter 402. Administration

Subchapter A. General Provisions

§ 402.001. General Scope and Exercise of Powers

When an independent administration has been created, and the order appointing an independent executor has been entered by the probate court, and the inventory, appraisement, and list of claims has been filed by the independent executor and approved by the court or an affidavit in lieu of the inventory, appraisement, and list of claims has been filed by the independent executor, as long as the estate is represented by an independent executor, further action of any nature may not be had in the probate court except where this title specifically and explicitly provides for some action in the court.

Derived from Probate Code § 145(h).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 402.002. Independent Executors May Act Without Court Approval

Unless this title 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 subtitle 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 chapter.

Derived from Probate Code § 145B.

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

Subchapter B. Power of Sale

§ 402.051. Definition of Independent Executor

In this subchapter, "independent executor" does not include an independent administrator.

Derived from Probate Code § 145C(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 402.052. Power of Sale of Estate Property Generally

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.

Derived from Probate Code § 145C(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 402.053. Protection of Person Purchasing Estate Property

(a) 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:

(1) a power of sale is granted to the independent executor in the will;

(2) a power of sale is granted under Section 401.006 in the court order appointing the independent executor or independent administrator; or

(3) 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 356.251(1).

(b) As to acts undertaken in good faith reliance, the affidavit described by Subsection (a)(3) is conclusive proof, as between a purchaser of property from the estate, and the personal representative of an 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.

(c) This subchapter 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.

Derived from Probate Code § 145C(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 402.054. No Limitation on Other Action

This subchapter does not limit the authority of an independent executor 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 title, including the authority to enter into a lease and to borrow money.

Derived from Probate Code § 145C(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

Chapter 403. Exemptions and Allowances; Claims

Subchapter A. Exemptions and Allowances

§ 403.001. Setting Aside Exempt Property and Allowances

Subchapter B. Claims

§ 403.051. Duty of Independent Executor
§ 403.052. Secured Claims for Money
§ 403.053. Matured Secured Claims
§ 403.054. Preferred Debt and Lien Claims
§ 403.055. Certain Unsecured Claims; Barring of Claims
§ 403.056. Notices Required by Creditors
§ 403.057. Statute of Limitations
§ 403.058. Other Claim Procedures Generally Do Not Apply
§ 403.0585. Liability of Independent Executor for Payment of a Claim
§ 403.059. Enforcement of Claims by Suit
§ 403.060. Requiring Heirs to Give Bond

Chapter 403. Exemptions and Allowances; Claims

Statutes in Context
Chapter 403

The independent executor deals with creditors and sets aside exempt property and allowances just like a dependent executor but without court involvement. Note, however, that the courts have held that §§ 355.051, 355.052, and 355.064 do not apply to independent administrations. See *Bunting v. Pearson*, 430 S.W.2d 470 (Tex. 1968).

Subchapter A. Exemptions and Allowances

§ 403.001. Setting Aside Exempt Property and Allowances

The independent executor shall set aside and deliver to those entitled exempt property and allowances for support, and allowances in lieu of exempt property, as prescribed in this title, to the same extent and result as if the independent executor's actions had been accomplished in, and under orders of, the court.

Derived from Probate Code § 146(a)(4).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

Subchapter B. Claims

§ 403.051. Duty of Independent Executor

(a) 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 308.051 and 308.053;

(2) may give the notice to an unsecured creditor with a claim for money permitted under Section 308.054 and bar a claim under Section 403.055; and

(3) may approve or reject any claim, or take no action on a claim, and shall classify and pay claims approved or established by suit against the estate in the same order of priority, classification, and proration prescribed in this title.

(b) To be effective, the notice prescribed under Subsection (a)(2) must include, in addition to the other information required by Section 308.054, a statement that a claim may be effectively presented by only one of the methods prescribed by this subchapter.

Derived from Probate Code § 146(a)(1)-(3), (a-1).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 403.052. 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 308.053, whichever is later, a creditor with a claim for money secured by 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 section 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 maturity if it is determined to be in the best interest of the estate to do so.

Derived from Probate Code § 146(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 403.053. Matured Secured Claims

(a) A claim approved as a matured secured claim under Section 403.052 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 355.102. However, the secured creditor:

(1) is not entitled to exercise any remedies in a manner that prevents the payment of the higher priority claims and allowances; and

(2) 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.

(b) Subsection (a) 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.

(c) 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 Subchapter G, Chapter 255, 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 Sections 355.153(b), (c), (d), and (e) applicable to court supervised administrations.

Derived from Probate Code § 146(b-1).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 403.054. 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 Section 403.052 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.

Derived from Probate Code § 146(b-2).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 403.055. 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 308.054 shall give to the independent executor notice of the nature and amount of the claim before the 121st [~~not later than the 120th~~] day after the date the notice is received or the claim is barred.

Derived from Probate Code § 146(b-3).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch.

1136, § 53, eff. Jan. 1, 2014.

§ 403.056. Notices Required by Creditors

(a) Notice to the independent executor required by Sections 403.052 and 403.055 must be contained in:

(1) a written instrument that complies with Section 355.004 and 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 that complies with Section 355.004 or a pleading filed in the court in which the administration of the estate is pending.

(b) This section does not exempt a creditor who elects matured secured status from the filing requirements of Section 403.052, to the extent those requirements are applicable.

Derived from Probate Code § 146(b-4), (b-5).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2013, 83rd Leg., ch. 1136, § 54, eff. Jan. 1, 2014.

§ 403.057. 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.

Derived from Probate Code § 146(b-6).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 403.058. Other Claim Procedures Generally Do Not Apply

Except as otherwise provided by this subchapter, the procedural provisions of this title governing creditor claims in supervised administrations do not apply to independent administrations. By way of example, but not as a limitation:

(1) Sections 355.064 and 355.066 do 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 355.156, 355.157, 355.158, 355.159, and 355.160 do not apply to independent administrations.

Derived from Probate Code § 146(b-7).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 403.0585. Liability of Independent Executor for Payment of a Claim

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 independent executor 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.

Derived from Probate Code § 146(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 403.059. 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 possession of the independent executor that is subject to the debt. The independent executor shall not be required to plead to any suit brought against the executor for money until after six months after the date that an independent administration was created and the order appointing the executor was entered by the probate court.

Derived from Probate Code § 147.

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 403.060. Requiring Heirs to Give Bond

When an independent administration is created and the order appointing an independent executor is entered by the probate court, any person having a debt against the estate may, by written complaint filed in the probate court in which the order was entered, cause all distributees of the estate, heirs at law, and other persons entitled to any portion of the estate under the will, if any, to be cited by personal service to appear before the court and execute a bond for an amount equal to the amount of the creditor's claim or the full value of the estate, as shown by the inventory and list of claims, whichever is smaller. The bond must be payable to the judge, and the judge's successors, and be approved by the judge, and conditioned that all obligors shall pay all debts that shall be established against the estate in the manner provided by law. On the return of the citation served, unless a person so entitled to any portion of the estate, or some of them, or some other person for them, shall execute the bond to the satisfaction of the probate court, the estate shall be administered and settled under the direction of the probate 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 the bond, and shall

be entitled to judgment on the bond for the amount of their debt, or they may have their action against those in possession of the estate.

Derived from Probate Code § 148.

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

Chapter 404. Accountings, Successors, and Other Remedies

§ 404.001. Accounting

§ 404.002. Requiring Independent Executor to Give Bond

§ 404.003. Removal of Independent Executor Without Notice

§ 404.0036. Removal Order

§ 404.0037. Costs and Expenses Related to Removal of Independent Executor

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§ 404.005. Court-Appointed Successor Independent Executor

Chapter 404. Accountings, Successors, and Other Remedies

Statutes in Context
Chapter 404

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 independent executor received letters (§ 404.001), 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 (see § 405.001).

§ 404.001. Accounting

(a) At any time after the expiration of 15 months after the date that the court clerk first issues letters testamentary or of administration to any personal representative of an estate [~~an independent administration was created and the order appointing an independent executor was entered by the probate court~~], any person interested in the estate may demand an accounting from the independent executor. The independent executor shall 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 that has come into the executor's possession as executor;

(2) the disposition that has been made of the property described by Subdivision (1);

(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 the executor's possession;

(6) other facts as may be necessary to a full and definite understanding of the exact condition of the estate; and

(7) the facts, if any, that show why the administration should not be closed and the estate distributed.

(a-1) Any other interested person shall, on 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) Should the independent executor not comply with a demand for an accounting authorized by this section within 60 days after receipt of the demand, the person making the demand may compel compliance by an action in the probate court. After a hearing, the court shall enter an order requiring the accounting to be made at such time as it considers proper under the circumstances.

(c) 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 12 months, and such subsequent demands may be enforced in the same manner as an initial demand.

(d) 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 of the estate.

Derived from Probate Code § 149A.

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2013, 83rd Leg., ch. 1136, § 55, eff. Jan. 1, 2014.

§ 404.002. Requiring Independent Executor to Give Bond

When it has been provided by will, regularly probated, that an independent executor appointed by the will shall not be required to give bond for the management of the estate devised by the will, or the independent executor is not required to give bond because bond has been waived by court order as authorized under Section 401.005, then the independent executor may be required to give bond, on proper proceedings had for that purpose as in the case of personal representatives in a supervised administration, if it be made to appear at any time that the independent executor is mismanaging the property, or has betrayed or is about to betray the independent executor's trust, or has in some other way become disqualified.

Derived from Probate Code § 149.

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 404.003. Removal of Independent Executor Without Notice

The probate court, on the court's own motion or on the motion of any interested person, and without notice, may remove an independent executor appointed under this subtitle when:

(1) the independent executor cannot be served with notice or other processes because:

(A) the independent executor's whereabouts are unknown;

(B) the independent executor is eluding service; or

(C) the independent executor is a nonresident of this state without a designated resident agent; or

(2) sufficient grounds appear to support a belief that the independent executor has misapplied or embezzled, or is about to misapply or embezzle, all or part of the property committed to the independent executor's care.

New.

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 1136, § 56, eff. Jan. 1, 2014.

§ 404.0035. Removal of Independent Executor With Notice

(a) The probate court, on the court's own motion, may remove an independent executor appointed under this subtitle after providing 30 days' written notice of the court's intent to remove the independent executor, by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney of record, if the independent executor:

(1) neglects to qualify in the manner and time required by law; or

(2) fails to return, before the 91st day after the date the independent executor qualifies, either an inventory of the estate property and a list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisement, and list of claims, unless that deadline is extended by court order.

(b) The probate court, 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 90 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, appraisement, 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;

(2) [~~(4)~~] the independent executor fails to timely file the affidavit or certificate required by Section 308.004;

(3) [~~(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;

(4) [~~(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

(5) [~~(7)~~] the independent executor becomes incapable of properly performing the independent executor's fiduciary duties due to a material conflict of interest.

Derived from Probate Code § 149C.

Added by Acts 2013, 83rd Leg., ch. 1136, § 56, eff. Jan. 1, 2014.

§ 404.0036. Removal Order

(a) [~~(b)~~] The order of removal of an independent executor 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 independent executor. The order of removal shall require that letters issued to the removed independent executor shall be surrendered and that all letters shall be canceled of record.

(b) If an independent executor is removed by the court under Section 404.003 or 404.0035 [~~this section~~], the court may, on application, appoint a successor independent executor as provided by Section 404.005.

Derived from Probate Code § 149C.

Added by Acts 2013, 83rd Leg., ch. 1136, § 56, eff. Jan. 1, 2014.

§ 404.0037. Costs and Expenses Related to Removal of Independent Executor

(a) [~~(c)~~] An independent executor who defends an action for the independent executor's removal in good faith, whether successful or not, shall be allowed out of the estate the independent executor's necessary expenses and disbursements, including reasonable attorney's fees, in the removal proceedings.

(b) [~~(d)~~] Costs and expenses incurred by the party seeking removal that are incident to removal of an independent executor appointed without bond, including reasonable attorney's fees and expenses, may be paid out of the estate.

Derived from Probate Code § 149C.

Added by Acts 2013, 83rd Leg., ch. 1136, § 56, eff. Jan. 1, 2014.

§ 404.004. Powers of an Administrator Who Succeeds an Independent Executor

(a) Whenever a person has died, or shall die, testate, owning property in this state, and the person's will has been or shall be admitted to probate by the court, and the probated will names an independent executor or executors, or trustees acting in the capacity of independent executors, to execute the terms and provisions of that will, and the will grants to the independent executor, or executors, or trustees acting in the capacity of independent executors, the power to raise or borrow money and to mortgage, and the 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 probate court, 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 on the administrator under other provisions of the laws of this state, authorize, direct, and empower the 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 provisions of this section.

(b) The court, on application, citation, and hearing, may, by its order, authorize, direct, and empower the 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, on application and order, shall provide; and, if authorized by the court's order, to secure such loans, obligations, and debts, by pledge or mortgage on property or assets of the estate, real, personal, or mixed, on such terms and conditions, and for such duration of time, as the court shall consider to be in the best interests 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 the administrator in the administrator's official capacity.

(c) The court may order and authorize the administrator to have and exercise the powers and privileges set forth in Subsection (a) or (b) 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 the decedent, and then only in such cases as it appears, at the hearing of the application, that at the time of the appointment of the 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 the administrator orders the business of the estate to be carried on and it becomes necessary, from time to time, under orders of the court, for the administrator to borrow money and incur obligations and indebtedness in order to protect and preserve the estate.

(d) The court, in addition, may, on application, citation, and hearing, order, authorize, and empower the administrator to assume, exercise, and discharge, under the orders and directions of the 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 the decedent, as the court finds to be in the best interests of the estate and shall, from time to time, order and direct.

(e) The granting to the administrator by the court of some, or all, of the powers and authorities set forth in this section shall be on application filed by the 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) On the filing of an application under Subsection (e), the clerk shall issue citation to all persons interested in the estate, stating the nature of the application, and requiring those persons to appear on the return day named in such citation and show cause why the application should not be granted, should they choose to do so. The citation shall be served by posting.

(g) The court shall hear the application and evidence on the application, on or after the return day named in the citation, and, if satisfied a necessity exists and that it would be in the best interests of the estate to grant the application in whole or in part, the court shall so order; otherwise, the court shall refuse the application.

Derived from Probate Code § 154.

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 404.005. 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 the successor executor's 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 probate court for the appointment of a qualified person, firm, or corporation to serve as successor independent executor. If the probate court finds that continued administration of the estate is necessary, the 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 probate court finds that it would not be in the best interest of the estate to do so. The successor independent executor shall serve with all of the powers and privileges granted to the successor's predecessor independent executor.

(b) Except as otherwise provided by this subsection, if [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 probate 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 Subsection (a), the court may 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 probate court considers such an appointment necessary to protect the interest of that distributee. If a distributee described in this section is a minor and has no guardian of the person, a natural guardian of the minor may sign the application for the order continuing independent administration on the minor's behalf unless a conflict of interest exists between the minor and the natural guardian.

(c) Except as otherwise provided by this subsection, if [If] a trust is created in the decedent's will or if the decedent's will devises property to a trustee as described by Section 254.001, the person or class of persons entitled to receive property outright from the trust on the decedent's death and those 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 considered to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the 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 on the termination of the trust. If a person considered to be a distributee under this subsection is an incapacitated person, the trustee or cotrustee may apply for the order continuing independent administration or sign the application on the incapacitated person's behalf if the trustee or cotrustee is not the person proposed to serve as the independent executor.

(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 considered 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, 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 the distributee's interest in the decedent's estate.

(g) If a distributee of a decedent's estate should die, and if by virtue of the distributee's death the distributee's share of the decedent's estate shall become payable to the 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 under this section, then, unless the probate 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 the judge's successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in an amount 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 351.354 does not apply to an appointment of a successor independent executor under this section.

Derived from Probate Code § 154A.

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014. Subsecs. (b) and (c) amended by Acts 2013, 83rd Leg., ch. 1136, § 57, eff. Jan. 1, 2014.

Chapter 405. Closing and Distributions

§ 405.001. Accounting and Distribution

§ 405.002. Receipts and Releases for Distributions by Independent Executor

§ 405.003. Judicial Discharge of Independent Executor
§ 405.004. Closing Independent Administration by Closing Report or Notice of Closing Estate
§ 405.005. Closing Report
§ 405.006. Notice of Closing Estate
§ 405.007. Effect of Filing Closing Report or Notice of Closing Estate
§ 405.008. Partition and Distribution or Sale of Property Incapable of Division
§ 405.009. Closing Independent Administration on Application by Distributee
§ 405.010. Issuance of Letters
§ 405.011. Rights and Remedies Cumulative
§ 405.012. Closing Procedures Not Required

Chapter 405. Closing and Distributions

Statutes in Context
Chapter 405

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 received letters (§ 404.001), 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 (see § 405.001).

§ 405.001. Accounting and Distribution

(a) In addition to or in lieu of the right to an accounting provided by Section 404.001, at any time after the expiration of two years after 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 court 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 considers proper. The accounting shall include the information that the court considers 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 distributees 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 may:

(1) [~~shall~~] order partition and distribution, or sale, in the manner provided for the partition and distribution of property incapable of division in supervised estates; or

(2) order distribution of that portion of the estate incapable of distribution without prior partition or sale in undivided interests.

(c) If all the property in the estate is ordered distributed by the court and the estate is fully administered, the court may also 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.

Derived from Probate Code § 149B.

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2013, 83rd Leg., ch. 1136, § 58, eff. Jan. 1, 2014.

§ 405.002. Receipts and Releases for Distributions by Independent Executor

(a) 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.

(b) An independent executor may not require a waiver or release from the distributee as a condition of delivery of property to a distributee.

Derived from Probate Code § 151(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

Statutes in Context
§§ 405.003–405.009

There is no requirement that an independent administration be closed. § 405.012. The Code, however, provides three methods for closing the administration. (1) Section 405.004 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 405.009 permits an heir or beneficiary to petition the court for an order closing the estate. (3) Section 405.003 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.

Case law has indicated that the statutory closing methods are not exclusive. Final

distribution of the estate after creditors are paid may result 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).

§ 405.003. 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.

(d) On or before filing an action under this section, 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 independent executor's possession 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. The court may review the amount of assets on reserve and may order the independent executor to make further distributions under this section.

(e) Except as ordered by the court, the independent executor is entitled to pay from the estate legal fees, expenses, or other costs incurred in relation to a proceeding for judicial discharge filed under this section. The independent executor shall be personally liable to refund any amount of such fees, expenses, or other costs not approved by the court as a proper charge against the estate.

Derived from Probate Code §§ 149D, 149E, 149F.

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 405.004. Closing Independent Administration by 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 independent executor's possession will permit, when there is no pending litigation, and when the independent executor has distributed to the distributees entitled to the estate 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.

Derived from Probate Code § 151(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 405.005. Closing Report

An independent executor may file a closing report verified by affidavit that:

(1) shows:

(A) the property of the estate that came into the independent executor's possession;

(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 addresses of the distributees 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.

Derived from Probate Code § 151(a-1).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 405.006. Notice of Closing Estate

(a) Instead of filing a closing report under Section 405.005, an independent executor may file a notice of closing estate verified by affidavit that states:

(1) 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;

(2) that all remaining assets of the estate, if any, have been distributed; and

(3) 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.

(b) 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.

Derived from Probate Code § 151(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 405.007. Effect of Filing Closing Report or Notice of Closing Estate

(a) 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.

(b) 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 does 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.

(c) 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.

(d) 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.

(e) 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.

Derived from Probate Code § 151(c), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 405.008. 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 the estate, or if no will was probated, the independent executor may, but may not be required to, petition the probate court for either a 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. The estate or portion of the estate shall either be partitioned and distributed or sold, or both, in the manner provided for the partition and distribution of property and the sale of property incapable of division in supervised estates.

Derived from Probate Code § 150.

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 405.009. Closing Independent Administration on 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 the estate, any distributee may file an application to close the administration; and, after citation on the independent executor, and on hearing, the court may enter an order:

(1) requiring the independent executor to file a closing report meeting the requirements of Section 405.005;

(2) closing the administration;

(3) terminating the power of the independent executor to act as independent executor; 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 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.

Derived from Probate Code § 152.

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 405.010. Issuance of Letters

At any time before the authority of an independent executor has been terminated in the manner set forth in this subtitle, the clerk shall issue such number of letters testamentary as the independent executor shall request.

Derived from Probate Code § 153.

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 405.011. Rights and Remedies Cumulative

The rights and remedies conferred by this chapter are cumulative of other rights and remedies to which a

person interested in the estate may be entitled under law.

Derived from Probate Code § 149G.

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

§ 405.012. Closing Procedures Not Required

An independent executor is not required to close the independent administration of an estate under Section 405.003 or Sections 405.004 through 405.007.

New.

Added by Acts 2011, 82nd Leg., ch. 823, § 2.53, eff. Jan. 1, 2014.

SUBTITLE J. ADDITIONAL MATTERS RELATING TO THE ADMINISTRATION OF CERTAIN ESTATES

Chapter 451. Order of No Administration

§ 451.001. Application for Family Allowance and Order of No Administration
§ 451.002. Hearing and Order
§ 451.003. Effect of Order
§ 451.004. Proceeding to Revoke Order

Chapter 451. Order of No Administration

Statutes in Context
Chapter 451

Chapter 451 provides a procedure for a court to dispense with administration if (1) the decedent is survived by a spouse, minor child, or adult incapacitated child, 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.

§ 451.001. Application for Family Allowance and Order of No Administration

(a) If the value of the entire assets of an estate, excluding 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, an application may be filed by or on behalf of the surviving spouse, minor children, or adult incapacitated children requesting a court to make a family allowance and to enter an order that no administration of the decedent's estate is necessary.

(b) The application may be filed:

(1) in any court in which venue is proper for administration; or

(2) if an application for the appointment of a personal representative has been filed but not yet granted, in the court in which the application is filed.

(c) The application must:

(1) state the names of the heirs or devisees;

(2) list, to the extent known, estate creditors together with the amounts of the claims; and

(3) describe all property belonging to the estate, together with:

(A) the estimated value of the property according to the best knowledge and information of the applicant; and

(B) the liens and encumbrances on the property.

(d) The application must also include a prayer that the court make a family allowance and that, if the family allowance exhausts the entire assets of the estate, excluding homestead and exempt property, the entire assets of the estate be set aside to the surviving spouse, minor children, and adult incapacitated children, as with other family allowances provided for by Subchapter C, Chapter 353.

Derived from Probate Code § 139.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsecs. (a) and (d) amended by Acts 2011, 82nd Leg., ch. 810, § 2.15, eff. Jan. 1, 2014.

§ 451.002. Hearing and Order

(a) On the filing of an application under Section 451.001, the court may hear the application:

(1) promptly without notice; or

(2) at a time and with notice as required by the court.

(b) On the hearing of the application, if the court finds that the facts contained in the application are true and that the expenses of last illness, funeral charges, and expenses of the proceeding have been paid or secured, the court shall:

(1) make a family allowance; and

(2) if the entire assets of the estate, excluding homestead and exempt property, are exhausted by the family allowance made under Subdivision (1):

(A) assign to the surviving spouse, minor children, and adult incapacitated children the entire estate in the same manner and with the same effect as provided in Subchapter C, Chapter 353, for the making of a family allowance to the surviving spouse, minor children, and adult incapacitated children; and

(B) order that there shall be no administration of the estate.

Derived from Probate Code § 140.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1,

2014. Subsec. (b) amended by Acts 2011, 82nd Leg., ch. 810, § 2.16, eff. Jan. 1, 2014.

§ 451.003. Effect of Order

(a) An order of no administration issued under Section 451.002(b) constitutes sufficient legal authority to each person who owes money, has custody of property, or acts as registrar or transfer agent of any evidence of interest, indebtedness, property, or right, belonging to the estate, and to each person purchasing from or otherwise dealing with the estate, for payment or transfer without administration to the persons described in the order as entitled to receive the estate.

(b) The persons described in the order are entitled to enforce by suit their right to payment or transfer described by this section.

Derived from Probate Code § 141.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 451.004. Proceeding to Revoke Order

(a) At any time, but not later than the first anniversary of the date of entry of an order of no administration under Section 451.002(b), any interested person may file an application to revoke the order.

(b) An application to revoke the order must allege that:

(1) other estate property has been discovered, property belonging to the estate was not included in the application for no administration, or the property described in the application for no administration was incorrectly valued; and

(2) if that property were added, included, or correctly valued, as applicable, the total value of the property would exceed the amount necessary to justify the court in ordering no administration.

(c) The court shall revoke the order on proof of any of the grounds described by Subsection (b).

(d) If the value of any property is contested, the court may appoint two appraisers to appraise the property in accordance with the procedure prescribed for inventories and appraisements under Chapter 309. The appraisement of the appointed appraisers shall be received in evidence but is not conclusive.

Derived from Probate Code § 142.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 452. Temporary Administration of Estates

Subchapter A. Appointment of Temporary Administrator Generally

§ 452.001. Duty to Appoint Temporary Administrator
§ 452.002. Application for Appointment
§ 452.003. Order of Appointment; Requirements
§ 452.004. Temporary Administrator's Bond
§ 452.005. Issuance of Letters of Temporary Administration
§ 452.006. Notice of Appointment
§ 452.007. Hearing to Contest Appointment
§ 452.008. Permanent Appointment

Subchapter B. Temporary Administration Pending Contest of a Will or Administration

§ 452.051. Appointment of Temporary Administrator
§ 452.052. Additional Powers Regarding Claims

Subchapter C. Powers and Duties of Temporary Administrator

§ 452.101. Limited Powers of Temporary Administrator
§ 452.102. Additional Bond for Extension of Rights and Powers

Subchapter D. Expiration and Closing of Temporary Administration

§ 452.151. Accounting
§ 452.152. Closing Temporary Administration

Chapter 452. Temporary Administration of Estates

Subchapter A. Appointment of Temporary Administrator Generally

Statutes in Context
Chapter 452, Subchapter A

Chapter 452, Subchapter A, 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 § 22.018, may request a temporary administration.

§ 452.001. Duty to Appoint Temporary Administrator

A judge who determines that the interest of a decedent's estate requires the immediate appointment of a personal representative shall, by written order, appoint a temporary administrator with powers limited as the circumstances of the case require.

Derived from Probate Code § 131A(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 452.002. Application for Appointment

(a) A person may file with the court clerk a written application for the appointment of a temporary

administrator of a decedent's estate under this subchapter.

(b) The application must:

(1) be verified;

(2) include the information required by:

(A) Sections 256.052, 256.053, and 256.054, if the decedent died testate; or

(B) Section 301.052, if the decedent died intestate; and

(3) include an affidavit that:

(A) states the name, address, and interest of the applicant;

(B) states the facts showing an immediate necessity for the appointment of a temporary administrator;

(C) lists the requested powers and duties of the temporary administrator;

(D) states that the applicant is entitled to letters of temporary administration and is not disqualified by law from serving as a temporary administrator; and

(E) describes the property that the applicant believes to be in the decedent's estate.

Derived from Probate Code § 131A(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 452.003. Order of Appointment; Requirements

The order appointing a temporary administrator must:

(1) designate the appointee as "temporary administrator" of the decedent's estate;

(2) specify the period of the appointment, which may not exceed 180 days unless the appointment is made permanent under Section 452.008;

(3) define the powers given to the appointee; and

(4) set the amount of bond to be given by the appointee.

Derived from Probate Code §§ 131A(a), (c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 452.004. Temporary Administrator's Bond

(a) In this section, "business day" means a day other than a Saturday, Sunday, or holiday recognized by this state.

(b) Not later than the third business day after the date of the order appointing a temporary administrator, the appointee shall file with the county clerk a bond in the amount ordered by the court.

Derived from Probate Code § 131A(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 452.005. Issuance of Letters of Temporary Administration

Not later than the third day after the date an appointee qualifies as temporary administrator, the county clerk shall issue to the appointee letters of temporary administration that list the powers to be exercised by the appointee as ordered by the court.

Derived from Probate Code § 131A(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 452.006. Notice of Appointment

(a) On the date the county clerk issues letters of temporary administration:

(1) the county clerk shall post on the courthouse door a notice of the appointment to all interested persons; and

(2) the appointee shall notify, by certified mail, return receipt requested, the decedent's known heirs of the appointment.

(b) A notice required under Subsection (a) must state that:

(1) an heir or other interested person may request a hearing to contest the appointment not later than the 15th day after the date the letters of temporary administration are issued;

(2) if no contest is made during the period specified by the notice, the appointment continues for the period specified in the order appointing a temporary administrator; and

(3) the court may make the appointment permanent.

Derived from Probate Code §§ 131A(f), (g), (h).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 452.007. Hearing to Contest Appointment

(a) A hearing shall be held and a determination made not later than the 10th day after the date an heir or other interested person requests a hearing to contest the appointment of a temporary administrator. If a request is not made on or before the 15th day after the date the letters of temporary administration are issued, the appointment of a temporary administrator continues for the period specified in the order, unless the appointment is made permanent under Section 452.008.

(b) While a contest of the appointment of a temporary administrator is pending, the temporary appointee shall continue to act as administrator of the estate to the extent of the powers given by the appointment.

(c) A court that sets aside a temporary administrator's appointment may require the temporary administrator to prepare and file, under oath, a complete exhibit of the condition of the estate and detail any disposition of the estate property made by the temporary administrator.

Derived from Probate Code § 131A(i).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 452.008. Permanent Appointment

At the end of a temporary administrator's period of appointment, the court by written order may make the appointment permanent if the permanent appointment is in the interest of the estate.

Derived from Probate Code § 131A(j).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Temporary Administration Pending Contest of a Will or Administration

Statutes in Context
Chapter 452, Subchapter B

Chapter 452, Subchapter B, provides for the creation of a temporary administration pending the contest of a will if no executor has yet to be appointed.

§ 452.051. Appointment of Temporary Administrator

(a) If a contest related to probating a will or granting letters of administration is pending, the court may appoint a temporary administrator, with powers limited as the circumstances of the case require.

(b) The appointment may continue until the contest is terminated and an executor or administrator with full powers is appointed.

(c) The power of appointment under this section is in addition to the court's power of appointment under Subchapter A.

Derived from Probate Code § 132(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 452.052. Additional Powers Regarding Claims

(a) A court that grants temporary administration pending a will contest or a contest on an application for letters of administration may, at any time while the contest is pending, give the temporary administrator all the powers of a permanent administrator regarding claims against the estate.

(b) If the court gives the temporary administrator powers described by Subsection (a), the court and the temporary administrator shall act in the same manner as in permanent administration in matters such as:

(1) approving or disapproving claims;

(2) paying claims; and

(3) selling property to pay claims.

(c) The court shall require a temporary administrator given powers described by Subsection (a) to give bond in the full amount required of a permanent administrator.

(d) This section is cumulative and does not affect the court's right to order a temporary administrator to perform any action described by this section in other cases if the action is necessary or expedient to preserve the estate pending the contest's final determination.

Derived from Probate Code § 132(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Powers and Duties of Temporary Administrator

§ 452.101. Limited Powers of Temporary Administrator

(a) A temporary administrator may exercise only the rights and powers:

(1) specifically expressed in the court's order appointing the temporary administrator; or

(2) expressed in the court's subsequent orders.

(b) An act performed by a temporary administrator is void unless expressly authorized by the court's orders.

Derived from Probate Code § 133.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 452.102. Additional Bond for Extension of Rights and Powers

A court that extends the rights and powers of a temporary administrator in an order subsequent to the order appointing the temporary administrator may require additional bond commensurate with the extension.

Derived from Probate Code § 133.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter D. Expiration and Closing of Temporary Administration

§ 452.151. Accounting

At the expiration of a temporary appointment, the temporary administrator shall file with the court clerk:

(1) a sworn list of all estate property that has come into the temporary administrator's possession;

(2) a return of all sales made by the temporary administrator; and

(3) a full exhibit and account of all the temporary administrator's acts as temporary administrator.

Derived from Probate Code § 134.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 452.152. Closing Temporary Administration

(a) The court shall act on the list, return, exhibit, and account filed under Section 452.151.

(b) When letters of temporary administration expire or become ineffective for any cause, the court immediately shall enter an order requiring the temporary administrator to promptly deliver the estate remaining in the temporary administrator's possession to the person legally entitled to possession of the estate.

(c) On proof of delivery under Subsection (b), the temporary administrator shall be discharged and the sureties on the temporary administrator's bond shall be released as to any future liability.

Derived from Probate Code § 135.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 453. Administration of Community Property

§ 453.001. Effect of Chapter
§ 453.002. Administration of Community Property Not Necessary
§ 453.003. General Powers of Surviving Spouse if No Administration is Pending
§ 453.004. Collection of Unpaid Wages if No Administration is Pending
§ 453.005. Remarriage of Surviving Spouse
§ 453.006. Account of Community Debts and Disposition of Community Property
§ 453.007. Delivery of Community Estate on Final Partition
§ 453.008. Liability of Surviving Spouse for Loss
§ 453.009. Distribution of Powers Between Personal Representative and Surviving Spouse

Chapter 453. Administration of Community Property

§ 453.001. Effect of Chapter

This chapter does not prohibit the administration of community property under other provisions of this title relating to the administration of an estate.

Derived from Probate Code § 155.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§ 453.002

Section 453.002 provides 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).

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§ 453.002. Administration of Community Property Not Necessary

If a spouse dies intestate and the community property passes to the surviving spouse, no administration of the community property is necessary.

Derived from Probate Code § 155.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Statutes in Context
§§ 453.003–453.004

Sections 453.003–453.004 permit 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.

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§ 453.003. General Powers of Surviving Spouse if No Administration Is Pending

(a) If there is no qualified executor or administrator of a deceased spouse's estate, the surviving spouse, as the surviving partner of the marital partnership, may:

(1) sue and be sued to recover community property;

(2) sell, mortgage, lease, and otherwise dispose of community property to pay community debts;

(3) collect claims due to the community estate; and

(4) exercise other powers as necessary to:

(A) preserve the community property;

(B) discharge community obligations; and

(C) wind up community affairs.

(b) This section does not affect the disposition of the deceased spouse's property.

Derived from Probate Code §§ 160(a), (c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 453.004. Collection of Unpaid Wages if No Administration Is Pending

(a) If a person who owes money to the community estate for current wages at the time of a deceased spouse's death is provided an affidavit stating that the affiant is the surviving spouse and that no one has qualified as executor or administrator of the deceased spouse's estate, the person who pays or delivers to the affiant the deceased spouse's final paycheck for the wages, including any unpaid sick pay or vacation pay, is released from liability to the same extent as if the payment or delivery is made to the deceased spouse's personal representative. The person is not required to inquire into the truth of the affidavit.

(b) An affiant to whom the payment or delivery is made under Subsection (a) is answerable to a person having a prior right and is accountable to a personal representative who is appointed. The affiant is liable for any damage or loss to a person that arises from a payment or delivery made in reliance on the affidavit.

(c) This section does not affect the disposition of the deceased spouse's property.

Derived from Probate Code §§ 160(b), (c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 453.005. Remarriage of Surviving Spouse

The remarriage of a surviving spouse does not terminate the surviving spouse's powers as a surviving partner.

Derived from Probate Code § 176.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 453.006. Account of Community Debts and Disposition of Community Property

(a) The surviving spouse shall keep a fair and full account and statement of:

(1) all community debts and expenses paid by the surviving spouse; and

(2) the disposition made of the community property.

(b) 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 an estate described by Sections 101.052(a) and (b).

Derived from Probate Code §§ 156, 168.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 453.007. Delivery of Community Estate on Final Partition

On final partition of the community estate, the surviving spouse shall deliver to the deceased spouse's heirs or devisees their interest in the estate, and the increase in and profits of the interest, after deducting from the interest:

(1) the proportion of the community debts chargeable to the interest;

(2) unavoidable losses;

(3) necessary and reasonable expenses; and

(4) a reasonable commission for the management of the interest.

Derived from Probate Code § 168.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 453.008. Liability of Surviving Spouse for Loss

A surviving spouse is not liable for a loss sustained by the community estate unless the surviving spouse is guilty of gross negligence or bad faith.

Derived from Probate Code § 168.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 453.009. Distribution of Powers Between Personal Representative and Surviving Spouse

(a) A qualified personal representative of a deceased spouse's estate may administer:

(1) the separate property of the deceased spouse;

(2) the community property that was by law under the management of the deceased spouse during the marriage; and

(3) the community property that was by law under the joint control of the spouses during the marriage.

(b) The surviving spouse, as surviving partner of the marital partnership, is entitled to:

(1) retain possession and control of the community property that was legally under the sole management of the surviving spouse during the marriage; and

(2) exercise over that property any power this chapter authorizes the surviving spouse to exercise if there is no administration pending on the deceased spouse's estate.

(c) The surviving spouse, by written instrument filed with the clerk, may waive any right to exercise powers as community survivor. If the surviving spouse files a waiver under this subsection, the deceased spouse's personal representative may administer the entire community estate.

Derived from Probate Code § 177.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 454. Administration of Estate of Person Presumed Dead

Subchapter A. Estates of Persons Presumed Dead

§ 454.001. Applicability; Determination of Death
§ 454.002. Grant of Letters on Proof of Death
§ 454.003. Citation and Search
§ 454.004. Distribution of Estate

Subchapter B. Persons Presumed Dead but Subsequently Proved Living

§ 454.051. Restoration of Estate
§ 454.052. Liability of Personal Representative and Others Acting Under Court Order; Bonds Not Voided

Chapter 454. Administration of Estate of Person Presumed Dead

Subchapter A. Estates of Persons Presumed Dead

§ 454.001. Applicability; Determination of Death

(a) This subchapter applies in a proceeding to probate a person's will or administer a person's estate if there is no direct evidence that the person is dead.

(b) The court has jurisdiction to determine the fact, time, and place of the person's death.

Derived from Probate Code § 72(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 454.002. Grant of Letters on Proof of Death

On application for the grant of letters testamentary or of administration for the estate of a person presumed to be dead, the court shall grant the letters if the death of the person is proved by circumstantial evidence to the court's satisfaction.

Derived from Probate Code § 72(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 454.003. Citation and Search

(a) If the fact of a person's death must be proved by circumstantial evidence under Section 454.002, at the request of any interested person, the court may order that a citation be issued to the person presumed dead and that the citation be served on the person by publication and posting and by additional methods as directed by the order.

(b) After letters testamentary or of administration are issued, the court may also direct:

(1) the personal representative to search for the person presumed dead by notifying law enforcement agencies and public welfare agencies in appropriate locations that the person has disappeared; and

(2) the applicant to engage the services of an investigative agency to search for the person presumed dead.

(c) The expense of a search or notice under this section shall be taxed to the estate as a cost and paid out of the estate property.

Derived from Probate Code § 72(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 454.004. Distribution of Estate

The personal representative of the estate of a person presumed dead may not distribute the estate to the persons entitled to the estate until the third anniversary of the date the court granted the letters under Section 454.002.

Derived from Probate Code § 72(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Persons Presumed Dead but Subsequently Proved Living

§ 454.051. Restoration of Estate

(a) Except as provided by Subsection (b), a person who was proved by circumstantial evidence to be dead under Section 454.002 and who, in a subsequent action, is proved by direct evidence to have been living at any time after the date the court granted the letters under that section, is entitled to restoration of the person's estate or the residue of the person's estate, including the rents and profits from the estate.

(b) For estate property sold by the personal representative of the estate, a distributee, or a distributee's successors or assignees to a bona fide purchaser for value, the right of a person to restoration is limited to the proceeds of the sale or the residue of the sold property with any increase of the proceeds or the residue.

Derived from Probate Code § 72(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 454.052. Liability of Personal Representative and Others Acting Under Court Order; Bonds Not Voided

(a) Anyone, including a personal representative, who delivered to another the estate or any part of the estate of a person who was proved by circumstantial evidence to be dead under Section 454.002 and who, in a subsequent action, is proved by direct evidence to have been living at any time after the date the court granted the letters testamentary or of administration under that section is not liable for any part of the estate delivered in accordance with the court's order.

(b) Subject to Subsection (c), the bond of a personal representative of the estate of a person described by Subsection (a) is not void in any event.

(c) A surety is not liable for any act of the personal representative that was done in compliance with or approved by the court's order.

Derived from Probate Code § 72(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

CHAPTER 455. PUBLIC PROBATE ADMINISTRATOR

§ 455.001. Definition
§ 455.002. Bond of Public Probate Administrator
§ 455.003. Funding of Public Probate Administrator's Office
§ 455.004. Powers and Duties
§ 455.005. Informing Public Probate Administrator

§ 455.006. Public Probate Administrator's Initiation of Administration
§ 455.007. Access to Information
§ 455.008. Small Estates
§ 455.010. Grant of Administration
§ 455.011. Withdrawal of Public Probate Administrator and Appointment of Successor
§ 455.012. Deposit of Funds Into the County Treasury

CHAPTER 455. PUBLIC PROBATE ADMINISTRATOR

Statutes in Context
Chapter 455

The judge of a statutory probate court (with commissioner court approval) may appoint a "public probate administrator" for all of the statutory probate courts in the county. If there are multiple probate courts, the judges are to designate one among them to appoint and administer the public probate administrator office. This PPA (which may be a charitable organization or other suitable entity) is responsible for taking control of decedents' estates when no one has been appointed as the personal representative, there are no known or suitable relatives, and the estate may be subject to loss or misappropriation. The PPA is also responsible for determining whether there are heirs or a will and making burial arrangements. There are also expedited provisions for small estates (§ 455.009), and extremely expedited provisions for extremely small estates (§ 455.008).

§ 455.001. Definition

In this chapter, "public probate administrator" means the public probate administrator appointed under Section 25.00251, Government Code.

New.

Added by Acts 2013, 83rd Leg., ch. 671, § 2, eff. Jan. 1, 2014.

§ 455.002. Bond Of Public Probate Administrator

(a) The public probate administrator must execute an official bond of at least $100,000 conditioned as required by law and payable to the statutory probate court judge who appointed the public probate administrator.

(b) In addition to the official bond of office, at any time, for good cause, the statutory probate court judge who appointed the public probate administrator may require the administrator to post an additional corporate surety bond for individual estates. The additional bonds shall bear the written approval of the judge requesting the additional bond.

(c) The county may choose to self-insure the public probate administrator for the minimum bond amount required by this section.

New.

Added by Acts 2013, 83rd Leg., ch. 671, § 2, eff. Jan. 1, 2014.

§ 455.003. Funding of Public Probate Administrator's Office

A public probate administrator is entitled to commissions under Subchapter A, Chapter 352, to be paid into the county treasury. The public probate administrator's office, including salaries, is funded, in part, by the commissions.

New.

Added by Acts 2013, 83rd Leg., ch. 671, § 2, eff. Jan. 1, 2014.

§ 455.004. Powers and Duties

(a) On receipt of notice of a decedent for whose estate a personal representative has not been appointed and who has no known or suitable next of kin, the public probate administrator shall take prompt possession or control of the decedent's property located in the county that:

(1) is considered by the public probate administrator to be subject to loss, injury, waste, or misappropriation; or

(2) the court orders into the possession and control of the public probate administrator after notice to the public probate administrator.

(b) The public probate administrator is responsible for determining if the decedent has any heirs or a will and, if necessary, shall make burial arrangements with the appropriate county facility in charge of indigent burial if there are no known personal representatives.

(c) If the public probate administrator determines the decedent executed a will, the administrator shall file the will with the county clerk.

(d) The public probate administrator has all of the powers and duties of an administrator under this title.

(e) The public probate administrator may dispose of any unclaimed property by public auction or private sale, or donation to a charity, if appropriate.

(f) The statutory probate court judge or commissioners court may request accountings in addition to accountings otherwise required by this title.

New.

Added by Acts 2013, 83rd Leg., ch. 671, § 2, eff. Jan. 1, 2014.

§ 455.005. Informing Public Probate Administrator

(a) If a public officer or employee knows of a decedent without known or suitable next of kin or knows of property of a decedent that is subject to loss, injury, waste, or misappropriation, the officer or employee may inform the public probate administrator of that fact.

(b) If a person dies in a hospital, mental health facility, or board and care facility without known or suitable next of kin, the person in charge of the hospital or facility may give immediate notice of that fact to the public probate administrator of the county in which the hospital or facility is located.

(c) A funeral director in control of a decedent's remains may notify the public probate administrator if:

(1) none of the persons listed in Section 711.002, Health and Safety Code, can be found after a reasonable inquiry or contacted by reasonable means; or

(2) any of the persons listed in Section 711.002, Health and Safety Code, refuses to act.

New.

Added by Acts 2013, 83rd Leg., ch. 671, § 2, eff. Jan. 1, 2014.

§ 455.006. Public Probate Administrator's Initiation of Administration

(a) The public probate administrator shall investigate a decedent's estate and circumstances to determine if the opening of an administration is necessary if the public probate administrator has reasonable cause to believe that the decedent found in the county or believed to be domiciled in the county in which the administrator is appointed does not have a personal representative appointed for the decedent's estate.

(b) The public probate administrator shall secure a decedent's estate or resolve any other circumstances related to a decedent, if, after the investigation, the public probate administrator determines that:

(1) the decedent has an estate that may be subject to loss, injury, waste, or misappropriation; or

(2) there are other circumstances relating to the decedent that require action by the public probate administrator.

(c) To establish reasonable cause under Subsection (a), the public probate administrator may require an information letter about the decedent that contains the following:

(1) the name, address, date of birth, and county of residence of the decedent;

(2) a description of the relationship between the interested person and the decedent;

(3) a statement of the suspected cause of death of the decedent;

(4) the names and telephone numbers of any known friends or relatives of the decedent;

(5) a description of any known property of the decedent, including the estimated value of the property; and

(6) a statement of whether the property is subject to loss, injury, waste, or misappropriation.

New.

Added by Acts 2013, 83rd Leg., ch. 671, § 2, eff. Jan. 1, 2014.

§ 455.007. Access to Information

(a) A public probate administrator who has made an investigation under Section 455.006 may present to the statutory probate court judge a statement of the known facts relating to a decedent with a request for permission to take possession or control of property of the decedent and further investigate the matter.

(b) On presentation of a statement under Subsection (a), a statutory probate court judge may issue an order authorizing the public probate administrator to take possession or control of property under this chapter. A public probate administrator may record the order in any county in which property subject to the order is located.

(c) On presentation of an order issued under this section, a financial institution, governmental or private agency, retirement fund administrator, insurance company, licensed securities dealer, or any other person shall perform the following without requiring a death certificate or letters of administration and without inquiring into the truth of the order:

(1) provide the public probate administrator complete information concerning property held in the name of the decedent referenced in the order, without charge, including the names and addresses of any beneficiaries and any evidence of a beneficiary designation; and

(2) grant the public probate administrator access to a safe deposit box rented in the name of the decedent referenced in the order, without charge, for the purpose of inspection and removal of its contents.

(d) Costs and expenses incurred in drilling or forcing a safe deposit box open under Subsection (c) shall be paid by the decedent's estate.

New.

Added by Acts 2013, 83rd Leg., ch. 671, § 2, eff. Jan. 1, 2014.

§ 455.008. Small Estates

(a) If gross assets of an estate do not exceed 10 percent of the maximum amount authorized for a small estate affidavit under Section 205.001, the public probate administrator may act without issuance of letters testamentary or of administration if the court approves a statement of administration stating:

(1) the name and domicile of the decedent;

(2) the date and place of death of the decedent; and

(3) the name, address, and relationship of each known heir or devisee of the decedent.

(b) On approval of the statement of administration, the public probate administrator may:

(1) take possession of, collect, manage, and secure the personal property of the decedent;

(2) sell the decedent's personal property at private or public sale or auction, without a court order;

(3) distribute personal property to the estate's personal representative if one is appointed after the statement of administration is filed;

(4) distribute personal property to a distributee of the decedent who presents an affidavit complying with Chapter 205;

(5) sell or abandon perishable property of the decedent if necessary to preserve the estate;

(6) make necessary funeral arrangements for the decedent and pay reasonable funeral charges with estate assets;

(7) distribute to a minor heir or devisee for whom a guardian has not been appointed the share of an intestate estate or a devise to which the heir or devisee is entitled; and

(8) distribute allowances and exempt property as provided by this title.

(c) On the distribution of property and internment of the decedent under this section, the public probate administrator shall file with the clerk an affidavit, to be approved by the court, detailing:

(1) the property collected;

(2) the property's distribution;

(3) the cost of internment; and

(4) the place of internment.

New.

Added by Acts 2013, 83rd Leg., ch. 671, § 2, eff. Jan. 1, 2014.

§ 455.009. Small Estate Affidavit

(a) If gross assets of an estate do not exceed the maximum amount authorized for a small estate affidavit under Section 205.001, the public probate administrator may file an affidavit that complies with Chapter 205 for approval by the statutory probate court judge.

(b) If the statutory probate court judge approves the affidavit, the affidavit:

(1) must be maintained or recorded as provided by Section 205.005; and

(2) has the effect described by Section 205.007.

New.

Added by Acts 2013, 83rd Leg., ch. 671, § 2, eff. Jan. 1, 2014.

§ 455.010 Grant of Administration

(a) A public probate administrator shall file an application for letters of administration or administration with will annexed as provided by this title:

(1) if gross assets of an estate exceed the maximum amount authorized for a small estate affidavit under Section 205.001;

(2) if the property of the decedent cannot be disposed of using other methods detailed in this chapter; or

(3) at the discretion of the public probate administrator or on order of the statutory probate court judge.

(b) After issuance of letters of administration, the public probate administrator is considered a personal representative under this title and has all of the powers and duties of a personal representative under this title.

New.

Added by Acts 2013, 83rd Leg., ch. 671, § 2, eff. Jan. 1, 2014.

§ 455.011. Withdrawal of Public Probate Administrator and Appointment of Successor

(a) If a public probate administrator has taken any action under Section 455.008, 455.009, or 455.010 and a qualified person more entitled to serve as a personal representative under Section 304.001 comes forward or a will of a decedent is found naming an executor, the public probate administrator may surrender the administration of the estate and the assets of the estate to the person once the person has qualified under this title.

(b) Before surrendering the administration of the estate, the public probate administrator must file a verified 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 rejected and may be established later;

(4) the property of the estate in the administrator's possession; and

(5) any other facts that are necessary in determining the condition of the estate.

(c) The court may require any other filing from the public probate administrator that the court considers appropriate to fully show the condition of the estate before surrendering the estate under this section.

New.

Added by Acts 2013, 83rd Leg., ch. 671, § 2, eff. Jan 1, 2014.

§ 455.012. Deposit of Funds Into the County Treasury

The public probate administrator shall deposit all funds coming into the custody of the administrator in the county treasury. Funds deposited must be dispersed at the direction of the public probate administrator and according to the guidelines of the county treasurer or auditor.

New.

Added by Acts 2013, 83rd Leg., ch. 671, § 2, eff. Jan. 1, 2014.

SUBTITLE K. FOREIGN WILLS, OTHER TESTAMENTARY INSTRUMENTS, AND FIDUCIARIES

Statutes in Context
Subtitle K

Subtitle K addresses 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.

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.

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.

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, this will could be probated in Texas even though it was rejected by the domiciliary state.

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.

Chapter 501. Ancillary Probate of Foreign Will

§ 501.001. Authority for Ancillary Probate of Foreign Will
§ 501.002. Application for Ancillary Probate of Foreign Will
§ 501.003. Citation and Notice
§ 501.004. Recording by Clerk
§ 501.005. Effect of Filing and Recording Foreign Will
§ 501.006. Ancillary Letters Testamentary
§ 501.007. Effect on Property
§ 501.008. Setting Aside of Certain Foreign Wills

Chapter 501. Ancillary Probate of Foreign Will

§ 501.001. Authority for Ancillary Probate of Foreign Will

The written will of a testator who was not domiciled in this state at the time of the testator's death may be admitted to probate in this state if:

(1) the will would affect any property in this state; and

(2) proof is presented that the will stands probated or otherwise established in any state of the United States or a foreign nation.

Derived from Probate Code § 95(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 501.002. Application for Ancillary Probate of Foreign Will

(a) An application for ancillary probate in this state of a foreign will admitted to probate or otherwise established in the jurisdiction in which the testator was domiciled at the time of the testator's death is required to indicate only that probate in this state is requested on the basis of the authenticated copy of the foreign proceedings in which the will was admitted to probate or otherwise established.

(b) An application for ancillary probate in this state of a foreign will that has been admitted to probate or otherwise established in a jurisdiction other than the jurisdiction in which the testator was domiciled at the time of the testator's death must:

(1) include all information required for an application for probate of a domestic will; and

(2) state the name and address of:

(A) each devisee; and

(B) each person who would be entitled to a portion of the estate as an heir in the absence of a will.

(c) An application described by Subsection (a) or (b) must include for filing a copy of the foreign will and the judgment, order, or decree by which the will was admitted to probate or otherwise established. The copy must:

(1) be attested by and with the original signature of the court clerk or other official who has custody of the will or who is in charge of probate records;

(2) include a certificate with the original signature of the judge or presiding magistrate of the court stating that the attestation is in proper form; and

(3) have the court seal affixed, if a court seal exists.

Derived from Probate Code §§ 95(b)(1), (2), (c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 501.003. Citation and Notice

(a) Citation or notice is not required for an application described by Section 501.002(a).

(b) For an application described by Section 501.002(b), a citation shall be issued and served by registered or certified mail on each devisee and heir identified in the application.

Derived from Probate Code §§ 95(b)(1), (2).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 501.004. Recording by Clerk

(a) If a foreign will submitted for ancillary probate in this state has been admitted to probate or otherwise established in the jurisdiction in which the testator was domiciled at the time of the testator's death, it is the ministerial duty of the court clerk to record the will and the evidence of the will's probate or other establishment in the judge's probate docket.

(b) If a foreign will submitted for ancillary probate in this state has been admitted to probate or otherwise established in a jurisdiction other than the jurisdiction in which the testator was domiciled at the time of the testator's death, and a contest against the ancillary probate is not filed as authorized by Chapter 504, the court clerk shall record the will and the evidence of the will's probate or other establishment in the judge's probate docket.

(c) A court order is not necessary for the recording of a foreign will in accordance with this section.

Derived from Probate Code §§ 95(d)(1), (2).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsecs. (a) and (b) amended by Acts 2011, 82nd Leg., ch. 90, § 8.019, eff. Jan. 1, 2014.

§ 501.005. Effect of Filing and Recording Foreign Will

On filing and recording a foreign will in accordance with this chapter, the foreign will:

(1) is considered to be admitted to probate; and

(2) has the same effect for all purposes as if the original will had been admitted to probate by order of a court of this state, subject to contest in the manner and to the extent provided by Chapter 504.

Derived from Probate Code §§ 95(d)(1), (2).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 501.006. Ancillary Letters Testamentary

(a) On application, an executor named in a foreign will admitted to ancillary probate in this state in accordance with this chapter is entitled to receive ancillary letters testamentary on proof made to the court that:

(1) the executor has qualified to serve as executor in the jurisdiction in which the will was previously admitted to probate or otherwise established; and

(2) the executor is not disqualified from serving in that capacity in this state.

(b) After the proof required by Subsection (a) is made, the court shall enter an order directing that ancillary letters testamentary be issued to the executor. The court shall revoke any letters of administration previously issued by the court to any other person on application of the executor after personal service of citation on the person to whom the letters were issued.

Derived from Probate Code § 105.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 501.007. Effect on Property

A foreign will admitted to ancillary probate in this state as provided by this chapter after having been admitted to probate or otherwise established in the jurisdiction in which the testator was domiciled at the time of the testator's death is effective to dispose of property in this state regardless of whether the will was executed with the formalities required by this title.

Derived from Probate Code § 95(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 501.008. Setting Aside of Certain Foreign Wills

(a) This section applies only to a foreign will admitted to ancillary probate in this state, in accordance with the procedures prescribed by this chapter, based on the previous probate or other establishment of the will in the jurisdiction in which the testator was domiciled at the time of the testator's death.

(b) The admission to probate in this state of a foreign will to which this section applies shall be set aside if it is subsequently proven in a proceeding brought for that purpose that the foreign jurisdiction in which the will was admitted to probate or otherwise established was not in fact the domicile of the testator at the time of the testator's death.

(c) The title or rights of a person who, before commencement of a proceeding to set aside the admission to probate of a foreign will under this section, purchases property in good faith and for value from the personal representative or a devisee or otherwise deals in good faith with the personal

representative or a devisee are not affected by the subsequent setting aside of the admission to probate in this state.

Derived from Probate Code § 95(f).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 502. Original Probate of Foreign Will

§ 502.001. Original Probate of Foreign Will Authorized

§ 502.002. Proof of Foreign Will in Original Probate Proceeding

Chapter 502. Original Probate of Foreign Will

§ 502.001. Original Probate of Foreign Will Authorized

(a) This section applies only to a will of a testator who dies domiciled outside of this state that:

(1) on probate, may operate on any property in this state; and

(2) is valid under the laws of this state.

(b) A court may grant original probate of a will described by Subsection (a) in the same manner as the court grants the probate of other wills under this title if the will:

(1) has not been rejected from probate or establishment in the jurisdiction in which the testator died domiciled; or

(2) has been rejected from probate or establishment in the jurisdiction in which the testator died domiciled solely for a cause that is not a ground for rejection of a will of a testator who died domiciled in this state.

(c) A court may delay passing on an application for probate of a foreign will pending the result of probate or establishment, or of a contest of probate or establishment, in the jurisdiction in which the testator died domiciled.

Derived from Probate Code § 103.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 502.002. Proof of Foreign Will in Original Probate Proceeding

(a) A copy of the will of a testator who dies domiciled outside of this state, authenticated in the manner required by this title, is sufficient proof of the contents of the will to admit the will to probate in an original proceeding in this state if an objection to the will is not made.

(b) This section does not:

(1) authorize the probate of a will that would not otherwise be admissible to probate; or

(2) if an objection is made to a will, relieve the proponent from offering proof of the contents and legal sufficiency of the will as otherwise required.

(c) Subsection (b)(2) does not require the proponent to produce the original will unless ordered by the court.

Derived from Probate Code § 104.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 503. Recording of Foreign Testamentary Instrument

Subchapter A. Requirements for Recording Foreign Testamentary Instrument

§ 503.001. Authorization to Record Certain Foreign Testamentary Instruments in Deed Records

§ 503.002. Original Signatures Not Required

§ 503.003. Contest of Recorded Foreign Testamentary Instrument Permitted

Subchapter B. Effects of Recorded Foreign Testamentary Instrument

§ 503.051. Recorded Foreign Testamentary Instrument as Conveyance

§ 503.052. Recorded Foreign Testamentary Instrument as Notice of Title

Chapter 503. Recording of Foreign Testamentary Instrument

Subchapter A. Requirements for Recording Foreign Testamentary Instrument

§ 503.001. Authorization to Record Certain Foreign Testamentary Instruments in Deed Records

(a) A copy of a will or other testamentary instrument that conveys, or in any other manner disposes of, land in this state and that has been probated according to the laws of any state of the United States or a country other than the United States, along with a copy of the judgment, order, or decree by which the instrument was admitted to probate that has the attestation, seal, and certificate required by Section 501.002(c), may be filed and recorded in the deed records in any county in this state in which the land is located:

(1) without further proof or authentication, subject to Section 503.003; and

(2) in the same manner as a deed or conveyance is required to be recorded under the laws of this state.

(b) A copy of a will or other testamentary instrument described by Subsection (a), along with a copy of the judgment, order, or decree by which the instrument was admitted to probate that has the attestation and certificate required by Section 501.002(c), is:

(1) prima facie evidence that the instrument has been admitted to probate according to the laws of the state or country in which it was allegedly admitted to probate; and

(2) sufficient to authorize the instrument and the judgment, order, or decree to be recorded in the deed records in the proper county or counties in this state.

Derived from Probate Code §§ 96, 97.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 503.002. Original Signatures Not Required

Notwithstanding Section 501.002(c), the original signatures required by that section may not be required for a recordation in the deed records in accordance with Section 503.001 or for a purpose described by Section 503.051 or 503.052.

Derived from Probate Code § 95(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 503.003. Contest of Recorded Foreign Testamentary Instrument Permitted

The validity of a will or other testamentary instrument, a copy of which is filed and recorded as provided by Section 503.001, may be contested in the manner and to the extent provided by Subchapter A, Chapter 504.

Derived from Probate Code § 96.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Effects of Recorded Foreign Testamentary Instrument

§ 503.051. Recorded Foreign Testamentary Instrument as Conveyance

A copy of a foreign will or other testamentary instrument described by Section 503.001 and the copy of the judgment, order, or decree by which the instrument was admitted to probate that are attested and proved as provided by that section and delivered to the county clerk of the proper county in this state to be recorded in the deed records:

(1) take effect and are valid as a deed of conveyance of all property in this state covered by the instrument; and

(2) have the same effect as a recorded deed or other conveyance of land beginning at the time the instrument is delivered to the clerk to be recorded.

Derived from Probate Code § 98.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 503.052. Recorded Foreign Testamentary Instrument as Notice of Title

A copy of a foreign will or other testamentary instrument described by Section 503.001 and the copy of the judgment, order, or decree by which the instrument was admitted to probate that is attested and proved as provided by that section and filed for recording in the deed records of the proper county in this state constitute notice to all persons of the:

(1) existence of the instrument; and

(2) title or titles conferred by the instrument.

Derived from Probate Code § 99.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 504. Contest of or Other Challenge to Foreign Testamentary Instrument

Subchapter A. Contest or Setting Aside Probate of Foreign Will in this State

§ 504.001. Grounds for Contesting Foreign Will Probated in Domiciliary Jurisdiction

§ 504.002. Grounds for Contesting Foreign Will Probated in Non-Domiciliary Jurisdiction

§ 504.003. Procedures and Time Limits for Contesting Foreign Will

§ 504.004. Probate of Foreign Will Set Aside for Lack of Service

Subchapter B. Contest or Final Rejection in Foreign Jurisdiction

§ 504.051. Notice of Will Contest in Foreign Jurisdiction

§ 504.052. Effect of Notice

§ 504.053. Effect of Rejection of Testamentary Instrument by Foreign Jurisdiction

Chapter 504. Contest of or Other Challenge to Foreign Testamentary Instrument

Subchapter A. Contest or Setting Aside Probate of Foreign Will in this State

§ 504.001. Grounds for Contesting Foreign Will Probated in Domiciliary Jurisdiction

(a) Subject to Subsection (b), an interested person may contest a foreign will that has been:

(1) admitted to probate or established in the jurisdiction in which the testator was domiciled at the time of the testator's death; and

(2) admitted to probate in this state or filed in the deed records of any county of this state.

(b) A will described by Subsection (a) may be contested only on the grounds that:

(1) the proceedings in the jurisdiction in which the testator was domiciled at the time of the testator's death were not authenticated in the manner required for ancillary probate or recording in the deed records in this state;

(2) the will has been finally rejected for probate in this state in another proceeding; or

(3) the probate of the will has been set aside in the jurisdiction in which the testator was domiciled at the time of the testator's death.

Derived from Probate Code § 100(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 504.002. Grounds for Contesting Foreign Will Probated in Non-Domiciliary Jurisdiction

A foreign will admitted to probate or established in any jurisdiction other than the jurisdiction in which the testator was domiciled at the time of the testator's death may be contested on any grounds that are the basis for the contest of a domestic will.

Derived from Probate Code § 100(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 504.003. Procedures and Time Limits for Contesting Foreign Will

(a) The probate in this state of a foreign will probated or established in a jurisdiction other than the jurisdiction in which the testator was domiciled at the time of the testator's death may be contested in the manner that would apply if the testator had been domiciled in this state at the time of the testator's death.

(b) A foreign will admitted to ancillary probate in this state or filed in the deed records of any county of this state may be contested using the same procedures and within the same time limits applicable to the contest of a will admitted to original probate in this state.

Derived from Probate Code §§ 95(d)(2), 100(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 504.004. Probate of Foreign Will Set Aside for Lack of Service

(a) The probate in this state of a foreign will shall be set aside if:

(1) the will was probated in this state:

(A) in accordance with the procedure applicable to the probate of a will admitted to probate in the jurisdiction in which the testator was domiciled at the time of the testator's death; and

(B) without the service of citation required for a will admitted to probate in another jurisdiction that was not the testator's domicile at the time of the testator's death; and

(2) it is proved that the foreign jurisdiction in which the will was probated was not the testator's domicile at the time of the testator's death.

(b) If otherwise entitled, a will the probate of which is set aside in accordance with Subsection (a) may be:

(1) reprobated in accordance with the procedure prescribed for the probate of a will admitted in a jurisdiction that was not the testator's domicile at the time of the testator's death; or

(2) admitted to original probate in this state in the proceeding in which the ancillary probate was set aside or in a subsequent proceeding.

Derived from Probate Code § 100(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Contest or Final Rejection in Foreign Jurisdiction

§ 504.051. Notice of Will Contest in Foreign Jurisdiction

Verified notice that a proceeding to contest a will probated or established in a foreign jurisdiction has been commenced in that jurisdiction may be filed and recorded in the judge's probate docket of the court in this state in which the foreign will was probated, or in the deed records of any county of this state in which the foreign will was recorded, within the time limits for the contest of a foreign will in this state.

Derived from Probate Code § 101.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg., ch. 90, § 8.020, eff. Jan. 1, 2014.

§ 504.052. Effect of Notice

After a notice is filed and recorded under Section 504.051, the probate or recording in this state of the foreign will that is the subject of the notice has no effect until verified proof is filed and recorded that the foreign proceedings:

(1) have been terminated in favor of the will; or

(2) were never commenced.

Derived from Probate Code § 101.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 504.053. Effect of Rejection of Testamentary Instrument by Foreign Jurisdiction

(a) Except as provided by Subsection (b), final rejection of a will or other testamentary instrument from probate or establishment in a foreign jurisdiction in

which the testator was domiciled at the time of the testator's death is conclusive in this state.

(b) A will or other testamentary instrument that is finally rejected from probate or establishment in a foreign jurisdiction in which the testator was domiciled at the time of the testator's death may be admitted to probate or continue to be effective in this state if the will or other instrument was rejected solely for a cause that is not a ground for rejection of a will of a testator who died domiciled in this state.

Derived from Probate Code § 102.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Chapter 505. Foreign Personal Representatives, Trustees, and Fiduciaries

Subchapter A. Foreign Corporate Fiduciary

§ 505.001. Definition
§ 505.002. Applicability of Other Law
§ 505.003. Authority of Foreign Corporate Fiduciary to Serve in Fiduciary Capacity
§ 505.004. Filing Requirements; Designation
§ 505.005. Service of Notice or Process on Secretary of State
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Subchapter B. Foreign Executors and Trustees

§ 505.051. Applicability of Bond Requirement
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Subchapter C. Recovery of Debts by Foreign Executor or Administrator

§ 505.101. Suit to Recover Debt
§ 505.102. Jurisdiction
§ 505.103. Restriction on Suit Brought by Foreign Executor or Administrator

Chapter 505. Foreign Personal Representatives, Trustees, and Fiduciaries

Subchapter A. Foreign Corporate Fiduciary

Statutes in Context
Chapter 505, Subchapter A

Chapter 505, Subchapter A, 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.

§ 505.001. Definition

In this subchapter, "foreign corporate fiduciary" means a corporate fiduciary that does not have its main office or a branch office in this state.

Derived from Probate Code § 105A(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 505.002. Applicability of Other Law

(a) A foreign corporate fiduciary acting in a fiduciary capacity in this state in strict accordance with this subchapter:

(1) is not transacting business in this state within the meaning of Section 9.001, Business Organizations Code; and

(2) is qualified to serve in that capacity under Section 501.006.

(b) This subchapter is in addition to, and not a limitation on, Subtitles F and G, Title 3, Finance Code.

Derived from Probate Code §§ 105A(c), (d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 505.003. Authority of Foreign Corporate Fiduciary to Serve in Fiduciary Capacity

(a) Subject to Subsections (b) and (c) and Section 505.004, a foreign corporate fiduciary may be appointed by will, deed, agreement, declaration, indenture, court order or decree, or otherwise and may serve in this state in any fiduciary capacity, including as:

(1) trustee of a personal or corporate trust;
(2) executor;
(3) administrator; or
(4) guardian of the estate.

(b) A foreign corporate fiduciary appointed to serve in a fiduciary capacity in this state must have the corporate power to act in that capacity.

(c) This section applies only to the extent that the home state of the foreign corporate fiduciary appointed to serve in a fiduciary capacity in this state grants to a corporate fiduciary whose home state is this state the authority to serve in like fiduciary capacity.

Derived from Probate Code § 105A(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 505.004. Filing Requirements; Designation

(a) A foreign corporate fiduciary must file the following documents with the secretary of state before qualifying or serving in this state in a fiduciary capacity as authorized by Section 505.003:

(1) a copy of the fiduciary's charter, articles of incorporation or of association, and all amendments

to those documents, certified by the fiduciary's secretary under the fiduciary's corporate seal;

(2) a properly executed written instrument that by the instrument's terms is of indefinite duration and irrevocable, appointing the secretary of state and the secretary of state's successors as the fiduciary's agent for service of process on whom notices and processes issued by a court of this state may be served in an action or proceeding relating to a trust, estate, fund, or other matter within this state with respect to which the fiduciary is acting in a fiduciary capacity, including the acts or defaults of the fiduciary with respect to that trust, estate, or fund; and

(3) a written certificate of designation specifying the name and address of the officer, agent, or other person to whom the secretary of state shall forward notices and processes described by Subdivision (2).

(b) A foreign corporate fiduciary may change the certificate of designation under Subsection (a)(3) by filing a new certificate.

Derived from Probate Code § 105A(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 505.005. Service of Notice or Process on Secretary of State

(a) On receipt of a notice or process described by Section 505.004(a)(2), the secretary of state shall promptly forward the notice or process by registered or certified mail to the officer, agent, or other person designated by the foreign corporate fiduciary under Section 505.004 to receive the notice or process.

(b) Service of notice or process described by Section 505.004(a)(2) on the secretary of state as agent for a foreign corporate fiduciary has the same effect as if personal service had been had in this state on the foreign corporate fiduciary.

Derived from Probate Code § 105A(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 505.006. Criminal Penalty; Effect of Conviction

(a) A foreign corporate fiduciary commits an offense if the fiduciary violates this subchapter.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $5,000.

(c) On conviction, the court may prohibit a foreign corporate fiduciary convicted of an offense under this section from thereafter serving in any fiduciary capacity in this state.

Derived from Probate Code § 105A(e).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter B. Foreign Executors and Trustees

§ 505.051. Applicability of Bond Requirement

(a) A foreign executor is not required to give bond if the will appointing the foreign executor provides that the executor may serve without bond.

(b) The bond provisions of this title applicable to domestic representatives apply to a foreign executor if the will appointing the foreign executor does not exempt the foreign executor from giving bond.

Derived from Probate Code § 106.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 505.052. Power to Sell Property

(a) If a foreign will has been recorded in the deed records of a county in this state in the manner provided by this subtitle and the will gives an executor or trustee the power to sell property located in this state:

(1) an order of a court of this state is not necessary to authorize the executor or trustee to make the sale and execute proper conveyance; and

(2) any specific directions the testator gave in the foreign will respecting the sale of the estate property must be followed unless the directions have been annulled or suspended by an order of a court of competent jurisdiction.

(b) Notwithstanding Section 501.002(c), the original signatures required by that section may not be required for purposes of this section.

Derived from Probate Code §§ 95(c), 107.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Recovery of Debts by Foreign Executor or Administrator

§ 505.101. Suit to Recover Debt

(a) On giving notice by registered or certified mail to all creditors of a decedent in this state who have filed a claim against the decedent's estate 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 maintain a suit in this state for the recovery of debts due to the decedent.

(b) The plaintiff's letters testamentary or of administration granted by a competent tribunal, properly authenticated, must be filed with the suit.

Derived from Probate Code §§ 107A(a), (b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 505.102. Jurisdiction

(a) A foreign executor or administrator who files a suit authorized by Section 505.101 submits personally to the jurisdiction of the courts of this state in a proceeding relating to the recovery of a debt owed to a resident of this state by the decedent whose estate the executor or administrator represents.

(b) Jurisdiction under this section is limited to the amount of money or value of personal property recovered in this state by the foreign executor or administrator.

Derived from Probate Code § 107A(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 505.103. Restriction on Suit Brought by Foreign Executor or Administrator

A suit may not be maintained in this state by a foreign executor or administrator for a decedent's estate under this subchapter if there is:

(1) an executor or administrator of the decedent's estate qualified by a court of this state; or

(2) a pending application in this state for the appointment of an executor or administrator of the decedent's estate.

Derived from Probate Code § 107A(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

SUBTITLE L. PAYMENT OF ESTATES INTO TREASURY

Chapter 551. Payment of Certain Estates to State

Subchapter A. Payment of Certain Funds to State

§ 551.001. Payment of Certain Shares of Estate to State
§ 551.002. Payment of Portion that Is in Money
§ 551.003. Payment of Portion that Is Not in Money
§ 551.004. Compensation to Executor or Administrator
§ 551.005. Comptroller Indispensable Party
§ 551.006. Comptroller's Receipt

Subchapter B. Recovery of Funds Paid to State

§ 551.051. Recovery of Funds
§ 551.052. Action for Recovery
§ 551.053. Judgment
§ 551.054. Payment of Costs
§ 551.055. Representation of Comptroller

Subchapter C. Penalties; Enforcement

§ 551.101. Liability of Court Clerk; Penalty
§ 551.102. Damages for Failure to Make Payments
§ 551.103. Enforcement of Payment and Damages; Recovery on Bond

Chapter 551. Payment of Certain Estates to State

Subchapter A. Payment of Certain Funds to State

§ 551.001. Payment of Certain Shares of Estate to State

(a) The court, by written order, shall require the executor or administrator of an estate to pay to the comptroller as provided by this subchapter the share of that estate of a person entitled to that share who does not demand the share, including any portion deposited in an account in the court's registry under Section 362.011(c), from the executor or administrator within six months after the date of, as applicable:

(1) a court order approving the report of the commissioners of partition made under Section 360.154; or

(2) the settlement of the final account of the executor or administrator.

(b) This section does not apply to the share of an estate to which a resident minor without a guardian is entitled.

Derived from Probate Code § 427.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2013, 83rd Leg., ch. 1136, § 59, eff. Jan. 1, 2014.

§ 551.002. Payment of Portion that Is in Money

The executor or administrator shall pay the portion of the share subject to Section 551.001 that is in money to the comptroller.

Derived from Probate Code § 427.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 551.003. Payment of Portion that Is Not in Money

(a) The court's order under Section 551.001 must require the executor or administrator to:

(1) sell, on terms determined best by the court, the portion of a share subject to that section that is in property other than money; and

(2) on collection of the proceeds of the sale, pay the proceeds to the comptroller.

(b) An action to recover the proceeds of a sale under this section is governed by Subchapter B.

Derived from Probate Code § 427.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 551.004. Compensation to Executor or Administrator

The executor or administrator is entitled to reasonable compensation for services performed under Section 551.003.

Derived from Probate Code § 427.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 551.005. Comptroller Indispensable Party

(a) The comptroller is an indispensable party to a judicial or administrative proceeding concerning the disposition and handling of any share of an estate that is or may be payable to the comptroller under Section 551.001.

(b) The clerk of a court that orders an executor or administrator to pay funds to the comptroller under Section 551.001 shall serve on the comptroller, by personal service of citation, a certified copy of the court order not later than the fifth day after the date the order is issued.

Derived from Probate Code § 428.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 551.006. Comptroller's Receipt

(a) An executor or administrator who pays to the comptroller under this subchapter any funds of the estate represented by the executor or administrator shall:

(1) obtain from the comptroller a receipt for the payment, with official seal attached; and

(2) file the receipt with the clerk of the court that orders the payment.

(b) The court clerk shall record the comptroller's receipt in the judge's probate docket.

Derived from Probate Code § 430.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2011, 82nd Leg., ch. 90, § 8.021, eff. Jan. 1, 2014.

Subchapter B. Recovery of Funds Paid to State

§ 551.051. Recovery of Funds

If funds of an estate have been paid to the comptroller under this chapter, an heir or devisee or an assignee of an heir or devisee may recover the share of the funds to which the heir, devisee, or assignee is entitled.

Derived from Probate Code § 433(a).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 551.052. Action for Recovery

(a) A person claiming funds under Section 551.051 must bring an action, on or before the fourth anniversary of the date of the order requiring payment under this chapter to the comptroller, by filing a petition in the district court of Travis County against the comptroller. The petition must set forth:

(1) the plaintiff's right to the funds; and

(2) the amount claimed by the plaintiff.

(b) On the filing of a petition under Subsection (a), the court clerk shall issue a citation for the comptroller to appear and represent the interest of this state in the action. The citation must be served by personal service.

(c) Proceedings in an action brought under this section are governed by the rules applicable to other civil actions.

Derived from Probate Code §§ 433(a), (b), (c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 551.053. Judgment

(a) If a plaintiff establishes the plaintiff's right to funds claimed under this subchapter, the court shall award a judgment that specifies the amount to which the plaintiff is entitled.

(b) A certified copy of the judgment constitutes sufficient authority for the comptroller to pay the judgment.

Derived from Probate Code § 433(c).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 551.054. Payment of Costs

The costs of an action brought under this subchapter shall be adjudged against the plaintiff. The plaintiff may be required to secure the costs.

Derived from Probate Code § 433(d).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 551.055. Representation of Comptroller

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 in an action brought under this subchapter.

Derived from Probate Code § 433(b).

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

Subchapter C. Penalties; Enforcement

§ 551.101. Liability of Court Clerk; Penalty

(a) A court clerk who fails to timely comply with Section 551.005(b) is liable for a $100 penalty.

(b) The penalty under Subsection (a) shall be recovered through an action brought in the name of this state, after personal service of citation, on the information of any resident. Half of the penalty shall be paid to the informer and the other half to this state.

Derived from Probate Code § 429.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 551.102. Damages for Failure to Make Payments

(a) An executor or administrator who fails to pay funds of an estate to the comptroller as required by an order under Section 551.001 on or before the 30th day after the date of the order is liable, after personal service of citation charging that failure and after proof of the failure, for damages. The damages:

(1) accrue at the rate of five percent of the amount of the funds per month for each month or fraction of a month after the 30th day after the date of the order that the executor or administrator fails to make the payment; and

(2) must be paid to the comptroller out of the executor's or administrator's own estate.

(b) Damages under this section may be recovered in any court of competent jurisdiction.

Derived from Probate Code § 431.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

§ 551.103. Enforcement of Payment and Damages; Recovery on Bond

(a) The comptroller may apply in the name of this state to the court that issued an order for the payment of funds of an estate under this chapter to enforce the payment of:

(1) funds the executor or administrator has failed to pay to the comptroller under the order; and

(2) any damages that have accrued under Section 551.102.

(b) The court shall enforce the payment under Subsection (a) in the manner prescribed for enforcement of other payment orders.

(c) In addition to the action under Subsection (a), the comptroller may bring an action in the name of this state against the executor or administrator and the sureties on the executor's or administrator's bond for the recovery of the funds ordered to be paid and any accrued damages.

(d) The county attorney or criminal district attorney for the county, the district attorney for 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 proceedings under this section, and shall also represent the interests of this state in all other matters arising under this code.

Derived from Probate Code § 432.

Added by Acts 2009, 81st Leg., ch. 680, § 1, eff. Jan. 1, 2014.

SUBTITLE P. DURABLE POWERS OF ATTORNEY

Chapter 751. General Provisions Regarding Durable Powers of Attorney

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§ 751.003. Uniformity of Application and Construction
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Chapter 752. Statutory Durable Power of Attorney

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§ 752.002. Validity Not Affected
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Subchapter B. Form of Statutory Durable Power of Attorney

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Chapter 751. General Provisions Regarding Durable Powers of Attorney

Statutes in Context
Chapter 751

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 751.

Subchapter A. General Provisions

§ 751.001. Short Title

This subtitle may be cited as the Durable Power of Attorney Act.

Derived from Probate Code § 481.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

Statutes in Context
§ 751.002

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.

§ 751.002. Definition of Durable Power of Attorney

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:

(A) the words:

(i) "This power of attorney is not affected by subsequent disability or incapacity of the principal"; or

(ii) "This power of attorney becomes effective on the disability or incapacity of the principal"; or

(B) words similar to those of Paragraph (A) that show 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 under the laws of this state or another state to:

(A) take acknowledgments to deeds of conveyance; and

(B) administer oaths.

Derived from Probate Code § 482.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 751.003. Uniformity of Application and Construction

This subtitle shall be applied and construed to effect the general purpose of this subtitle, which is to make uniform the law with respect to the subject of this subtitle among states enacting these provisions.

Derived from Probate Code § 506.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

Statutes in Context
§ 751.004

The durable power of attorney does not lapse merely because it is not used for a prolonged period of time.

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§ 751.004. Duration of Durable Power of Attorney

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.

Derived from Probate Code § 483.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 751.005. Extension of Principal's Authority to Other Persons

If, in this subtitle, a principal is given an authority to act, that authority includes:

(1) any person designated by the principal;

(2) a guardian of the estate of the principal; or

(3) another personal representative of the principal.

Derived from Probate Code § 489B(i).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 751.006. Rights Cumulative

The rights set out under this subtitle are cumulative of any other rights or remedies the principal may have at common law or other applicable statutes and are not in derogation of those rights.

Derived from Probate Code § 489B(j).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

Subchapter B. Effect of Certain Acts on Exercise of Durable Power of Attorney

§ 751.051. Effect of Acts Performed by Attorney In Fact or Agent During Principal's Disability or Incapacity

Each act performed by an attorney in fact or agent under a durable power of attorney during a period of the principal's disability or incapacity has the same effect, and inures to the benefit of and binds the principal and the principal's successors in interest, as if the principal were not disabled or incapacitated.

Derived from Probate Code § 484.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

Statutes in Context
§ 751.052

The appointment of a permanent guardian of the principal's estate will terminate the agent's authority under § 751.052(a).

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§ 751.052. Relation of Attorney In Fact or Agent oo 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. The attorney in fact or agent shall:

(1) deliver to the guardian of the estate all assets of the ward's estate that are in the possession of the attorney in fact or agent; and

(2) account to the guardian of the estate as the attorney in fact or agent would account to the principal if the principal had terminated the powers of the attorney in fact or agent.

(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 the term of the temporary guardian expires. This subsection may not be construed to prohibit the application for or issuance of a temporary restraining order under applicable law.

Derived from Probate Code § 485.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

Statutes in Context
§ 751.053

Generally, the designation of a spouse as an agent is automatically revoked upon the principal's divorce from the spouse.

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§ 751.053. Effect of Principal's Divorce or Marriage Annulment if Former Spouse is Attorney In Fact or Agent

Unless otherwise expressly provided by the durable power of attorney, 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 terminate on the date the divorce or annulment of marriage is granted by a court.

Derived from Probate Code § 485A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 751.054. Knowledge of Termination of Power; 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 acts in good faith under or in reliance on the power without actual knowledge of the termination of the power by:

(1) the revocation;

(2) the principal's death; or

(3) the qualification of a guardian of the estate of the principal.

(b) The divorce of a principal from a person who has been appointed the principal's attorney in fact or agent before the date 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 of attorney.

(c) An action taken under this section, unless otherwise invalid or unenforceable, binds the principal's successors in interest.

Derived from Probate Code § 486.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 751.055. Affidavit Regarding Lack of Knowledge of Termination of Power or of Disability or Incapacity; Good-Faith Reliance

(a) As to an act undertaken in good-faith reliance on a durable power of attorney, an affidavit executed by the attorney in fact or agent under the durable power of attorney stating that the attorney in fact or agent did not have, at the time the power was exercised, actual knowledge of the termination of the power by revocation, the principal's death, the principal's divorce or the annulment of the principal's marriage if the attorney in fact or agent was the principal's spouse, or 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 an act undertaken in good-faith reliance on a durable power of attorney, an affidavit executed by the attorney in fact or agent under the durable power of attorney stating that the principal is disabled or incapacitated, as defined by the power of attorney, 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 principal's disability or incapacity at that time.

(c) If the exercise of the power of attorney requires execution and delivery of an instrument that is to be recorded, an affidavit executed under Subsection (a) or (b), authenticated for record, may also be recorded.

(d) This section and Section 751.056 do not affect a provision in a durable power of attorney for the termination of the power by:

(1) expiration of time; or

(2) the occurrence of an event other than express revocation.

Derived from Probate Code §§ 487(a), (b), (c), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 751.056. Nonliability of Third Party on Good-Faith Reliance

If 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 performed within the scope of the power of attorney is not liable to the principal.

Derived from Probate Code § 487(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 751.057. Effect of Bankruptcy Proceeding

(a) The filing of a voluntary or involuntary petition in bankruptcy in connection with the debts of a principal who has executed a durable power of attorney does not revoke or terminate the agency as to the principal's attorney in fact or agent.

(b) 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 (11 U.S.C. Section 101 et seq.) until a final determination is made in the bankruptcy proceeding.

Derived from Probate Code § 487A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 751.058. Effect of Revocation of Durable Power of Attorney on Third Party

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.

Derived from Probate Code § 488.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

Subchapter C. Duty to Inform and Account

Statutes in Context
Chapter 751, Subchapter C

The agent's duty to inform the principal with respect to actions taken and to account for them is set forth in Chapter 751, Subchapter C.

§ 751.101. Fiduciary Duties

An attorney in fact or agent is a fiduciary and has a duty to inform and to account for actions taken under the power of attorney.

Derived from Probate Code § 489B(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 751.102. Duty to Timely Inform Principal

(a) The attorney in fact or agent shall timely inform the principal of each action taken under the power of attorney.

(b) Failure of an attorney in fact or agent to timely inform, as to third parties, does not invalidate any action of the attorney in fact or agent.

Derived from Probate Code § 489B(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 751.103. Maintenance of Records

(a) The attorney in fact or agent shall maintain records of each action taken or decision made by the attorney in fact or agent.

(b) The attorney in fact or agent shall maintain all records until delivered to the principal, released by the principal, or discharged by a court.

Derived from Probate Code § 489B(c), (f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 751.104. Accounting

(a) The principal may demand an accounting by the attorney in fact or agent.

(b) Unless otherwise directed by the principal, an accounting under Subsection (a) must 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) each action taken or decision 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 that includes the source and nature of each receipt, disbursement, or action, 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 that includes:

(A) an adequate description of each asset; and

(B) the asset's current value, if the value is known to the attorney in fact or agent;

(5) the cash balance on hand and the name and location of the depository at which the cash balance is kept;

(6) each known liability; and

(7) any other information and facts known to the attorney in fact or agent as necessary for a full and definite understanding of the exact condition of the property belonging to the principal.

(c) 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.

Derived from Probate Code § 489B(d), (e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 751.105. Effect of Failure to Comply; Suit

If the attorney in fact or agent fails or refuses to inform the principal, provide documentation, or deliver an accounting under Section 751.104 within 60 days of a demand under that section, or a longer or shorter period as demanded by the principal or ordered by a court, the principal may file suit to:

(1) compel the attorney in fact or agent to deliver the accounting or the assets; or

(2) terminate the power of attorney.

Derived from Probate Code § 489B(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 751.106. Effect of Subchapter on Principal's Rights

This subchapter does 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.

Derived from Probate Code § 489B(h).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

Subchapter D. Recording Durable Power of Attorney for Certain Real Property Transactions

Statutes in Context
§ 751.151

The durable power of attorney will need to be recorded if the agent uses it with respect to a real property transaction.

§ 751.151. Recording for Real Property Transactions Requiring Execution and Delivery of Instruments

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, must be recorded in the office of the county clerk of the county in which the property is located.

Derived from Probate Code § 489.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

Chapter 752. Statutory Durable Power of Attorney

Statutes in Context
Chapter 752.001

Section 752.051 contains a form which the principal may use to create a durable power of attorney. The form includes a list of powers which the principal may grant by initialing a line in front of the power. Alternatively, the principal may grant all the powers by initialing Line N. 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.

Subchapter A. General Provisions Regarding Statutory Durable Power of Attorney

§ 752.001. Use, Meaning, and Effect of Statutory Durable Power of Attorney

(a) 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.

(b) A power of attorney in substantially the form prescribed by Section 752.051 has the meaning and effect prescribed by this subtitle.

Derived from Probate Code § 490(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.002. Validity Not Affected

A power of attorney is valid with respect to meeting the requirements for a statutory durable power of attorney regardless of the fact that:

(1) one or more of the categories of optional powers listed in the form prescribed by Section 752.051 are not initialed [~~struck~~]; or

(2) the form includes specific limitations on, or additions to, the powers of the attorney in fact or agent.

Derived from Probate Code § 490(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 700, § 2, eff. Jan. 1, 2014.

§ 752.003. Prescribed Form Not Exclusive

The form prescribed by Section 752.051 is not exclusive, and other forms of power of attorney may be used.

Derived from Probate Code § 490(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.004. Legal Sufficiency of Statutory Durable Power of Attorney

A statutory durable power of attorney is legally sufficient under this subtitle if:

(1) the wording of the form complies substantially with the wording of the form prescribed by Section 752.051;

(2) the form is properly completed; and

(3) the signature of the principal is acknowledged.

Derived from Probate Code § 490(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

Subchapter B. Form of Statutory Durable Power of Attorney

§ 752.051. Form

The following form is known as a "statutory durable power of attorney":

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, SUBTITLE P, TITLE 2, ESTATES 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.

You should select someone you trust to serve as your agent (attorney in fact). Unless you specify otherwise, generally the agent's (attorney in fact's) authority will continue until:

(1) you die or revoke the power of attorney;

(2) your agent (attorney in fact) resigns or is unable to act for you; or

(3) a guardian is appointed for your estate.

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 that I have initialed below.

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (M).

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD [~~except for a power that I have crossed out below.~~

[~~TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER WITHHELD~~].

____(A) Real property transactions;

____(B) Tangible personal property transactions;

____(C) Stock and bond transactions;

____(D) Commodity and option transactions;

____(E) Banking and other financial institution transactions;

____(F) Business operating transactions;

____(G) Insurance and annuity transactions;

____(H) Estate, trust, and other beneficiary transactions;

____(I) Claims and litigation;

____(J) Personal and family maintenance;

____(K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;

____(L) Retirement plan transactions;

____(M) Tax matters;

____(N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (N).

[~~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 outright to or for the benefit of a person, including by the exercise of a presently exercisable general power of appointment held by me, 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 _____, _____

_____
(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: _____

IMPORTANT INFORMATION FOR AGENT
(ATTORNEY IN FACT)

Agent's Duties

When you accept the authority granted under this power of attorney, you establish a "fiduciary" relationship with the principal. This is a special legal relationship that imposes on you legal duties that continue until you resign or the power of attorney is terminated or revoked by the principal or by operation of law. A fiduciary duty generally includes the duty to:

(1) act in good faith;

(2) do nothing beyond the authority granted in this power of attorney;

(3) act loyally for the principal's benefit;

(4) avoid conflicts that would impair your ability to act in the principal's best interest; and

(5) disclose your identity as an agent or attorney in fact when you act for the principal by writing or printing the name of the principal and signing your own name as "agent" or "attorney in fact" in the following manner:

(Principal's Name) by (Your Signature) as Agent (or as Attorney in Fact)

In addition, the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code) requires you to:

(1) maintain records of each action taken or decision made on behalf of the principal;

(2) maintain all records until delivered to the principal, released by the principal, or discharged by a court; and

(3) if requested by the principal, provide an accounting to the principal that, unless otherwise directed by the principal or otherwise provided in the Special Instructions, must include:

(A) the property belonging to the principal that has come to your knowledge or into your possession;

(B) each action taken or decision made by you as agent or attorney in fact;

(C) a complete account of receipts, disbursements, and other actions of you as agent or attorney in fact that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;

(D) a listing of all property over which you have exercised control that includes an adequate description of each asset and the asset's current value, if known to you;

(E) the cash balance on hand and the name and location of the depository at which the cash balance is kept;

(F) each known liability;

(G) any other information and facts known to you as necessary for a full and definite understanding of the exact condition of the property belonging to the principal; and

(H) all documentation regarding the principal's property.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. An event that terminates this power of attorney or your authority to act under this power of attorney includes:

(1) the principal's death;

(2) the principal's revocation of this power of attorney or your authority;

(3) the occurrence of a termination event stated in this power of attorney;

(4) if you are married to the principal, the dissolution of your marriage by court decree of divorce or annulment;

(5) the appointment and qualification of a permanent guardian of the principal's estate; or

(6) if ordered by a court, the suspension of this power of attorney on the appointment and qualification of a temporary guardian until the date the term of the temporary guardian expires.

Liability of Agent

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

Derived from Probate Code § 490(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 700, § 1, eff. Jan. 1, 2014.

Subchapter C. Construction of Powers Related to Statutory Durable Power of Attorney

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Statutes in Context
Chapter 752, Subchapter C

Chapter 752, Subchapter C, provides detailed explanations of the powers granted in the statutory form.

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§ 752.101. Construction in General

By executing a statutory durable power of attorney that confers authority with respect to any class of transactions, the principal 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 that 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 attorney in fact or agent considers desirable to accomplish a purpose of a transaction;

(5) with respect to a claim existing in favor of or against the principal:

(A) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise; or

(B) 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 an expenditure made in exercising the powers granted by the durable power of attorney; and

(11) in general, perform any other lawful act that the principal may perform with respect to the transaction.

Derived from Probate Code § 491.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.102. Real Property Transactions

The language conferring authority with respect to real property transactions in a statutory durable power of attorney empowers the attorney in fact or agent, without further reference to a specific description of the real property, to:

(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 or 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) perform 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 the authority 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 the taxes or assessments;

(D) purchase supplies, hire assistance or labor, or make repairs or alterations to the real property; and

(E) manage and supervise an interest in real property, including the mineral estate, by, for example:

(i) entering into a lease for oil, gas, and mineral purposes;

(ii) making contracts for development of the mineral estate; or

(iii) 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.

Derived from Probate Code § 492.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.103. Tangible Personal Property Transactions

The language conferring general authority with respect to tangible personal property transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) accept tangible personal property or an interest in tangible personal property as a gift or as security for a loan or 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, 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) perform 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 the property or interest 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 the property;

(E) storing the property for hire or on a gratuitous bailment; and

(F) using, altering, and making repairs or alterations to the property.

Derived from Probate Code § 493.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.104. Stock and Bond Transactions

The language conferring authority with respect to stock and bond transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) buy, sell, and exchange:

(A) stocks;

(B) bonds;

(C) mutual funds; and

(D) all other types of securities and financial instruments other than commodity futures contracts and call and put options on stocks and stock indexes;

(2) receive certificates and other evidences of ownership with respect to securities;

(3) exercise voting rights with respect to securities in person or by proxy;

(4) enter into voting trusts; and

(5) consent to limitations on the right to vote.

Derived from Probate Code § 494.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.105. Commodity and Option Transactions

The language conferring authority with respect to commodity and option transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) 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

(2) establish, continue, modify, or terminate option accounts with a broker.

Derived from Probate Code § 495.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.106. Banking and Other Financial Institution Transactions

The language conferring authority with respect to banking and other financial institution transactions in a statutory durable power of attorney 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) rent 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 those documents;

(7) enter a safe deposit box or vault and withdraw from or add to its contents;

(8) borrow money at an interest rate agreeable to the attorney in fact or agent and pledge as security the principal's property as 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.

Derived from Probate Code § 496.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.107. Business Operation Transactions

The language conferring authority with respect to business operating transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) operate, buy, sell, enlarge, reduce, or terminate a business interest;

(2) do the following, to the extent that an attorney in fact or agent is permitted by law to act for a principal and subject to the terms of a partnership agreement:

(A) perform a duty, discharge a liability, or exercise a right, power, privilege, or option that the principal has, may have, or claims to have under the partnership agreement, whether or not the principal is a general or limited partner;

(B) enforce the terms of the 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 similar instrument 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 before execution of the power of attorney with an individual, legal entity, firm, association, or corporation by or on behalf of the principal with respect to the business;

(B) determine:

(i) the location of the business's operation;

(ii) the nature and extent of the business;

(iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in the business's operation;

(iv) the amount and types of insurance carried; and

(v) the method of engaging, compensating, and dealing with the business's 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 the business 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) do the following:

(A) prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business:

(i) that are required by a governmental agency, department, or instrumentality; or

(ii) that the attorney in fact or agent considers desirable; and

(B) make related payments; and

(10) pay, compromise, or contest taxes or assessments and perform 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.

Derived from Probate Code § 497.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.108. Insurance and Annuity Transactions

(a) The language conferring authority with respect to insurance and annuity transactions in a statutory durable power of attorney 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 insurance contracts and annuities for the principal or the principal's spouse, children, and other dependents and select the amount, type of insurance or annuity, and method of payment;

(3) pay the premium or assessment on, or modify, rescind, release, or terminate, an insurance contract or annuity procured by the attorney in fact or agent;

(4) designate the beneficiary of the insurance contract, except as provided by Subsection (b);

(5) apply for and receive a loan on the security of the insurance contract 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 by this section;

(10) change the beneficiary of an insurance contract or annuity, except that the attorney in fact or agent may be designated a beneficiary only to the extent authorized by Subsection (b);

(11) apply for and procure government aid to guarantee or pay premiums of an insurance contract on the life of the principal;

(12) collect, sell, assign, borrow on, or pledge the principal's interest in an insurance contract or annuity; and

(13) pay from proceeds or otherwise, compromise or contest, or apply for refunds in connection with a tax or assessment imposed by a taxing authority with respect to an insurance contract or annuity or the proceeds of the contract or annuity or liability accruing because of the tax or assessment.

(b) An attorney in fact or agent may be named a beneficiary of an insurance 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.

Derived from Probate Code § 498.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.109. Estate, Trust, and Other Beneficiary Transactions

The language conferring authority with respect to estate, trust, and other beneficiary transactions in a statutory durable power of attorney 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:

(A) ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal; or

(B) remove, substitute, or surcharge a fiduciary;

(4) conserve, invest, disburse, or use anything received for an authorized purpose; and

(5) transfer all or part of the principal's interest 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.

Derived from Probate Code § 499.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.110. Claims and Litigation

The language conferring general authority with respect to claims and litigation in a statutory durable power of attorney 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 an action to:

(A) recover property or other thing of value;

(B) recover damages sustained by the principal;

(C) eliminate or modify tax liability; or

(D) seek an injunction, specific performance, or other relief;

(2) bring an action to determine an adverse claim, intervene in an action or litigation, and act as an amicus curiae;

(3) in connection with an action or litigation:

(A) 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; and

(B) perform any lawful act the principal could perform, including:

(i) acceptance of tender;

(ii) offer of judgment;

(iii) admission of facts;

(iv) submission of a controversy on an agreed statement of facts;

(v) consent to examination before trial; and

(vi) binding of the principal in litigation;

(4) submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation;

(5) 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;

(6) act for the principal regarding voluntary or involuntary bankruptcy or insolvency proceedings concerning:

(A) the principal; or

(B) another person, with respect to a reorganization proceeding or a receivership or application for the appointment of a receiver or trustee that affects the principal's interest in property or other thing of value; and

(7) 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.

Derived from Probate Code § 500.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.111. Personal and Family Maintenance

The language conferring authority with respect to personal and family maintenance in a statutory durable power of attorney 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:

(A) providing living quarters by purchase, lease, or other contract; or

(B) 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):

(A) normal domestic help;

(B) usual vacations and travel expenses; and

(C) money for shelter, clothing, food, appropriate education, and other living costs;

(3) pay necessary medical, dental, and surgical care, hospitalization, and custodial care for the individuals described by Subdivision (1);

(4) continue any provision made by the principal for the individuals described by Subdivision (1) 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) and open new accounts the attorney in fact or agent considers desirable to accomplish a lawful purpose; and

(6) continue:

(A) payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization; or

(B) contributions to those organizations.

Derived from Probate Code § 501.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.112. Benefits from Certain Governmental Programs or Civil or Military Service

The language conferring authority with respect to benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) execute a voucher in the principal's name for an allowance or reimbursement payable by the United States, a foreign government, or a state or subdivision of a state to the principal, including an allowance or reimbursement for:

(A) transportation of the individuals described by Section 752.111(1); and

(B) shipment of the household effects of those individuals;

(2) take possession and order the removal and shipment of the principal's property from a post, warehouse, depot, dock, or other governmental or private place of storage or safekeeping 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 for 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 by this section and conserve, invest, disburse, or use anything received for a lawful purpose.

Derived from Probate Code § 502.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.113. Retirement Plan Transactions

(a) In this section, "retirement plan" means:

(1) an employee pension benefit plan as defined by Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 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 the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.) because the plan does not cover common law employees;

(3) a plan that is similar to an employee benefit plan under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), regardless of whether the plan is covered by Title 1 of that Act, including a plan that provides death benefits to the beneficiary of employees; and

(4) an individual retirement account or annuity, a self-employed pension plan, or a similar plan or account.

(b) The language conferring authority with respect to retirement plan transactions in a statutory durable power of attorney empowers the attorney in fact or agent to perform any lawful act the principal may perform 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 as provided by Subsection (c);

(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 principal's right 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 principal's right 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.

(c) An attorney in fact or agent may be named a beneficiary under a retirement plan 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.

Derived from Probate Code § 503.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.114. Tax Matters

The language conferring authority with respect to tax matters in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) prepare, sign, and file:

(A) federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act (26 U.S.C. Chapter 21), and other tax returns;

(B) claims for refunds;

(C) requests for extensions of time;

(D) petitions regarding tax matters; and

(E) any other tax-related documents, including:

(i) receipts;

(ii) offers;

(iii) waivers;

(iv) consents, including consents and agreements under Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 2032A);

(v) closing agreements; and

(vi) 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.

Derived from Probate Code § 504.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

§ 752.115. Existing Interests; Foreign Interests

The powers described by Sections 752.102-752.114 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:

(1) the property is located in this state; or

(2) the powers are exercised or the durable power of attorney is executed in this state.

Derived from Probate Code § 505.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.01, eff. Jan. 1, 2014.

TITLE 3. GUARDIANSHIP AND RELATED PROCEDURES

Statutes in Context
Title 3

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 (§ 1151.051) and a guardian of the estate of who is in charge of the ward's property and financial affairs (§ 1151.101).

The guardianship provisions 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.

SUBTITLE A. GENERAL PROVISIONS

Chapter 1001. Purpose and Construction

§ 1001.001. Policy; Purpose of Guardianship
§ 1001.002. Laws Applicable to Guardianships
§ 1001.003. References in Law Meaning Incapacitated Person

Chapter 1001. Purpose and Construction

§ 1001.001. Policy; Purpose of Guardianship

(a) A court may appoint a guardian with either full or 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 incapacitated person.

(b) In creating a guardianship that gives a guardian limited 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.

Derived from Probate Code § 602.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1001.002. Laws Applicable to Guardianships

To the extent applicable and not inconsistent with other provisions of this code, the laws and rules governing estates of decedents apply to guardianships.

Derived from Probate Code § 603(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1001.003. References in Law Meaning Incapacitated Person

In this code or any other law, a reference to any of the following means an incapacitated person:

(1) a person who is mentally, physically, or legally incompetent;

(2) a person who is judicially declared incompetent;

(3) an incompetent or an incompetent person;

(4) a person of unsound mind; or

(5) a habitual drunkard.

Derived from Probate Code § 603(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1002. Definitions

§ 1002.001. Applicability of Definitions
§ 1002.002. Attorney Ad Litem
§ 1002.003. Authorized Corporate Surety
§ 1002.004. Child
§ 1002.005. Claim
§ 1002.006. Community Administrator
§ 1002.007. Corporate Fiduciary
§ 1002.008. Court; Probate Court; Statutory Probate Court
§ 1002.009. Court Investigator
§ 1002.010. Estate; Guardianship Estate
§ 1002.011. Exempt Property
§ 1002.012. Guardian
§ 1002.013. Guardian Ad Litem
§ 1002.014. Guardianship Certification Program Of The Judicial Branch Certification Commission [~~Board~~]
§ 1002.015. [~~Guardianship Matter;~~] Guardianship Proceeding [~~; Proceedings in Guardianship; Proceedings for Guardianship~~]
§ 1002.016. Guardianship Program
§ 1002.017. Incapacitated Person
§ 1002.018. Interested Person; Person Interested
§ 1002.019. Minor
§ 1002.020. Mortgage; Lien
§ 1002.021. Next Of Kin
§ 1002.022. Parent
§ 1002.023. Person
§ 1002.024. Personal Property
§ 1002.025. Private Professional Guardian
§ 1002.026. Proposed Ward
§ 1002.027. Real Property
§ 1002.028. Representative; Personal Representative
§ 1002.029. Surety
§ 1002.030. Ward

Chapter 1002. Definitions

§ 1002.001. Applicability of Definitions

The definition for a term provided by this chapter applies in this title.

Derived from Probate Code § 601.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.002. Attorney Ad Litem

"Attorney ad litem" means an attorney appointed by a court to represent and advocate on behalf of a proposed ward, an incapacitated person, [~~or~~] an unborn person, or another person described by Section 1054.007 in a guardianship proceeding.

Derived from Probate Code § 601(1).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 982, § 1, eff. Jan. 1, 2014.

§ 1002.003. Authorized Corporate Surety

"Authorized corporate surety" means a domestic or foreign corporation authorized to engage in business in this state to issue surety, guaranty, or indemnity bonds that guarantee the fidelity of a guardian.

Derived from Probate Code § 601(2).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.004. Child

"Child" includes a biological child and an adopted child, regardless of whether the child was adopted by a parent under a statutory procedure or by acts of estoppel.

Derived from Probate Code § 601(3).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.005. Claim

"Claim" includes:

(1) a liability against the estate of an incapacitated person; and

(2) a debt due to the estate of an incapacitated person.

Derived from Probate Code § 601(4).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.006. Community Administrator

"Community administrator" means a spouse who, on the judicial declaration of incapacity of the other spouse, is authorized to manage, control, and dispose of the entire community estate, including the part of the

community estate the incapacitated spouse legally has the power to manage in the absence of the incapacity.

Derived from Probate Code § 601(5).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.007. Corporate Fiduciary

"Corporate fiduciary" means a financial institution, as defined by Section 201.101, Finance Code, that:

(1) is existing or engaged in business under the laws of this state, another state, or the United States;

(2) has trust powers; and

(3) is authorized by law to act under the order or appointment of a court of record, without giving bond, as guardian, receiver, trustee, executor, administrator, or, although the financial institution does not have general depository powers, depository for any money paid into the court, or to become sole guarantor or surety in or on any bond required to be given under the laws of this state.

Derived from Probate Code § 601(6).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.008. Court; Probate Court; Statutory Probate Court

(a) "Court" or "probate court" means:

(1) a county court exercising its probate jurisdiction;

(2) a court created by statute and authorized to exercise original probate jurisdiction; or

(3) a district court exercising original probate jurisdiction in a contested matter.

(b) "Statutory probate court" means a court created by statute and designated as a statutory probate court under Chapter 25, Government Code. The term does not include a county court at law exercising probate jurisdiction unless the court is designated a statutory probate court under Chapter 25, Government Code.

Derived from Probate Code §§ 601(8), (29).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.009. Court Investigator

"Court investigator" means a person appointed by the judge of a statutory probate court under Section 25.0025, Government Code.

Derived from Probate Code § 601(7).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.010. Estate; Guardianship Estate

"Estate" or "guardianship estate" means a ward's or deceased ward's property, as that property:

(1) exists originally and changes in form by sale, reinvestment, or otherwise;

(2) is augmented by any accretions and other additions to the property, including any property to be distributed to the deceased ward's representative by the trustee of a trust that terminates on the ward's death, or substitutions for the property; and

(3) is diminished by any decreases in or distributions from the property.

Derived from Probate Code § 601(9).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.011. Exempt Property

"Exempt property" means the property in a deceased ward's estate that is exempt from execution or forced sale by the constitution or laws of this state, and any allowance paid instead of that property.

Derived from Probate Code § 601(10).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.012. Guardian

(a) "Guardian" means a person appointed as a:

(1) guardian under Subchapter D, Chapter 1101;

(2) successor guardian; or

(3) temporary guardian.

(b) Except as expressly provided otherwise, "guardian" includes:

(1) the guardian of the estate of an incapacitated person; and

(2) the guardian of the person of an incapacitated person.

Derived from Probate Code § 601(11).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.013. Guardian Ad Litem

"Guardian ad litem" means a person appointed by a court to represent the best interests of an incapacitated person in a guardianship proceeding.

Derived from Probate Code § 601(12).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.014. Guardianship Certification Program of the Judicial Branch Certification Commission [~~BOARD~~]

"Guardianship certification program of the Judicial Branch Certification Commission" [~~"Guardianship Certification Board"~~] means the program [~~Guardianship Certification Board~~] established under Chapter 155 [111], Government Code.

Derived from Probate Code § 601(12-a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.Amended by Acts 2013, 83rd Leg., ch. 42, § 2.04, eff. Jan. 1, 2014.

§ 1002.015. [~~Guardianship Matter;~~] Guardianship Proceeding ~~[; Proceedings in Guardianship; Proceedings for Guardianship~~].

The term [terms "guardianship matter,"] "guardianship proceeding" means [proceeding," "proceedings in guardianship," and "proceedings for guardianship" are synonymous and include] a matter or proceeding related [relating] to a guardianship or any other matter covered [addressed] by this title, including:

(1) 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;

(2) an application, petition, or motion regarding guardianship or an alternative to guardianship under this title;

(3) a mental health action; and

(4) an application, petition, or motion regarding a trust created under Chapter 1301.

Derived from Probate Code § 601(25).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.014, eff. Jan. 1, 2014.

§ 1002.016. Guardianship Program

"Guardianship program" has the meaning assigned by Section 155.001 [~~111.001~~], Government Code.

Derived from Probate Code § 601(13).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 42, § 2.06, eff. Jan. 1, 2014.

§ 1002.017. Incapacitated Person

"Incapacitated person" means:

(1) a minor;

(2) an adult who, because of a physical or mental condition, is substantially unable to:

(A) provide food, clothing, or shelter for himself or herself;

(B) care for the person's own physical health; or

(C) manage the person's own financial affairs; or

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

Derived from Probate Code § 601(14).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.018. Interested Person; Person Interested

"Interested person" or "person interested" means:

(1) an heir, devisee, spouse, creditor, or any other person having a property right in or claim against an estate being administered; or

(2) a person interested in the welfare of an incapacitated person.

Derived from Probate Code § 601(15).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.019. Minor

"Minor" means a person younger than 18 years of age who:

(1) has never been married; and

(2) has not had the disabilities of minority removed for general purposes.

Derived from Probate Code § 601(16).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.020. Mortgage; Lien

"Mortgage" and "lien" include:

(1) a deed of trust;

(2) a vendor's lien;

(3) a mechanic's, materialman's, or laborer's lien;

(4) a judgment, attachment, or garnishment lien;

(5) a federal or state tax lien;

(6) a chattel mortgage; and

(7) a pledge by hypothecation.

Derived from Probate Code § 601(18).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.021. Next of Kin

"Next of kin" includes:

(1) an adopted child;

(2) an adopted child's descendants; and

(3) the adoptive parent of an adopted child.

Derived from Probate Code § 601(19).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.022. Parent

"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.

Derived from Probate Code § 601(20).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.023. Person

(a) "Person" includes a natural person, a corporation, and a guardianship program.

(b) The definition of "person" assigned by Section 311.005, Government Code, does not apply to any provision in this title.

Derived from Probate Code § 601(21).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.024. Personal Property

"Personal property" includes an interest in:

(1) goods;
(2) money;
(3) a chose in action;
(4) an evidence of debt; and
(5) a real chattel.

Derived from Probate Code § 601(22).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.025. Private Professional Guardian

"Private professional guardian" has the meaning assigned by Section 155.001 [~~111.001~~], Government Code.

Derived from Probate Code § 601(24).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 42, § 2.06, eff. Jan. 1, 2014.

§ 1002.026. Proposed Ward

"Proposed ward" means a person alleged in a guardianship proceeding to be incapacitated.

Derived from Probate Code § 601(27).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.027. Real Property

"Real property" includes estates and interests in land, whether corporeal or incorporeal or legal or equitable. The term does not include a real chattel.

Derived from Probate Code § 601(28).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.028. Representative; Personal Representative

"Representative" and "personal representative" include:

(1) a guardian; and
(2) a successor guardian.

Derived from Probate Code § 601(23).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.029. Surety

"Surety" includes a personal surety and a corporate surety.

Derived from Probate Code § 601(30).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1002.030. Ward

"Ward" means a person for whom a guardian has been appointed.

Derived from Probate Code § 601(31).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

SUBTITLE B. SCOPE, JURISDICTION, AND VENUE

Chapter 1021. General Provisions

§1021.001. Matters Related to Guardianship Proceeding.

Chapter 1021. General Provisions

§ 1021.001 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;

(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 1204.001:

(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 Chapter 1155 and Subpart H, Part 2, Subtitle Z; and

(E) a matter related to an authorization made or duty performed by a guardian under Chapter 1204; and

(7) the appointment of a trustee for a trust created under Section 1301.053 or 1301.054, 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);

(2) a suit, action, or application filed against or on behalf of a guardianship or a trustee of a trust created under Section 1301.053 or 1301.054; and

(3) a cause of action in which a guardian in a guardianship pending in the statutory probate court is a party.

Derived from Probate Code § 606A.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.015, eff. Jan. 1, 2014.

Chapter 1022. Jurisdiction

§ 1022.001. General Probate Court Jurisdiction in Guardianship Proceedings; Appeals

§ 1022.002. Original Jurisdiction For Guardianship Proceedings.

§ 1022.003. Jurisdiction of Contested Guardianship Proceeding in County With No Statutory Probate Court or County Court at Law

§ 1022.004. Jurisdiction of Contested Guardianship Proceeding in County With No Statutory Probate Court

§ 1022.005. Exclusive Jurisdiction of Guardianship Proceeding in County With Statutory Probate Court

§ 1022.006. Concurrent Jurisdiction With District Court

§ 1022.007. Transfer of Proceeding by Statutory Probate Court

§ 1022.008. Transfer of Contested Guardianship of the Person of a Minor

Chapter 1022. Jurisdiction

§ 1022.001. 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 1021.001 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.

Derived from Probate Code § 605.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.015, eff. Jan. 1, 2014.

§ 1022.002. 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.

(d) [~~Sec. 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.

Derived from Probate Code §§ 604 & 607A.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.015, eff. Jan. 1, 2014 and Acts 2013, 83rd Leg., ch. 982, § 2, eff. Jan. 1, 2014.

§ 1022.003. 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) 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.

(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) 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.

Derived from Probate Code § 607B.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.015, eff. Jan. 1, 2014.

§ 1022.004. 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.

Derived from Probate Code § 607C.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.015, eff. Jan. 1, 2014.

§ 1022.005. 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) 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 1022.006 or with the jurisdiction of any other court.

Derived from Probate Code § 607D.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.015, eff. Jan. 1, 2014.

§ 1022.006. 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.

Derived from Probate Code § 607E.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.015, eff. Jan. 1, 2014.

§ 1022.007. 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 title, 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.

Derived from Probate Code § 608.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.015, eff. Jan. 1, 2014.

§ 1022.008. 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.

Derived from Probate Code § 609.

Added by and redesignated from Probate Code § 609(b), (c) by Acts 2013, 83rd Leg., ch. 161, § 6.015(a), (b), eff. Jan. 1, 2014.

Chapter 1023. Venue

§ 1023.001. Venue for Appointment of Guardian
§ 1023.002. Concurrent Venue and Transfer for Want of Venue
§ 1023.003. Application for Transfer of Guardianship to Another County
§ 1023.004. Notice
§ 1023.005. Court Action
§ 1023.006. Transfer of Record
§ 1023.007. Transfer Effective
§ 1023.008. Continuation of Guardianship
§ 1023.009. New Guardian Appointed on Transfer
§ 1023.010. Review of Transferred Guardianship

Chapter 1023. Venue

§ 1023.001. 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.

Derived from Probate Code § 610.

Redesignated from Probate Code § 610 by Acts 2013, 83rd Leg., ch. 161, § 6.015(c), eff. Jan. 1, 2014.

§ 1023.002. 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.

Derived from Probate Code §§ 611(b)-(d).

Added by and redesignated from Probate Code § 611(b)-(d) by Acts 2013, 83rd Leg., ch. 161, § 6.015(a), (d), eff. Jan. 1, 2014.

§ 1023.003. 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.

Derived from Probate Code § 612.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.015, eff. Jan. 1, 2014.

§ 1023.004. 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.

Derived from Probate Code § 613.

Added by and redesignated from Probate Code § 613(b) by Acts 2013, 83rd Leg., ch. 161, § 6.015(a), (e), eff. Jan. 1, 2014.

§ 1023.005. Court Action

(a) On hearing an application under Section 1023.003, 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), 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.

Derived from Probate Code § 614.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.015, eff. Jan. 1, 2014.

§ 1023.006. Transfer of Record

When an order of transfer is made under Section 1023.005, 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.

Derived from Probate Code § 615.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.015, eff. Jan. 1, 2014.

§ 1023.007. 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 1023.006 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.

Derived from Probate Code § 616.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.015, eff. Jan. 1, 2014.

§ 1023.008. Continuation of Guardianship

When a guardianship is transferred from one county to another in accordance with this chapter, 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.

Derived from Probate Code § 617.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.015, eff. Jan. 1, 2014.

§ 1023.009. 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 title in a case in which a guardian resigns.

Derived from Probate Code § 618.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.015, eff. Jan. 1, 2014.

§ 1023.010. Review of Transferred Guardianship

Not later than the 90th day after the date the transfer of the guardianship takes effect under Section 1023.007, 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.

Derived from Probate Code § 619.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.015, eff. Jan. 1, 2014.

SUBTITLE C. PROCEDURAL MATTERS

Chapter 1051. Notices and Process in Guardianship Proceedings in General

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Chapter 1051. Notices and Process in Guardianship Proceedings in General

Subchapter A. Issuance and Form of Notice or Process

§ 1051.001. Issuance of Notice or Process in General

(a) Except as provided by Subsection (b), a person is not required to be cited or otherwise given notice in a guardianship proceeding [~~matter~~] except in a situation in which this title expressly provides for citation or the giving of notice.

(b) If this title does not expressly provide for citation or the issuance or return of notice in a guardianship proceeding [~~matter~~], the court may require that notice be given. A court that requires that notice be given shall prescribe the form and manner of service of the notice and the return of service.

(c) Unless a court order is required by this title, the county clerk without a court order shall issue:

(1) necessary citations, writs, and other process in a guardianship proceeding [~~matter~~]; and

(2) all notices not required to be issued by a guardian.

Derived from Probate Code §§ 632(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.016, eff. Jan. 1, 2014.

§ 1051.002. Direction of Writ or Other Process

(a) A writ or other process other than a citation or notice must be directed "To any sheriff or constable within the State of Texas."

(b) Notwithstanding Subsection (a), a writ or other process other than a citation or notice may not be held defective because the process is directed to the sheriff or a constable of a named county if the process is properly served within that county by an officer authorized to serve the process.

Derived from Probate Code § 632(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.003. Contents of Citation or Notice

(a) A citation or notice must:

(1) be directed to the person to be cited or notified;

(2) be dated;

(3) state the style and number of the proceeding;

(4) state the court in which the proceeding is pending;

(5) describe generally the nature of the proceeding or matter to which the citation or notice relates;

(6) direct the person being cited or notified to appear by filing a written contest or answer or to perform another required action; and

(7) state when and where the appearance or performance described by Subdivision (6) is required.

(b) A citation or notice issued by the county clerk must be styled "The State of Texas" and be signed by the clerk under the clerk's seal.

(c) A notice required to be given by a guardian must be in writing and be signed by the guardian in the guardian's official capacity.

(d) A citation or notice is not required to contain a precept directed to an officer, but may not be held defective because the citation or notice contains a precept directed to an officer authorized to serve the citation or notice.

Derived from Probate Code § 632(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Methods of Serving Citation or Notice; Persons to be Served

§ 1051.051. Personal Service

(a) Except as otherwise provided by Subsection (b), if personal service of citation or notice is required, the citation or notice must be served on the attorney of record for the person to be cited or notified. Notwithstanding the requirement of personal service, service may be made on that attorney by any method specified by Section 1051.055 for service on an attorney of record.

(b) If the person to be cited or notified does not have an attorney of record in the proceeding, or if an attempt to serve the person's attorney is unsuccessful:

(1) the sheriff or constable shall serve the citation or notice by delivering a copy of the citation or notice to the person to be cited or

notified, in person, if the person to whom the citation or notice is directed is in this state; or

(2) a disinterested person competent to make an oath that the citation or notice was served may serve the citation or notice, if the person to be cited or notified is absent from or is not a resident of this state.

(c) The return day of the citation or notice served under Subsection (b) must be at least 10 days after the date of service, excluding the date of service.

(d) If the citation or notice attempted to be served as provided by Subsection (b) is returned with the notation that the person sought to be served, whether inside or outside this state, cannot be found, the county clerk shall issue a new citation or notice. Service of the new citation or notice must be made by publication.

Derived from Probate Code § 632(f)(1).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.052. Service by Mail

(a) The county clerk, or the guardian if required by statute or court order, shall serve a citation or notice required or permitted to be served by regular mail by mailing the original citation or notice to the person to be cited or notified.

(b) Except as provided by Subsection (c), the county clerk shall issue a citation or notice required or permitted to be served by registered or certified mail and shall serve the citation or notice by mailing the original citation or notice by registered or certified mail.

(c) A guardian shall issue a notice required to be given by the guardian by registered or certified mail and shall serve the notice by mailing the original notice by registered or certified mail.

(d) The county clerk or guardian, as applicable, shall mail a citation or notice under Subsection (b) or (c) with an instruction to deliver the citation or notice to the addressee only and with return receipt requested. The clerk or guardian, as applicable, shall address the envelope containing the citation or notice to:

(1) the attorney of record in the proceeding for the person to be cited or notified; or

(2) the person to be cited or notified, if the citation or notice to the attorney is returned undelivered or the person to be cited or notified has no attorney of record in the proceeding.

(e) Service by mail must be made at least 20 days before the return day of the citation or notice, excluding the date of service. The date of service by mail is the date of mailing.

(f) A copy of a citation or notice served under Subsection (a), (b), or (c) and a certificate of the person serving the citation or notice showing that the citation or notice was mailed and the date of the mailing shall be filed and recorded. A returned receipt for a citation or notice served under Subsection (b) or (c) shall be attached to the certificate.

(g) If a citation or notice served by mail is returned undelivered, a new citation or notice shall be issued. Service of the new citation or notice must be made by posting.

Derived from Probate Code § 632(f)(4).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.053. Service by Posting

(a) The county clerk shall deliver the original and a copy of a citation or notice required to be posted to the sheriff or a constable of the county in which the proceeding is pending. The sheriff or constable shall post the copy at the door of the county courthouse or the location in or near the courthouse where public notices are customarily posted.

(b) Citation or notice under this section must be posted for at least 10 days before the return day of the citation or notice, excluding the date of posting, except as provided by Section 1051.152(b). The date of service of citation or notice by posting is the date of posting.

(c) A sheriff or constable who posts a copy of a citation or notice under this section shall return the original citation or notice to the county clerk and state the date and location of the posting in a written return of the copy of the citation or notice.

(d) The method of service prescribed by this section applies when a guardian is required or permitted to post a notice. The notice must be:

(1) issued in the name of the guardian;

(2) addressed and delivered to, and posted and returned by, the appropriate officer; and

(3) filed with the county clerk.

Derived from Probate Code § 632(f)(2).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.054. Service by Publication

(a) Citation or notice to a person to be served by publication shall be published one time in a newspaper of general circulation in the county in which the proceeding is pending. The publication must be made at least 10 days before the return day of the citation or notice, excluding the date of publication.

(b) The date of service of citation or notice by publication is the date of publication printed on the newspaper in which the citation or notice is published.

(c) If there is not a newspaper of general circulation published or printed in the county in which the citation or notice is to be published, the citation or notice under Subsection (a) shall be served by posting.

Derived from Probate Code § 632(f)(3).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.055. Service on Party's Attorney of Record

(a) If a party is represented by an attorney of record in a guardianship proceeding, a citation or notice required to be served on the party shall be served instead on that attorney.

(b) A notice served on an attorney under this section may be served by:

(1) delivery to the attorney in person;

(2) registered or certified mail, return receipt requested; or

(3) any other form of mail that requires proof of delivery.

(c) A notice or citation may be served on an attorney under this section by:

(1) another party to the proceeding;

(2) the attorney of record for another party to the proceeding;

(3) an appropriate sheriff or constable; or

(4) another person competent to testify.

(d) Each of the following is prima facie evidence of the fact that service has been made under this section:

(1) the written statement of an attorney of record showing service;

(2) the return of the officer showing service; and

(3) the affidavit of a person showing service.

(e) Except as provided by Section 1051.105, an attorney ad litem may not waive personal service of citation.

Derived from Probate Code § 634.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.056. Service on Guardian or Receiver

Unless this title expressly provides for another method of service, the county clerk who issues a citation or notice required to be served on a guardian or receiver shall serve the citation or notice by mailing the original citation or notice by registered or certified mail to:

(1) the guardian's or receiver's attorney of record; or

(2) the guardian or receiver, if the guardian or receiver does not have an attorney of record.

Derived from Probate Code § 632(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Notice and Citation Required for Application for Guardianship

§ 1051.101. Notice Required for Application for Guardianship; Citation of Applicant not Required

(a) On the filing of an application for guardianship, notice shall be issued and served as provided by this subchapter.

(b) It is not necessary to serve a citation on a person who files an application for the creation of a guardianship under this title or for that person to waive the issuance and personal service of citation under this subchapter.

Derived from Probate Code §§ 633(a), (g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.102. Issuance of Citation for Application for Guardianship

(a) On the filing of an application for guardianship, the court clerk shall issue a citation stating:

(1) that the application was filed;

(2) the name of the proposed ward;

(3) the name of the applicant; and

(4) the name of the person to be appointed guardian as provided in the application, if that person is not the applicant.

(b) 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 the persons wish to contest the application.

(c) The citation shall be posted.

(d) The citation must contain a clear and conspicuous statement informing those interested persons of the right provided under Section 1051.252 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.

Derived from Probate Code § 633(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (d) added by Acts 2013, 83rd Leg., ch. 161, § 6.017, eff. Jan. 1, 2014.

§ 1051.103. Service of Citation for Application for Guardianship

(a) The sheriff or other officer shall personally serve citation to appear and answer an application for guardianship on:

(1) a proposed ward who is 12 years of age or older;

(2) the proposed ward's parents, 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) the 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.

(b) A citation served as provided by Subsection (a) must contain the statement regarding the right under Section 1051.252 that is required in the citation issued under Section 1051.102.

Derived from Probate Code § 633(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.018, eff. Jan. 1, 2014.

§ 1051.104. Notice by Applicant for Guardianship

(a) The person filing an application for guardianship shall mail a copy of the application and a notice containing the information required in the citation issued under Section 1051.102 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) each adult child of the proposed ward;

(2) each adult sibling of the 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 Subchapter E, Chapter 1104, 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 proposed ward;

(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; and

(9) each person named as another relative within the third degree by consanguinity [~~next of kin~~] in the application as required by Section 1101.001(b)(11) or (13) 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.

(b) The applicant shall file with the court:

(1) a copy of any notice required by Subsection (a) 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 (A); 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.

(c) Failure of the applicant to comply with Subsections (a)(2)-(9) does not affect the validity of a guardianship created under this title.

Derived from Probate Code §§ 633(d), (d-1), (f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2013, 83rd Leg., ch. 161, § 6.019, eff. Jan. 1, 2014.

§ 1051.105. Waiver of Notice of Application for Guardianship

A person other than the proposed ward who is entitled to receive notice or personal service of citation under Sections 1051.103 and 1051.104(a) may, by writing filed with the clerk, waive the receipt of notice or the issuance and personal service of citation either in person or through an attorney ad litem.

Derived from Probate Code § 633(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.106. Action by Court on Application for Guardianship

The court may not act on an application for the creation of a guardianship until the applicant has complied with Section 1051.104(b) and not earlier than the Monday following the expiration of the 10-day period beginning on the date service of notice and citation has been made as provided by Sections 1051.102, 1051.103, and 1051.104(a)(1).

Derived from Probate Code § 633(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Return and Proof of Service of Citation or Notice

§ 1051.151. Requirements for Return on Citation or Notice Served by Personal Service

The return of the person serving a citation or notice under Section 1051.051 must:

(1) be endorsed on or attached to the citation or notice;

(2) state the date and place of service;

(3) certify that a copy of the citation or notice was delivered to the person directed to be served;

(4) be subscribed and sworn to before, and under the hand and official seal of, an officer authorized by the laws of this state to take an affidavit; and

(5) be returned to the county clerk who issued the citation or notice.

Derived from Probate Code § 632(f)(1).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.152. Validity of Service and Return on Citation or Notice Served by Posting

(a) A citation or notice in a guardianship proceeding [~~matter~~] that is required to be served by posting and is issued in conformity with this title, and the service of and return of the citation or notice, is valid if:

(1) a sheriff or constable posts a copy of the citation or notice at the location or locations prescribed by this title; and

(2) the posting occurs on a day preceding the return day of service specified in the citation or notice that provides sufficient time for the period the citation or notice must be posted to expire before the specified return day.

(b) The fact that the sheriff or constable, as applicable, makes the return of service on the citation or notice described by Subsection (a) and returns the citation or notice on which the return has been made to the court before the expiration of the period the citation or notice must be posted does not affect the validity of the citation or notice or the service or return of service. This subsection applies even if the sheriff or constable makes the return of service and returns the citation or notice to the court on the same day the citation or notice is issued.

Derived from Probate Code § 632(h).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2013, 83rd Leg., ch. 161, § 6.020, eff. Jan. 1, 2014.

§ 1051.153. Proof of Service

(a) Proof of service in each case requiring citation or notice must be filed before a hearing.

(b) Proof of service consists of:

(1) if the service is made by a sheriff or constable, the return of service;

(2) if the service is made by a private person, the person's affidavit;

(3) if the service is made by mail:

(A) the certificate of the county clerk making the service, or the affidavit of the guardian or other person making the service that states that the citation or notice was mailed and the date of the mailing; and

(B) the return receipt attached to the certificate, if the mailing was by registered or certified mail and a receipt has been returned; and

(4) if the service is made by publication, an affidavit that:

(A) is made by the publisher of the newspaper in which the citation or notice was published or an employee of the publisher;

(B) contains or to which is attached a copy of the published citation or notice; and

(C) states the date of publication printed on the newspaper in which the citation or notice was published.

Derived from Probate Code § 632(i).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.154. Return to Court

A citation or notice issued by a county clerk must be returned to the court from which the citation or notice was issued on the first Monday after the service is perfected.

Derived from Probate Code § 632(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Alternative Manner of Issuance, Service, and Return

§ 1051.201. Court-Ordered Issuance, Service, and Return Under Certain Circumstances

(a) A citation or notice required by this title shall be issued, served, and returned in the manner specified by written order of the court in accordance with this title and the Texas Rules of Civil Procedure if:

(1) an interested person requests that action;

(2) a specific method is not provided by this title for giving the citation or notice;

(3) a specific method is not provided by this title for the service and return of citation or notice; or

(4) a provision with respect to a matter relating to citation or notice is inadequate.

(b) Citation or notice issued, served, and returned in the manner specified by a court order as provided by Subsection (a) has the same effect as if the manner of service and return had been specified by this title.

Derived from Probate Code § 632(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter F. Additional Notice Provisions

§ 1051.251. Waiver of Notice of Hearing

(a) A competent person who is interested in a hearing in a guardianship proceeding may waive notice of the hearing in writing either in person or through an attorney.

(b) 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 the person's behalf.

(c) A person who submits to the jurisdiction of the court in a hearing is considered to have waived notice of the hearing.

Derived from Probate Code § 635.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.252. Request for Notice of Filing of Pleading

(a) At any time after an application is filed to commence a guardianship proceeding, a person interested in the estate or welfare of a ward or incapacitated person may file with the county clerk a written request to be notified of all, or any specified, motions, applications, or pleadings filed with respect to the proceeding by any person or by a person specifically designated in the request. A person filing a request under this section is responsible for payment of the fees

and other costs of providing the requested documents, and the clerk may require a deposit to cover the estimated costs of providing the notice. The clerk shall send to the requestor by regular mail a copy of any requested document.

(b) A county clerk's failure to comply with a request under this section does not invalidate a proceeding.

Derived from Probate Code § 632(j).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1051.253. Service of Notice of Intention to Take Depositions in Certain Proceedings [~~Matters~~]

(a) In a guardianship proceeding in which there is no opposing party or attorney of record on whom to serve notice and copies of interrogatories, service may be made by posting notice of the intention to take depositions for a period of 10 days as provided by Section 1051.053 governing a posting of notice.

(b) When notice by posting under Subsection (a) is filed with the clerk, a copy of the interrogatories must also be filed.

(c) At the expiration of the 10-day period prescribed by Subsection (a):

(1) [~~commission may issue for taking~~] the depositions for which the notice was posted may be taken; and

(2) the judge may file cross-interrogatories if no person appears.

Derived from Probate Code § 649.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.021, eff. Jan. 1, 2014 and subsec. (c) amended by Acts 2013, 83rd Leg., ch. 982, § 3, eff. Jan. 1, 2014.

Chapter 1052. Filing and Recordkeeping

Subchapter A. Recordkeeping Requirements

§ 1052.001. Guardianship Docket
§ 1052.002. Claim Docket
§ 1052.003. Guardianship Fee Book
§ 1052.004. Alternate Recordkeeping

Subchapter B. Files; Index

§ 1052.051. Filing Procedures
§ 1052.052. Case Files
§ 1052.053. Index

Chapter 1052. Filing and Recordkeeping

Subchapter A. Recordkeeping Requirements

§ 1052.001. Guardianship Docket

(a) The county clerk shall maintain a record book titled "Judge's Guardianship Docket" and shall record in the book:

(1) the name of each person with respect to whom, or with respect to whose estate, a proceeding is commenced or sought to be commenced;

(2) the name of the guardian of the estate or person or of the applicant for letters of guardianship;

(3) the date each original application for a guardianship proceeding is filed;

(4) a notation of each order, judgment, decree, and proceeding that occurs in each estate, including the date it occurs; and

(5) the docket number of each guardianship as assigned under Subsection (b).

(b) The county clerk shall assign a docket number to each guardianship in the order a proceeding is commenced.

Derived from Probate Code § 623(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1052.002. Claim Docket

(a) The county clerk shall maintain a record book titled "Claim Docket" and shall record in the book each claim that is presented against a guardianship for the court's approval.

(b) The county clerk shall assign one or more pages of the record book to each guardianship.

(c) The claim docket must 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. The county clerk shall record for each claim, in the order the claims are filed, the following information in the respective columns, beginning with the first or marginal column:

(1) the name of the claimant;

(2) the amount of the claim;

(3) the date of the claim;

(4) the date the claim is filed;

(5) the date the claim is due;

(6) the date the claim begins bearing interest;

(7) the interest rate;

(8) the date the claim is allowed by the guardian, if applicable;

(9) the amount allowed by the guardian, if applicable;

(10) the date the claim is rejected, if applicable;

(11) the date the claim is approved, if applicable;

(12) the amount approved for the claim, if applicable;

(13) the date the claim is disapproved, if applicable;

(14) the class to which the claim belongs;

(15) the date the claim is established by a judgment of a court, if applicable; and

(16) the amount of the judgment established under Subdivision (15), if applicable.

Derived from Probate Code § 624.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1052.003. Guardianship Fee Book

(a) The county clerk shall maintain a record book titled "Guardianship Fee Book" and shall record in the book each item of cost that accrues to the officers of the court and any witness fees.

(b) Each record entry must include:

(1) the party to whom the cost or fee is due;

(2) the date the cost or fee accrued;

(3) the guardianship or party liable for the cost or fee; and

(4) the date the cost or fee is paid.

Derived from Probate Code § 626.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1052.004. Alternate Recordkeeping

Instead of maintaining the record books described by Sections 1052.001, 1052.002, and 1052.003, the county clerk may maintain the information described by those sections relating to a person's guardianship proceeding:

(1) on a computer file;

(2) on microfilm;

(3) in the form of a digitized optical image; or

(4) in another similar form of data compilation.

Derived from Probate Code § 627.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Files; Index

§ 1052.051. Filing Procedures

(a) An application for a guardianship proceeding or a [~~,~~] complaint, petition, or other paper permitted or required by law to be filed with a court in a guardianship proceeding [~~matter~~] must be filed with the county clerk of the appropriate county.

(b) Each paper filed in a guardianship proceeding must be given the docket number assigned to the estate.

(c) On receipt of a paper described by Subsection (a), the county clerk shall:

(1) file the paper; and

(2) endorse on the paper:

(A) the date the paper is filed;

(B) the docket number; and

(C) the clerk's official signature.

(d) Except as provided by Subsection (e), the court clerk shall collect a filing fee, including a deposit for payment to an attorney ad litem, required by law to be paid on the filing of any document described by Subsection (a) from the person or entity filing the document.

(e) Notwithstanding any other law requiring the payment of a filing fee for the document, the following are not required to pay a fee on the filing of a document described by Subsection (a):

(1) a guardian;

(2) an attorney ad litem;

(3) a guardian ad litem;

(4) a person or entity who files an affidavit of inability to pay under Rule 145, Texas Rules of Civil Procedure;

(5) a guardianship program;

(6) a governmental entity; and

(7) a government agency or nonprofit agency providing guardianship services.

(f) After the creation of a guardianship, a person or entity is entitled to be reimbursed for a filing fee described by Subsection (d), other than a deposit for payment to an attorney ad litem, from:

(1) the guardianship estate; or

(2) the county treasury, if the guardianship estate is insufficient to pay the amount of the filing fee.

Derived from Probate Code §§ 621, 623(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2013, 83rd Leg., ch. 161, § 6.022, eff. Jan. 1, 2014 and subsecs. (d), (e), & (f) added by Acts 2013, 83rd Leg., ch. 982, § 4, eff. Jan. 1, 2014.

§ 1052.052. Case Files

(a) The county clerk shall maintain a case file for each person's filed guardianship proceedings.

(b) Each case file must contain each order, judgment, and proceeding of the court and any other guardianship filing with the court, including each:

(1) application for the granting of guardianship;

(2) citation and notice, whether published or posted, including the return on the citation or notice;

(3) bond and official oath;

(4) inventory, appraisement, and list of claims;

(5) exhibit and account;

(6) report of renting;

(7) application for sale or partition of real estate;

(8) report of sale;

(9) application for authority to execute a lease for mineral development, or for pooling or unitization of lands, royalty, or other interest in minerals, or to lend or invest money;

(10) report of lending or investing money; and

(11) report of guardians of the persons.

Derived from Probate Code § 625.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1052.053. Index

(a) The county clerk shall properly index the records required under this chapter.

(b) The county clerk shall keep the index open for public inspection but may not release the index from the clerk's custody.

Derived from Probate Code § 627A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1053. Other Court Duties and Procedures

Subchapter A. Enforcement of Orders

§ 1053.001. Enforcement of Orders

Subchapter B. Costs and Security

§ 1053.051. Applicability of Certain Laws
§ 1053.052. Security for Certain Costs

Subchapter C. Procedures for Guardianship Proceedings [~~Matters~~]

§ 1053.101. Calling of Dockets
§ 1053.102. Setting of Certain Hearings by Clerk
§ 1053.103. Rendering of Decisions, Orders, Decrees, and Judgments
§ 1053.104. Confidentiality of Certain Information
§ 1053.105. Inapplicability of Certain Rules of Civil Procedure

Chapter 1053. Other Court Duties and Procedures

Subchapter A. Enforcement of Orders

§ 1053.001. Enforcement of Orders

A judge may enforce an order entered against a guardian by attachment and confinement. Unless this title expressly provides otherwise, the term of confinement for any one offense under this section may not exceed three days.

Derived from Probate Code § 651.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Costs and Security

§ 1053.051. Applicability of Certain Laws

A law regulating costs in ordinary civil cases applies to a guardianship proceeding [~~matter~~] unless otherwise expressly provided by this title.

Derived from Probate Code § 622(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.023, eff. Jan. 1, 2014.

§ 1053.052. Security for Certain Costs

(a) The clerk may require a person who files an application, complaint, or opposition relating to a guardianship proceeding [~~matter~~], other than a guardian, attorney ad litem, or guardian ad litem, to provide security for the probable costs of the [~~guardianship~~] proceeding before filing the application, complaint, or opposition.

(b) At any time before the trial of an application, complaint, or opposition described by Subsection (a), an officer of the court or a person interested in the guardianship or in the welfare of the ward may, by written motion, obtain from the court an order requiring the person who filed the application, complaint, or opposition to provide security for the probable costs of the proceeding. The rules governing civil suits in the county court with respect to providing security for the probable costs of a proceeding control in cases described by Subsection (a) and this subsection.

(c) A guardian, attorney ad litem, or guardian ad litem appointed under this title by a court of this state may not be required to provide security for costs in an action brought by the guardian, attorney ad litem, or guardian ad litem in the guardian's, attorney ad litem's, or guardian ad litem's fiduciary capacity.

Derived from Probate Code § 622(b), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsection (a) amended by Acts 2013, 83rd Leg., ch. 161 , § 6.024, eff. Jan. 1, 2014.

Subchapter C. Procedures for Guardianship Proceedings [~~Matters~~]

§ 1053.101. Calling of Dockets

The judge in whose court a guardianship proceeding is pending, as determined by the judge, shall:

(1) call guardianship proceedings [~~matters~~] in the proceedings' [~~matters'~~] regular order on both the guardianship and claim dockets; and

(2) issue necessary orders.

Derived from Probate Code § 629.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.026, eff. Jan. 1, 2014.

§ 1053.102. Setting of Certain Hearings by Clerk

(a) If a judge is unable to designate the time and place for hearing a guardianship proceeding [~~matter~~] pending in the judge's court because the judge is absent from the county seat or is on vacation, disqualified, ill, or deceased, the county clerk of the county in which the proceeding [~~matter~~] is pending may:

(1) designate the time and place for hearing;

(2) enter the setting on the judge's docket; and

(3) certify on the docket the reason that the judge is not acting to set the hearing.

(b) If, after the perfection of the service of notices and citations required by law concerning the time and place of hearing, a qualified judge is not present for a hearing set under Subsection (a), the hearing is automatically continued from day to day until a qualified judge is present to hear and make a determination in the proceeding [~~determine the matter~~].

Derived from Probate Code § 630.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.027, eff. Jan. 1, 2014.

§ 1053.103. Rendering of Decisions, Orders, Decrees, and Judgments

The court shall render a decision, order, decree, or judgment in a guardianship proceeding [~~matter~~] in open court, except as otherwise expressly provided.

Derived from Probate Code § 650.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.028, eff. Jan. 1, 2014.

§ 1053.104. Confidentiality of Certain Information

(a) On request by a person protected by a protective order issued under Chapter 85, Family Code, or a guardian, attorney ad litem, or member of the family or household of a person protected by an order, the court may exclude from any document filed in a guardianship proceeding:

(1) the address and phone number of the person protected by the protective order;

(2) the place of employment or business of the person protected by the protective order;

(3) the school attended by the person protected by the protective order or the day-care center or other child-care facility the person attends or in which the person resides; and

(4) the place at which service of process on the person protected by the protective order was effectuated.

(b) On granting a request for confidentiality under this section, the court shall order the clerk to:

(1) strike the information described by Subsection (a) from the public records of the court; and

(2) maintain a confidential record of the information for use only by the court.

New.

Added by Acts 2013, 83rd Leg., ch. 982, § 5, eff. Jan. 1, 2014.

§ 1053.105. Inapplicability of Certain Rules of Civil Procedure

The following do not apply to guardianship proceedings:

(1) Rules 47(c) and 169, Texas Rules of Civil Procedure; and

(2) the portions of Rule 190.2, Texas Rules of Civil Procedure, concerning expedited actions under Rule 169, Texas Rules of Civil Procedure.

New.

Added by Acts 2013, 83rd Leg., ch. 982, § 5, eff. Jan. 1, 2014.

Chapter 1054. Court Officers and Court-Appointed Persons

Subchapter A. Attorneys Ad Litem and Interpreters

§ 1054.001. Appointment of Attorney Ad Litem in Proceeding For Appointment of Guardian
§ 1054.002. Term of Appointment
§ 1054.003. Access to Records
§ 1054.004. Duties
§ 1054.005. Appointment of Interpreter
§ 1054.006. Representation of Ward or Proposed Ward by Attorney
§ 1054.007. Attorneys Ad Litem

Subchapter B. Guardians Ad Litem

§ 1054.051. Appointment of Guardian Ad Litem in Guardianship Proceeding
§ 1054.052. Appointment of Guardian Ad Litem Relating to Certain Other Suits
§ 1054.053. Term of Certain Appointments
§ 1054.054. Duties
§ 1054.055. Compensation and Expenses
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Subchapter C. Court Visitors

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Chapter 1054. Court Officers and Court-Appointed Persons

Subchapter A. Attorneys Ad Litem and Interpreters

§ 1054.001. Appointment of Attorney Ad Litem in Proceeding for Appointment of Guardian

In a proceeding under this title for the appointment of a guardian, the court shall appoint an attorney ad litem to represent the proposed ward's interests.

Derived from Probate Code § 646(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.002. Term of Appointment

(a) Unless the court determines that the continued appointment of an attorney ad litem appointed under Section 1054.001 is in the ward's best interests, the attorney's term of appointment expires, without a court order, on the date the court:

(1) appoints a guardian in accordance with Subchapter D, Chapter 1101;

(2) appoints a successor guardian; or

(3) [~~(2)~~] denies the application for appointment of a guardian.

(b) The term of appointment of an attorney ad litem appointed under Section 1054.001 continues after the court appoints a temporary guardian under Chapter 1251 unless a court order provides for the termination or expiration of the attorney ad litem's appointment.

Derived from Probate Code § 646(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.029, eff. Jan. 1, 2014.

§ 1054.003. Access to Records

An attorney ad litem appointed under Section 1054.001 shall be provided copies of all of the current records in the guardianship case. The attorney may have access to all of the proposed ward's relevant medical, psychological, and intellectual testing records.

Derived from Probate Code § 646(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.004. Duties

(a) An attorney ad litem appointed under Section 1054.001 shall interview the proposed ward within a reasonable time before the hearing in the proceeding for the appointment of a guardian. To the greatest extent possible, the attorney shall discuss with the proposed ward:

(1) the law and facts of the case;

(2) the proposed ward's legal options regarding disposition of the case; and

(3) the grounds on which guardianship is sought.

(b) Before the hearing, the attorney ad litem shall review:

(1) the application for guardianship;

(2) certificates of current physical, medical, and intellectual examinations; and

(3) all of the proposed ward's relevant medical, psychological, and intellectual testing records.

Derived from Probate Code § 647.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.005. Appointment of Interpreter

At the time the court appoints the attorney ad litem under Section 1054.001, the court shall appoint a language interpreter or sign interpreter if necessary to ensure effective communication between the proposed ward and the attorney.

Derived from Probate Code § 646(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.006. 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 Subchapter E to represent the person's interests in a guardianship proceeding instead of having those interests represented by an attorney ad litem appointed under Section 1054.001 or another provision of this title:

(1) a ward who retains the power to enter into a contract under the terms of the guardianship, subject to Section 1202.103; 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 1054.001 or any other provision of this title 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.

New.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.030, eff. Jan. 1, 2014.

§ 1054.007. Attorneys Ad Litem

(a) Except in a situation in which this title requires the appointment to represent the interests of the person, a court may appoint an attorney ad litem in any guardianship proceeding to represent the interests of:

(1) an incapacitated person or another person who has a legal disability;

(2) a proposed ward;

(3) a nonresident;

(4) an unborn or unascertained person; or

(5) an unknown or missing potential heir.

(b) An attorney ad litem appointed under this section is entitled to reasonable compensation for services provided in the amount set by the court, to be taxed as costs in the proceeding.

New.

Added by Acts 2013, 83rd Leg., ch. 982, § 6, eff. Jan. 1, 2014.

Subchapter B. Guardians Ad Litem

§ 1054.051. Appointment of Guardian Ad Litem in Guardianship Proceeding

The judge may appoint a guardian ad litem to represent the interests of an incapacitated person in a guardianship proceeding.

Derived from Probate Code § 645(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.052. Appointment of Guardian Ad Litem Relating to Certain Other Suits

In the interest of judicial economy, the court may appoint as guardian ad litem under Section 1104.354(1) the person who has been appointed attorney ad litem under Section 1054.001 or the person who is serving as an ad litem for the ward's benefit in any other proceeding.

Derived from Probate Code § 645(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.053. Term of Certain Appointments

Unless the court determines that the continued appointment of a guardian ad litem appointed in a proceeding for the appointment of a guardian is in the ward's best interests, the guardian ad litem's term of appointment expires, without a court order, on the date the court:

(1) appoints a guardian; or

(2) denies the application for appointment of a guardian.

Derived from Probate Code § 645(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.054. Duties

(a) A guardian ad litem is an officer of the court.

(b) A guardian ad litem shall protect the incapacitated person whose interests the guardian has been appointed to represent in a manner that will enable the court to determine the action that will be in that person's best interests.

Derived from Probate Code § 645(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.055. Compensation and Expenses

(a) A guardian ad litem is entitled to reasonable compensation for services provided in the amount set by the court, to be taxed as costs in the proceeding.

(b) The fees and expenses of a guardian ad litem appointed under Section 1104.354(1) are costs of the litigation proceeding that made the appointment necessary.

Derived from Probate Code §§ 645(b), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.056. Immunity

(a) Subject to Subsection (b), a guardian ad litem appointed under this subchapter or Section 1102.001 or 1202.054 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) This section does not apply to a recommendation or opinion that is:

(1) wilfully wrongful;

(2) given:

(A) with conscious indifference to or reckless disregard for the safety of another;

(B) with malice; or

(C) in bad faith; or

(3) grossly negligent.

Derived from Probate Code § 645A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Court Visitors

§ 1054.101. Inapplicability of Subchapter to Certain Guardianships

This subchapter does not apply to a guardianship created only because the appointment of a guardian for a person is necessary for the person to receive funds from a governmental source.

Derived from Probate Code § 648(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.102. Operation of Court Visitor Program

(a) Each statutory probate court shall operate a court visitor program to assess the conditions of wards and proposed wards.

(b) A court, other than a statutory probate court, that has jurisdiction of a guardianship proceeding may operate a court visitor program in accordance with the population needs and financial abilities of the area the court serves.

Derived from Probate Code § 648(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.103. Evaluation of Ward or Proposed Ward

A court, at any time before a guardian is appointed for a proposed ward or during the pendency of a guardianship of the person or estate, may appoint a court visitor to evaluate the ward or proposed ward and provide a written report that substantially complies with Section 1054.104(b) on:

(1) the request of any interested person, including the ward or proposed ward; or

(2) the court's own motion.

Derived from Probate Code § 648(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.104. Evaluation Report

(a) A court visitor appointed under Section 1054.103 shall file the report on the evaluation of a ward or proposed ward not later than the 14th day after the date the court visitor conducts the evaluation. The court visitor shall swear under penalty of perjury that the report is accurate to the best of the court visitor's knowledge and belief.

(b) A court visitor's report must include:

(1) a description of the nature and degree of the ward's or proposed ward's capacity and incapacity, including a description of the ward's or proposed ward's medical history, if reasonably available and not waived by the court;

(2) a medical prognosis and list of the ward's or proposed ward's treating physicians, when appropriate;

(3) a description of the ward's or proposed ward's living conditions and circumstances;

(4) a description of the ward's or proposed ward's social, intellectual, physical, and educational conditions;

(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 guardian's most recent visit, if a guardian has been appointed;

(7) a recommendation as to any modification needed in the guardianship or proposed guardianship, including removal or denial of the guardianship; and

(8) any other information required by the court.

Derived from Probate Code §§ 648(c), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.105. Compensation

(a) A court that operates a court visitor program shall use persons willing to serve as court visitors without compensation to the greatest extent possible.

(b) A court visitor who has not expressed a willingness to serve without compensation is entitled to reasonable compensation for services provided in an amount set by the court, to be taxed as costs in the proceeding.

Derived from Probate Code §§ 648(a), (e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Court Investigators

§ 1054.151. Investigation of Guardianship Application

On the filing of an application for guardianship under Section 1101.001, a court investigator shall investigate the circumstances alleged in the application to determine whether a less restrictive alternative to guardianship is appropriate.

Derived from Probate Code § 648A(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.152. General Duties

A court investigator shall:

(1) supervise a court visitor program established under Subchapter C 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 title.

Derived from Probate Code § 648A(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.153. Investigation Report

(a) A court investigator shall file with the court a report containing the court investigator's findings and conclusions after conducting an investigation under Section 1054.151 or 1054.152.

(b) In a contested case, the court investigator shall provide copies of the report of the court investigator's findings and conclusions to the attorneys for the parties before the earlier of:

(1) the seventh day after the date the court investigator completes the report; or

(2) the 10th day before the date the trial is scheduled to begin.

(c) Disclosure to a jury of the contents of a court investigator's report is subject to the Texas Rules of Evidence.

Derived from Probate Code § 648A(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.154. Effect of Subchapter on Other Law

Nothing in this subchapter supersedes any duty or obligation of another to report or investigate abuse or neglect under any statute of this state.

Derived from Probate Code § 648A(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Qualifications to Serve as Court-Appointed Attorney

§ 1054.201. Certification Required

(a) A court-appointed attorney in a guardianship proceeding, including an attorney ad litem, 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 the state bar's designee.

(b) The State Bar of Texas shall require three hours of credit for certification under this subchapter.

Derived from Probate Code §§ 646(b), 647A(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.202. Certificate Expiration

(a) Except as provided by Subsection (b), a certificate issued under this subchapter expires on the second anniversary of the date the certificate is issued.

(b) A new certificate obtained by a person to whom a certificate under this subchapter was previously issued 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.

Derived from Probate Code §§ 647A(c), (e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1054.203. Eligibility for Appointment on Expiration of Certificate

An attorney whose certificate issued under this subchapter has expired must obtain a new certificate to be eligible for appointment by a court to represent a person at a guardianship proceeding, including as an attorney ad litem.

Derived from Probate Code §§ 646(c), 647A(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1055. Trial and Hearing Matters

Subchapter A. Standing and Pleadings

§ 1055.001. Standing to Commence or Contest Proceeding
§ 1055.002. Defect in Pleading
§ 1055.053. Location of Hearing

Subchapter B. Trial and Hearing

§ 1055.051. Hearing by Submission
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Subchapter C. Evidence

§ 1055.101. Applicability of Certain Rules Relating to Witnesses and Evidence
§ 1055.102. Use of Certain Records as Evidence

Subchapter D. Mediation

§ 1055.151. Mediation of Contested Guardianship Proceeding

Chapter 1055. Trial and Hearing Matters

Subchapter A. Standing and Pleadings

§ 1055.001. Standing to Commence or Contest Proceeding

(a) Except as provided by Subsection (b), any person has the right to:

(1) commence a guardianship proceeding, including a proceeding for complete restoration of a ward's capacity or modification of a ward's guardianship; or

(2) appear and contest a 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 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.

Derived from Probate Code § 642.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1055.002. Defect in Pleading

A court may not invalidate a pleading in a guardianship proceeding [~~matter~~], or an order based on the pleading, on the basis of a defect of form or substance in the pleading unless a timely objection has

been made against the defect and the defect has been called to the attention of the court in which the proceeding was or is pending.

Derived from Probate Code § 641.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.031, eff. Jan. 1, 2014.

Subchapter B. Trial and Hearing

§ 1055.051. Hearing by Submission

(a) A court may consider by submission a motion or application filed under this title unless the proceeding is:

(1) contested; or

(2) an application for the appointment of a guardian.

(b) The party seeking relief under a motion or application being considered by the court on submission has the burden of proof at the hearing.

(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 the court's own motion, may order oral argument on a motion or application that may be considered by submission.

Derived from Probate Code § 644.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1055.052. Trial by Jury

A party in a contested guardianship proceeding is entitled to a jury trial on request.

Derived from Probate Code § 643.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1055.053. Location of Hearing

(a) Except as provided by Subsection (b), the judge may hold a hearing on a guardianship proceeding involving an adult ward or adult proposed ward at any suitable location in the county in which the guardianship proceeding 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.

New.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.032, eff. Jan. 1, 2014.

Subchapter C. Evidence

§ 1055.101. Applicability of Certain Rules Relating to Witnesses and Evidence

The rules relating to witnesses and evidence that apply in the district court apply in a guardianship proceeding to the extent practicable.

Derived from Probate Code § 649.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1055.102. Use of Certain Records as Evidence

The following are admissible as evidence in any court of this state:

(1) record books described by Sections 1052.001, 1052.002, and 1052.003 and individual case files described by Section 1052.052, including records maintained in a manner allowed under Section 1052.004; and

(2) certified copies or reproductions of the records.

Derived from Probate Code § 628.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Mediation

§ 1055.151. Mediation of Contested Guardianship Proceeding

(a) On the written agreement of the parties or on the court's own motion, the court may refer a contested guardianship proceeding to mediation.

(b) A mediated settlement agreement is binding on the parties if the agreement:

(1) provides, in a prominently displayed statement that is in boldfaced type, in capital letters, or underlined, that the agreement is not subject to revocation by the parties;

(2) is signed by each party to the agreement; and

(3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

(c) If a mediated settlement agreement meets the requirements of this section, a party is entitled to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule or law.

(d) Notwithstanding Subsections (b) and (c), a court may decline to enter a judgment on a mediated settlement agreement if the court finds that the agreement is not in the ward's or proposed ward's best interests.

New.

Added by Acts 2013, 83rd Leg., ch. 982, § 7, eff. Jan. 1, 2014.

Chapter 1056. Execution, Attachment, and Bill of Review

Subchapter A. Execution

§ 1056.001. Executions in Guardianship Proceedings [~~Matters~~]

Subchapter B. Attachment of Estate Property

§ 1056.051. Order for Issuance of Writ of Attachment

§ 1056.052. Bond

Subchapter C. Bill of Review

§ 1056.101. Revision and Correction of Order or Judgment in Guardianship Proceeding

§ 1056.102. Injunction

Chapter 1056. Execution, Attachment, and Bill of Review

Subchapter A. Execution

§ 1056.001. Executions In Guardianship Proceedings [~~Matters~~]

(a) An execution in a guardianship proceeding [~~matter~~] must be:

(1) directed "to any sheriff or any constable within the State of Texas";

(2) attested and signed by the clerk officially under court seal; and

(3) made returnable in 60 days.

(b) A proceeding under an execution in a guardianship proceeding [~~matter~~] is governed, to the extent applicable, by the laws regulating a proceeding under an execution issued by a district court.

(c) Notwithstanding Subsection (a), an execution directed to the sheriff or a constable of a specific county in this state may not be held defective if properly executed within that county by the sheriff or constable to whom the execution is directed.

Derived from Probate Code § 653.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Section title amended by Acts 2013, 83rd Leg., ch. 161, § 6.033, eff. Jan. 1, 2014. Subsecs, (a) & (b) amended by Acts 2013, 83rd Leg., ch. 161, § 6.034, eff. Jan. 1, 2014.

Subchapter B. Attachment of Estate Property

§ 1056.051. Order for Issuance of Writ of Attachment

(a) If a person interested in the estate of an incapacitated person files with the judge a written complaint made under oath alleging that the guardian is about to remove the estate or a part of the estate outside of the state, the judge may order a writ of attachment to issue, directed "to any sheriff or any constable within the State of Texas." The writ must order the sheriff or constable to:

(1) seize the estate or a part of the estate; and

(2) hold that property subject to further court order.

(b) Notwithstanding Subsection (a), a writ of attachment directed to the sheriff or constable of a specific county in this state is not defective if the writ was properly executed within that county by the sheriff or constable to whom the writ is directed.

Derived from Probate Code § 654.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1056.052. Bond

Before a judge may issue a writ of attachment ordered under Section 1056.051, the complainant must execute a bond that is:

(1) payable to the guardian of the estate;

(2) in an amount set by the judge; and

(3) conditioned on the payment of all damages and costs that are recovered for a wrongful suit out of the writ.

Derived from Probate Code § 654.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Bill of Review

§ 1056.101. Revision and Correction of Order or Judgment in Guardianship Proceeding

(a) An interested person, including a ward, may, by a bill of review filed in the court in which the guardianship proceeding was held, have an order or judgment rendered by the court revised and corrected on a showing of error in the order or judgment.

(b) Except as provided by Subsection (c), a bill of review to revise and correct an order or judgment may not be filed more than two years after the date of the order or judgment.

(c) A bill of review to revise and correct an order or judgment filed by a person whose disability has been removed must be filed not later than the second anniversary of the date the person's disability was removed.

Derived from Probate Code § 657.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1056.102. Injunction

A process or action under a court order or judgment subject to a bill of review filed under Section 1056.101 may be stayed only by writ of injunction.

Derived from Probate Code § 657.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1057. Change and Resignation of Resident Agent of Guardian For Service Of Process

§ 1057.001. Change of Resident Agent
§ 1057.002. Resignation of Resident Agent

Chapter 1057. Change and Resignation of Resident Agent of Guardian for Service of Process

§ 1057.001. Change of Resident Agent

(a) A guardian may change the guardian's resident agent to accept service of process in a guardianship proceeding or other matter relating to the guardianship by filing with the court in which the guardianship proceeding is pending a statement titled "Designation of Successor Resident Agent" that states the names and addresses of:

(1) the guardian;
(2) the resident agent; and
(3) the successor resident agent.

(b) The designation of a successor resident agent takes effect on the date the statement is filed with the court.

Derived from Probate Code § 760A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1057.002. Resignation of Resident Agent

(a) A resident agent of a guardian may resign as resident agent by giving notice to the guardian and filing with the court in which the guardianship proceeding is pending a statement titled "Resignation of Resident Agent" that states:

(1) the name of the guardian;
(2) the guardian's address most recently known by the resident agent;
(3) that notice of the resignation has been given to the guardian and the date that notice was given; and
(4) that the guardian does not have a resident agent.

(b) The resident agent shall send, by certified mail, return receipt requested, a copy of a resignation statement filed under Subsection (a) to:

(1) the guardian at the address most recently known by the resident agent; and
(2) each party in the case or the party's attorney or other designated representative of record.

(c) The resignation of the resident agent takes effect on the date the court enters an order accepting the resignation. A court may not enter an order accepting the resignation unless the resident agent complies with this section.

Derived from Probate Code § 760B.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

SUBTITLE D. CREATION OF GUARDIANSHIP

Chapter 1101. General Procedure to Appoint Guardian

Subchapter A. Initiation of Proceeding for Appointment of Guardian

§ 1101.001. Application for Appointment of Guardian; Contents
§ 1101.002. Contents of Application; Confidentiality of Certain Addresses

Subchapter B. Hearing; Jury Trial

§ 1101.051. Hearing
§ 1101.052. Jury Trial
§ 1101.053. Provision of Records Required; Use of Records

Subchapter C. Determination of Necessity of Guardianship; Findings and Proof

§ 1101.101. Findings and Proof Required
§ 1101.102. Determination of Incapacity of Certain Adults: Recurring Acts or Occurrences
§ 1101.103. Determination of Incapacity of Certain Adults: Physician Examination
§ 1101.104. Examinations and Documentation Regarding Intellectual Disability [~~Mental Retardation~~]
§ 1101.105. Prohibition Against Consideration of Age as Sole Factor in Appointment of Guardian for Adults
§ 1101.106. Evidence of Necessity of Guardianship to Receive Governmental Funds

Subchapter D. Court Action

§ 1101.151. Order Appointing Guardian With Full Authority
§ 1101.152. Order Appointing Guardian With Limited Authority
§ 1101.153. General Contents of Order Appointing Guardian
§ 1101.154. Appointment of Guardian of Estate for Certain Minors Prohibited
§ 1101.155. Dismissal of Application

Chapter 1101. General Procedure to Appoint Guardian

Subchapter A. Initiation of Proceeding for Appointment of Guardian

§ 1101.001. Application for Appointment of Guardian; Contents

(a) Any person may commence a proceeding for the appointment of a guardian by filing a written application in a court having jurisdiction and venue.

(b) The application must be sworn to by the applicant and state:

(1) the proposed ward's name, sex, date of birth, and address;

(2) the name, relationship, and address of the person the applicant seeks 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 the appointment of a guardian;

(6) the interest of the applicant in the appointment of a guardian;

(7) the nature and description of any kind of guardianship existing for the proposed ward in any other state;

(8) the name and address of any person or institution having the care and custody of the proposed ward;

(9) 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;

(10) 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;

(11) for a proposed ward who is a minor, the following information if known by the applicant:

(A) the name of each of the proposed ward's parents and either the parent's address or that the parent is deceased;

(B) the name and age of each of the proposed ward's siblings, if any, and either 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 [~~next of kin~~] who are adults;

(12) for a proposed ward who is a minor, whether the minor was the subject of a legal or conservatorship proceeding in the preceding two years and, if so:

(A) the court involved;

(B) the nature of the proceeding; and

(C) any final disposition of the proceeding;

(13) for a proposed ward who is an adult, the following information if known by the applicant:

(A) the name of the proposed ward's spouse, if any, and either the spouse's address or that the spouse is deceased;

(B) the name of each of the proposed ward's parents and either 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 either 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 either the child's address or that the child is deceased; and

(E) if there is no living spouse, parent, adult sibling, or adult child of the proposed ward's, the names and addresses of the proposed ward's other living relatives who are related to the propsed ward within the third degree by consanguinity and [~~next of kin~~] who are adults;

(14) facts showing that the court has venue of the proceeding; and

(15) if applicable, that the person whom the applicant seeks to have appointed as a guardian is a private professional guardian who is certified under Subchapter C, Chapter 155 [~~111~~], Government Code, and has complied with the requirements of Subchapter G, Chapter 1104.

Derived from Probate Code § 682.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2013, 83rd Leg., ch. 42, § 2.07, eff. Jan. 1, 2014 and Acts 2013, 83rd Leg., ch. 161, § 6.035, eff. Jan. 1, 2014.

§ 1101.002. Contents of Application; Confidentiality of Certain Addresses

An application filed under Section 1101.001 may omit the address of a person named in the application if:

(1) the application states that the person is protected by a protective order issued under Chapter 85, Family Code;

(2) a copy of the protective order is attached to the application as an exhibit;

(3) the application states the county in which the person resides;

(4) the application indicates the place where notice to or the issuance and service of citation on the person may be made or sent; and

(5) the application is accompanied by a request for an order under Section 1051.201 specifying the manner of issuance, service, and return of citation or notice on the person.

Added by Acts 2013, 83rd Leg., ch. 982, § 8, eff. Jan. 1, 2014.

Subchapter B. Hearing; Jury Trial

§ 1101.051. Hearing

(a) At a hearing for the appointment of a guardian, the court shall:

(1) inquire into the ability of any allegedly incapacitated adult to:

(A) feed, clothe, and shelter himself or herself;

(B) care for his or her own physical health; and

(C) manage his or her 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.

(b) A proposed ward must be present at the hearing unless the court, on the record or in the order, determines that a personal appearance is not necessary.

(c) The court may close the hearing at the request of the proposed ward or the proposed ward's counsel.

Derived from Probate Code §§ 685(a), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1101.052. Jury Trial

A proposed ward is entitled to a jury trial on request.

Derived from Probate Code § 685(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1101.053. Provision of Records Required; Use of Records

(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:

(A) current or relevant records do not exist; and

(B) 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.

Derived from Probate Code § 686.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Determination of Necessity of Guardianship; Findings and Proof

§ 1101.101. Findings and Proof Required

(a) Before appointing a guardian for a proposed ward, the court must:

(1) find by clear and convincing evidence that:

(A) the proposed ward is an incapacitated person;

(B) it is in the proposed ward's best interest to have the court appoint a person as the proposed ward's guardian; and

(C) the proposed ward's rights or property will be protected by the appointment of a guardian; and

(2) find by a preponderance of the evidence that:

(A) the court has venue of the case;

(B) 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;

(C) 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

(D) the proposed ward:

(i) is totally without capacity as provided by this title to care for himself or herself and to manage his or her property; or

(ii) lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property.

(b) The court may not grant an application to create a guardianship unless the applicant proves each element required by this title.

Derived from Probate Code §§ 684(a), (b), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1101.102. Determination of Incapacity of Certain Adults: Recurring Acts or Occurrences

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 in the preceding six months and not by isolated instances of negligence or bad judgment.

Derived from Probate Code § 684(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1101.103. Determination of Incapacity of Certain Adults: Physician Examination

(a) Except as provided by Section 1101.104, 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:

(1) dated not earlier than the 120th day before the date the application is filed; and

(2) based on an examination the physician performed not earlier than the 120th day before the date the application is filed.

(b) The letter or certificate must:

(1) describe the nature, degree, and severity of the proposed ward's incapacity, including any functional deficits 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) in providing a description under Subdivision (1) 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;

(3) provide an evaluation of the proposed ward's physical condition and mental function and summarize the proposed ward's medical history if reasonably available;

(4) 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 proposed ward'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;

(5) state whether any current medication affects the proposed ward's demeanor or the proposed ward's ability to participate fully in a court proceeding;

(6) 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; and

(7) include any other information required by the court.

(c) 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.

(d) A physician who examines the proposed ward, other than a physician or psychologist who examines the proposed ward under Section 1101.104(2), shall make available for inspection by the attorney ad litem appointed to represent the proposed ward a written letter or certificate from the physician that complies with the requirements of Subsections (a) and (b).

Derived from Probate Code §§ 687(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1101.104. Examinations and Documentation Regarding Intellectual Disability [~~Mental Retardation~~]

If an intellectual disability [~~mental retardation~~] is the basis of the proposed ward's alleged incapacity, 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) [~~a written letter or certificate that~~:

[~~(A)~~] complies with Sections 1101.103(a) and (b)[~~; and~~

[~~(B) states that the physician has made a determination of mental retardation in accordance with Section 593.005, Health and Safety Code~~]; or

(2) shows that not earlier than 24 months before the hearing date [~~both~~]:

(A) [~~written documentation showing that, not earlier than 24 months before the hearing date,~~] 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 include[~~, including a statement as to whether the physician or psychologist has made~~] a determination of an intellectual disability; or

(B) a physician or psychologist licensed in this state or certified by the Department of Aging and Disability Services to perform examinations described by Paragraph (A) updated or endorsed in writing a prior determination of an intellectual disability for the proposed ward made by a physician or psychologist licensed in this state or certified by the department [~~mental retardation in accordance with Section 593.005, Health and Safety Code~~].

Derived from Probate Code § 687(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 780, § 2, eff. Jan. 1, 2014.

§ 1101.105. Prohibition Against Consideration of Age as Sole Factor in Appointment of Guardian for Adults

In determining whether to appoint a guardian for an incapacitated person who is not a minor, the court may not use age as the sole factor.

Derived from Probate Code § 602.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1101.106. Evidence of Necessity of Guardianship to Receive Governmental Funds

A certificate of the executive head or a representative of a 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.

Derived from Probate Code § 684(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Court Action

§ 1101.151. Order Appointing Guardian With Full Authority

(a) If it is found that the proposed ward is totally without capacity to care for himself or herself, manage his or her property, operate a motor vehicle, and vote in a public election, the court may appoint a guardian of the proposed ward's person or estate, or both, with full authority over the incapacitated person except as provided by law.

(b) An order appointing a guardian under this section must contain findings of fact and specify:

(1) the information required by Section 1101.153(a);

(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 guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156;

(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; and

(6) if it is a guardianship of the person of the ward or of both the person and the estate of the ward, the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1).

(c) An order appointing a guardian under this section that includes the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $10,000."

Derived from Probate Code § 693(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (b) amended by and subsec. (c) added by Acts 2013, 83rd Leg., ch. 982, § 9, eff. Jan. 1, 2014.

§ 1101.152. Order Appointing Guardian With Limited Authority

(a) If it is found that 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 his or her property, the court may appoint a guardian with limited powers and permit the proposed ward to care for himself or herself or to manage his or her property commensurate with the proposed ward's ability.

(b) An order appointing a guardian under this section must contain findings of fact and specify:

(1) the information required by Section 1101.153(a);

(2) the specific powers, limitations, or duties of the guardian with respect to the person's care 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 spend for the education and maintenance of the person under Subchapter A, Chapter 1156; 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) An order appointing a guardian under this section that includes the right of the guardian to have physical possession of the ward or to establish the ward's legal domicile as specified in Section 1151.051(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $10,000."

Derived from Probate Code § 693(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (c) added by Acts 2013, 83rd Leg., ch. 982, eff. Jan. 1, 2014.

§ 1101.153. General Contents of Order Appointing Guardian

(a) A court order 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 estate of the ward, or both;

(4) the amount of any bond required;

(5) if it is a guardianship of the estate of the ward and the court considers an appraisal to be necessary, one, two, or three disinterested persons to appraise the estate and to return the appraisement 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.

(b) An order appointing a guardian may not duplicate or conflict with the powers and duties of any other guardian.

(c) An order appointing a guardian or a successor guardian may specify as authorized by Section 1202.001(c) a period during which a petition for adjudication that the ward no longer requires the guardianship may not be filed without special leave.

Derived from Probate Code §§ 693(c), (d), (e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1101.154. Appointment of Guardian of Estate for Certain Minors Prohibited

A court may not appoint a guardian of the estate of a minor when a payment of claims is made under Chapter 1355.

Derived from Probate Code § 684(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1101.155. Dismissal of Application

If it is found that a proposed ward who is an adult possesses the capacity to care for himself or herself and manage his or her property as would a reasonably prudent person, the court shall dismiss an application for guardianship.

Derived from Probate Code § 692.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1102. Court-Initiated Procedure to Appoint Guardian

§ 1102.001. Court-Initiated Investigation

§ 1102.002. Establishment of Probable Cause for Investigation
§ 1102.003. Information Letter
§ 1102.004. Application for Guardianship Following Investigation
§ 1102.005. Compensation of Guardian Ad Litem

Chapter 1102. Court-Initiated Procedure to Appoint Guardian

§ 1102.001. Court-Initiated Investigation

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:

(1) the person is an incapacitated person; and

(2) a guardianship is necessary.

Derived from Probate Code § 683(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1102.002. Establishment of Probable Cause for Investigation

To establish probable cause under Section 1102.001, 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 1102.003; 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 1101.103, except that the letter must be:

(A) dated not earlier than the 120th day before the date of the appointment of a guardian ad litem or court investigator under Section 1102.001; and

(B) based on an examination the physician performed not earlier than the 120th day before that date.

Derived from Probate Code § 683(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1102.003. Information Letter

(a) An interested person who submits an information letter under Section 1102.002(1) about a person believed to be incapacitated must, to the best of the interested person's knowledge [~~may~~]:

(1) state [~~include~~] the person's name, address, telephone number, county of residence, and date of birth;

(2) state whether the person's residence is a private residence, health care facility, or other type of residence;

(3) describe the relationship between the person and the interested person submitting the letter;

(4) state [~~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 has been appointed in this state for the person;

(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 the amount and source of any monthly income of the person;

(9) describe the nature and degree of the person's alleged incapacity; and

(10) state whether the person is in imminent danger of serious impairment to the person's physical health, safety, or estate.

(b) In addition to the requirements of Subsection (a), if an information letter under that subsection is submitted by an interested person who is a family member of the person believed to be incapacitated, the information letter must:

(1) be signed and sworn to before a notary public by the interested person; or

(2) include a written declaration signed by the interested person under penalty of perjury that the information contained in the information letter is true to the best of the person's knowledge.

Derived from Probate Code § 683A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 982, § 11, eff. Jan. 1, 2014.

§ 1102.004. Application for Guardianship Following Investigation

A guardian ad litem or court investigator who, after an investigation as prescribed by Section 1102.001, believes that the person is an incapacitated person and that a guardianship is necessary shall file an application for the appointment of a guardian of the person or estate, or both, for the person.

Derived from Probate Code § 683(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1102.005. Compensation of Guardian Ad Litem

(a) A court that appoints a guardian ad litem under Section 1102.001 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.

(b) After examining the [~~ward's or~~] proposed ward's assets and determining that 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.

Derived from Probate Code § 683(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2013, ch. 982, § 12, eff. Jan. 1, 2014.

Chapter 1103. Procedure to Appoint Guardian for Certain Minors Requiring Guardianships as Adults

§ 1103.001. Application for Appointment of Guardian
§ 1103.002. Appointment of Conservator as Guardian Without Hearing
§ 1103.003. Effective Date of Guardianship
§ 1103.004. Settlement and Closing of Prior Guardianship

Chapter 1103. Procedure to Appoint Guardian for Certain Minors Requiring Guardianships as Adults

§ 1103.001. Application for Appointment of Guardian

Not earlier than the 180th day before the proposed ward's 18th birthday, a person may file an application under Section 1101.001 for the appointment of a guardian of the person or estate, or both, of a proposed ward who:

(1) is a minor; and

(2) because of incapacity will require a guardianship after the proposed ward is no longer a minor.

Derived from Probate Code § 682A(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1103.002. Appointment of Conservator as Guardian Without Hearing

(a) Notwithstanding any other law, if the applicant who files an application under Section 1101.001 or 1103.001 is a person who was appointed conservator of a disabled child and the proceeding is a guardianship proceeding described by Section 1002.015(1) 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 [~~for whom a court obtains jurisdiction under Section 606(k)~~], the applicant may present to the court a written letter or certificate that meets the requirements of Sections 1101.103(a) and (b).

(b) If, on receipt of the letter or certificate described by Subsection (a), the court is able to make the findings required by Section 1101.101, the court, notwithstanding Subchapter C, Chapter 1104, shall:

(1) appoint the conservator as guardian without conducting a hearing; and

(2) 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 [~~under Section 606(k)~~].

Derived from Probate Code § 682A(a-1) & (a-2).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.037, eff. Jan. 1, 2014.

§ 1103.003. Effective Date Of Guardianship

If the application filed under Section 1103.001 is heard before the proposed ward's 18th birthday, a guardianship created under this chapter may not take effect and the person appointed guardian may not take the oath as required under Section 1105.051 or give a bond as required under Section 1105.101 until the proposed ward's 18th birthday.

Derived from Probate Code § 682A(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1103.004. Settlement and Closing of Prior Guardianship

Notwithstanding Section 1202.001(b), 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 Section 1103.001 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 1105.002.

Derived from Probate Code § 682A(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1104. Selection of and Eligibility to Serve as Guardian

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§ 1104.002. Preference of Incapacitated Person

Subchapter B. Selection of Guardian for Minor

§ 1104.051. Guardian of Minor Children
§ 1104.052. Guardian for Minor Orphan

§ 1104.053. Guardian Designated by Will or Written Declaration

§ 1104.054. Selection of Guardian by Minor

Subchapter C. Selection of Guardian for Incapacitated Person Other Than Minor

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Chapter 1104. Selection of and Eligibility to Serve as Guardian

Subchapter A. General Provisions Relating to Appointment of Guardian

§ 1104.001. Guardian of the Person or Estate

(a) 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 person may be appointed guardian of the estate, if it is in the best interest of the incapacitated person or ward.

(b) Subsection (a) does not prohibit the joint appointment, if the court finds it to be in the best interest of the incapacitated person or ward, of:

(1) a husband and wife;

(2) joint managing conservators;

(3) co-guardians 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.

Derived from Probate Code § 690.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.002. Preference of Incapacitated Person

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 consistent with other provisions of this title, shall give due consideration to the preference indicated by the incapacitated person.

Derived from Probate Code § 689.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Selection of Guardian for Minor

Statutes in Context
Chapter 1104, Subchapter B

Chapter 1104, Subchapter B, 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.

§ 1104.051. Guardian of Minor Children

(a) 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.

(b) The rights of parents who do not live together are equal. The court shall assign the guardianship of their minor children to one parent considering only the best interests of the children.

(c) If one parent is deceased, the surviving parent is the natural guardian of the person of the minor children and is entitled to be appointed guardian of the minor children's estates.

Derived from Probate Code § 676(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.052. Guardian for Minor Orphan

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 of the minor, the court shall appoint one ascendant according to circumstances and considering the minor's best interests;

(3) if the minor does not have an ascendant in the direct line of the minor:

(A) the court shall appoint the nearest of kin; or

(B) if two or more persons are in the same degree of kinship to the minor, the court shall appoint one of those persons according to circumstances and considering the minor's best interests; and

(4) if the minor does not have a relative who is eligible to be guardian, or if none of the eligible persons apply to be guardian, the court shall appoint a qualified person as guardian.

Derived from Probate Code § 676(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.053. Guardian Designated by Will or Written Declaration

(a) Notwithstanding Section 1104.001 or 1104.051, 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 parent dies or in the event of the parent's incapacity.

(b) After the surviving parent of a minor dies or if the court finds the surviving parent is an incapacitated person, 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 another otherwise entitled to serve as guardian under this title, unless the court finds that the person designated to serve as guardian:

(1) is disqualified;

(2) is deceased;

(3) refuses to serve; or

(4) would not serve the minor children's best interests.

(c) On compliance with this title, an eligible person is also entitled to be appointed guardian of the minor children's estates after the surviving parent dies or in the event of the surviving parent's incapacity.

Derived from Probate Code §§ 676(d), (e), (f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.054. Selection of Guardian by Minor

(a) Notwithstanding any other provision of this subchapter, if 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 may select the guardian by a writing filed with the clerk, if the court finds that the selection is in the minor's best interest and approves the selection.

(b) Notwithstanding any other provision of this subchapter, a minor at least 12 years of age may select another guardian of the minor's person or estate, or both, if the minor has a guardian appointed by the court, by will of the minor's parent, or by written declaration of the minor's parent, and that guardian dies, resigns, or is removed from guardianship. The minor must make the selection by filing an application in open court in person or by an attorney. The court shall make the appointment and revoke the letters of guardianship of the former guardian if the court is satisfied that:

(1) the person selected is suitable and competent; and

(2) the appointment of the person is in the minor's best interest.

Derived from Probate Code §§ 676(a), 680.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Selection of Guardian for Incapacitated Person Other Than Minor

Statutes in Context
Chapter 1104, Subchapter C

Chapter 1104, Subchapter C, 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.

§ 1104.101. Appointment According to Circumstances and Best Interests

The court shall appoint a guardian for an incapacitated person other than a minor according to the circumstances and considering the incapacitated person's best interests.

Derived from Probate Code § 677(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.102. Appointment Preferences

If the court finds that two or more eligible persons are equally entitled to be appointed guardian of an incapacitated person:

(1) the incapacitated person'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 incapacitated person is entitled to the guardianship, if the incapacitated person'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) refuse to serve;

(B) two or more persons entitled to serve under Subdivision (2) are related in the same degree of kinship to the incapacitated person; or

(C) neither the incapacitated person's spouse nor any person related to the incapacitated person is an eligible person.

Derived from Probate Code § 677(A).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.103. Designation of Guardian by Will or Written Declaration

(a) The surviving parent of an adult individual who is an incapacitated person may, if the parent is the guardian of the person of the adult individual, by will or written declaration appoint an eligible person to serve as guardian of the person of the adult individual after the parent dies or in the event of the parent's incapacity.

(b) After the surviving parent dies or if the court finds the surviving parent has become an incapacitated person after being appointed the adult individual's guardian, the court shall appoint the person designated in the will or declaration to serve as guardian in preference to any other person otherwise entitled to

serve as guardian under this title, unless the court finds that the person designated to serve as guardian:

(1) is disqualified;

(2) is deceased;

(3) refuses to serve; or

(4) would not serve the adult individual's best interests.

(c) On compliance with this title, the eligible person appointed under Subsection (b) is also entitled to be appointed guardian of the estate of the adult individual after the surviving parent dies or in the event of the surviving parent's incapacity, if the surviving parent is the guardian of the estate of the adult individual.

Derived from Probate Code §§ 677(b), (c), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Written Declaration by Certain Parents to Appoint Guardian for Their Children

§ 1104.151. Definitions

In this subchapter:

(1) "Declaration" means a written declaration of a person that:

(A) appoints a guardian for the person's child under Section 1104.053(A) or 1104.103(A); and

(B) satisfies the requirements of this subdivision and Sections 1104.152, 1104.153, 1104.154, 1104.156, 1104.159, and 1104.160.

(2) "Self-proving affidavit" means an affidavit the form and content of which substantially comply with the requirements of Section 1104.153.

(3) "Self-proving declaration" includes a self-proving affidavit that is attached or annexed to a declaration.

Derived from Probate Code §§ 677A(h), 677B(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Statutes in Context
§ 1104.152

Section 1104.152 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. Suggested forms are provided in § 1104.153 (two-step execution procedure with separate self-proving affidavit) and § 1104.154 (one-step execution procedure with integrated self-proving affidavit).

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§ 1104.152. Requirements for Declaration

(a) A declaration appointing an eligible person to be guardian of the person of a parent's child under Section 1104.053(a) or 1104.103(a) must be signed by the declarant and be:

(1) written wholly in the declarant's handwriting; or

(2) attested to in the declarant's presence by at least two credible witnesses who are:

(A) 14 years of age or older; and

(B) not named as guardian or alternate guardian in the declaration.

(b) Notwithstanding Subsection (a), a declaration that is not written wholly in the declarant's handwriting 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) may have attached a self-proving affidavit signed by the declarant and the witnesses attesting to:

(1) the competence of the declarant; and

(2) the execution of the declaration.

Derived from Probate Code §§ 677A(A), (b), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.153. Form and Content of Declaration and Self-Proving Affidavit

(a) 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.

(b) The following form may be used but is not required to 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:
_____

Derived from Probate Code § 677A(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.154. Alternative to Self-Proving Affidavit

(a) As an alternative to the self-proving affidavit authorized by Section 1104.153, 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:
_____

(b) A declaration that is executed as provided by Subsection (a) is considered self-proved to the same extent a declaration executed with a self-proving affidavit under Section 1104.153 is considered self-proved.

Derived from Probate Code §§ 677A(i), (j).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.155. Alternate Self-Proving of Declaration

At any time during the declarant's lifetime, a declaration described by Section 1104.152(a)(1) may be made self-proved in the same form and manner that a will written wholly in the testator's handwriting is made self-proved under Section 251.107.

Derived from Probate Code § 677B(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.156. Filing of Declaration and Self-Proving Affidavit

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.

Derived from Probate Code § 677A(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.157. Proof of Declaration

(a) The court may admit a declaration that is self-proved 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.

(b) A declaration described by Section 1104.152(a)(1) that is not self-proved may be proved in the same manner that a will written wholly in the testator's handwriting is proved under Section 256.154.

(c) A declaration described by Section 1104.152(a)(2) that is not self-proved may be proved in the same manner that an attested written will produced in court is proved under Section 256.153.

Derived from Probate Code §§ 677B(b), (e), (f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.158. Prima Facie Evidence

A properly executed and witnessed self-proving declaration, including a declaration and self-proving affidavit described by Section 1104.152(c), is prima facie evidence that:

(1) the declarant was competent at the time the declarant executed the declaration; and

(2) the guardian named in the declaration would serve the best interests of the ward or incapacitated person.

Derived from Probate Code § 677B(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.159. Revocation of Declaration

The declarant may revoke a declaration in any manner provided for the revocation of a will under Section 253.002, including the subsequent re-execution of the declaration in the manner required for the original declaration.

Derived from Probate Code § 677A(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.160. Alternate or Other Court-Appointed Guardian

(a) The court shall appoint the next eligible designated alternate guardian named in a declaration if the designated guardian does not qualify, is deceased, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable to serve as guardian.

(b) The court shall appoint another person to serve as guardian as otherwise provided by this title if the designated guardian and all designated alternate guardians named in the declaration:

(1) do not qualify;

(2) are deceased;

(3) refuse to serve; or

(4) later die or resign.

Derived from Probate Code § 677A(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Written Declaration to Designate Guardian Before Need Arises

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Statutes in Context
Chapter 1104, Subchapter E

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 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 1104.203 sets forth the basic requirements Suggested forms are provided in § 1104.204 (two-step execution procedure with separate self-proving affidavit) and § 1104.205 (one-step execution procedure with integrated self-proving affidavit).

A declarant may also disqualify a person from serving as a guardian even though the person would otherwise have priority. § 1104.204(b). This allows the declarant to, for example, designate the "good" child and disqualify the "bad" child.

Debate exists over whether the same individuals should be named in the self-designation of guardian as in the durable power of attorney (Estates Code Chapter 752) 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.

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§ 1104.201. Definitions

In this subchapter:

(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 this subdivision and Sections 1104.202, 1104.203, 1104.204, 1104.205, 1104.207, 1104.210, 1104.211, and 1104.212.

(2) "Self-proving affidavit" means an affidavit the form and content of which substantially comply with the requirements of Section 1104.204.

(3) "Self-proving declaration" includes a self-proving affidavit that is attached or annexed to a declaration.

Derived from Probate Code §§ 679(j), 679A(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.202. Designation of Guardian for Declarant

(a) A person other than an incapacitated person may designate by declaration a person to serve as guardian of the person or estate of the declarant if the declarant becomes incapacitated. The court shall appoint the person designated in the declaration to serve as guardian in preference to any other person otherwise entitled to serve as guardian under this title, unless the court finds that the person designated to serve as guardian:

(1) is disqualified; or

(2) would not serve the ward's best interests.

(b) A declarant may, in the declaration, disqualify a named person from serving as guardian of the declarant's person or estate. The court may not under any circumstances appoint as guardian a person named under this subsection.

Derived from Probate Code §§ 679(a), (b), (f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.203. Requirements for Declaration

(a) A declaration under this subchapter must be signed by the declarant and be:

(1) written wholly in the declarant's handwriting; or

(2) attested to in the declarant's presence by at least two credible witnesses who are:

(A) 14 years of age or older; and

(B) not named as guardian or alternate guardian in the declaration.

(b) Notwithstanding Subsection (a), a declaration that is not written wholly in the declarant's handwriting 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) may have attached a self-proving affidavit signed by the declarant and the witnesses attesting to:

(1) the competence of the declarant; and

(2) the execution of the declaration.

Derived from Probate Code §§ 679(a), (c), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.204. Form and Content of Declaration and Self-Proving Affidavit

(a) A declaration and affidavit may be in any form adequate to clearly indicate the declarant's intention to designate a guardian.

(b) The following form may be used but is not required to be used:

DECLARATION OF GUARDIAN

IN THE EVENT OF LATER INCAPACITY OR NEED OF GUARDIAN

I, _____, make this Declaration of Guardian, to operate if the need for a guardian for me later arises.

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

_____ _____

Affiant Affiant

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:

_____

Derived from Probate Code § 679(i).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.205. Alternative to Self-Proving Affidavit

(a) As an alternative to the self-proving affidavit authorized by Section 1104.204, 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:

_____

(b) A declaration that is executed as provided by Subsection (a) is considered self-proved to the same extent a declaration executed with a self-proving affidavit under Section 1104.204 is considered self-proved.

Derived from Probate Code §§ 679(k), (l).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.206. Alternate Self-Proving of Declaration

At any time during the declarant's lifetime, a declaration described by Section 1104.203(a)(1) may be made self-proved in the same form and manner that a will written wholly in the testator's handwriting is made self-proved under Section 251.107.

Derived from Probate Code § 679A(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.207. Filing of Declaration and Self-Proving Affidavit

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.

Derived from Probate Code § 679(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.208. Proof of Declaration

(a) The court may admit a declaration that is self-proved 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.

(b) A declaration described by Section 1104.203(a)(1) that is not self-proved may be proved in the same manner that a will written wholly in the testator's handwriting is proved under Section 256.154.

(c) A declaration described by Section 1104.203(a)(2) that is not self-proved may be proved in the same manner that an attested written will produced in court is proved under Section 256.153.

Derived from Probate Code § 679A(b), (e), & (f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.209. Prima Facie Evidence

A properly executed and witnessed self-proving declaration, including a declaration and self-proving affidavit described by Section 1104.203(c), is prima facie evidence that:

(1) the declarant was competent at the time the declarant executed the declaration; and

(2) the guardian named in the declaration would serve the best interests of the ward or incapacitated person.

Derived from Probate Code § 679A(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.210. Revocation of Declaration

The declarant may revoke a declaration in any manner provided for the revocation of a will under Section 253.002, including the subsequent re-execution

of the declaration in the manner required for the original declaration.

Derived from Probate Code § 679(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.211. Effect of Divorce on Designation of Spouse

If a declarant designates the declarant's spouse to serve as guardian under this subchapter, 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.

Derived from Probate Code § 679(h).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.212. Alternate or Other Court-Appointed Guardian

(a) The court shall appoint the next eligible designated alternate guardian named in a declaration if the designated guardian does not qualify, is deceased, refuses to serve, resigns, or dies after being appointed guardian, or is otherwise unavailable to serve as guardian.

(b) The court shall appoint another person to serve as guardian as otherwise provided by this title if the designated guardian and all designated alternate guardians named in the declaration:

(1) do not qualify;

(2) are deceased;

(3) refuse to serve; or

(4) later die or resign.

Derived from Probate Code § 679(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter F. Certification Requirements for Certain Guardians

§ 1104.251. Certification Required for Certain Guardians

(a) An individual must be certified under Subchapter C, Chapter 155 [~~111~~], Government Code, if the individual:

(1) is a private professional guardian;

(2) will represent the interests of a ward as a guardian on behalf of a private professional guardian;

(3) is providing guardianship services to a ward of a guardianship program on the program's behalf, except as provided by Section 1104.254; or

(4) is an employee of the Department of Aging and Disability Services providing guardianship services to a ward of the department.

(b) An individual employed by or contracting with a guardianship program must be certified as provided by Subsection (a) to provide guardianship services to a ward of the program.

Derived from Probate Code §§ 696A, 697B(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2013, 83rd Leg., ch. 42, § 2.08, eff. Jan. 1, 2014.

§ 1104.252. Effect of Provisional Certificate

For purposes of this subchapter, a person who holds a provisional certificate issued under Section 155.103 [~~111.0421~~], Government Code, is considered to be certified.

Derived from Probate Code § 697B(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 42, § 2.09, eff. Jan. 1, 2014.

§ 1104.253. Exception for Family Members and Friends

A family member or friend of an incapacitated person is not required to be certified under Subchapter C, Chapter 155 [~~111~~], Government Code, or any other law to serve as the person's guardian.

Derived from Probate Code § 696B.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 42, § 2.10, eff. Jan. 1, 2014.

§ 1104.254. Exception for Certain Volunteers

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 Section 1104.251 to provide guardianship services or other services under Section 161.114, Human Resources Code, on the program's or the department's behalf.

Derived from Probate Code § 697B(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.038, eff. Jan. 1, 2014.

§ 1104.255. Expiration of Certification

A person whose certification under Subchapter C, Chapter 155 [~~111~~], Government Code, has expired must obtain a new certification under that subchapter to provide or continue providing guardianship services to a ward or incapacitated person under this title.

Derived from Probate Code § 697B(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 42, § 2.11, eff. Jan. 1, 2014.

§ 1104.256. Failure to Comply; Court's Duty to Notify

The court shall notify the guardianship certification program of the Judicial Branch Certification Commission [~~Guardianship Certification Board~~] if the

court becomes aware of a person who is not complying with:

(1) the terms of a certification issued under Subchapter C, Chapter 155 [~~111~~], Government Code; or

(2) the standards and rules adopted under that subchapter.

Derived from Probate Code § 697B(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 41, § 2.12, eff. Jan. 1, 2014.

§ 1104.257. Information Regarding Services Provided by Guardianship Program

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 program of the Judicial Branch Certification Commission [~~Guardianship Certification Board~~] under Section 155.105 [~~111.044~~], Government Code.

Derived from Probate Code § 697A(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 42, § 2.13, eff. Jan. 1, 2014.

§ 1104.258. Information Regarding Certain State Employees Providing Guardianship Services

Not later than January 31 of each year, the Department of Aging and Disability Services shall submit to the guardianship certification program of the Judicial Branch Certification Commission [~~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 the department's behalf; and

(2) the name of each county in which each employee named in Subdivision (1) is providing or is authorized to provide those services.

Derived from Probate Code § 697A(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 42, § 2.14, eff. Jan. 1, 2014.

Subchapter G. Private Professional Guardians

§ 1104.301. Certification and Registration Required

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 title if the private professional guardian is not:

(1) certified as provided by Section 1104.251(a), 1104.252, 1104.255, or 1104.256; or

(2) in compliance with the registration requirements of this subchapter.

Derived from Probate Code § 696.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.302. Annual Certificate of Registration

A private professional guardian must annually apply for a certificate of registration.

Derived from Probate Code § 697(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.303. Requirements of Application

(a) An application for a certificate of registration 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:

(1) place of residence;

(2) business address and business telephone number;

(3) educational background and professional experience;

(4) three or more professional references;

(5) the name of each ward for whom the private professional guardian or person is or will be serving as a guardian;

(6) the aggregate fair market value of the property of all wards that is or will be managed by the private professional guardian or person;

(7) 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) a description of the circumstances causing the removal or resignation; and

(B) the style of the suit, the docket number, and the court having jurisdiction over the proceeding; and

(8) the certification number or provisional certification number issued to the private professional guardian or person by the guardianship certification program of the Judicial Branch Certification Commission [~~Guardianship Certification Board~~].

(b) The application must be:

(1) made to the clerk of the county having venue of the proceeding for the appointment of a guardian; and

(2) accompanied by a nonrefundable fee of $40 [~~set by the clerk in an amount necessary~~] to cover the cost of administering this subchapter.

Derived from Probate Code § 697(a) & (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2013, 83rd Leg., ch. 42, § 2.15, eff. Jan. 1, 2014. Subsec. (b)

amended by Acts 2013, 83rd Leg., ch. 982, § 13, eff. Jan. 1, 2014.

§ 1104.304. Term of Registration; Renewal

(a) The term of an initial registration begins on the date the requirements under Section 1104.303 are met and extends through December 31 of the year in which the application is made. After the term of the initial registration, the term of registration begins on January 1 and extends through December 31 of each year.

(b) An application to renew a registration must be completed during December of the year preceding the year for which the renewal is requested.

Derived from Probate Code § 697(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.305. Use of Registration Information

(a) The clerk shall bring the information received under Section 1104.303 to the judge's attention for review.

(b) The judge shall use the information only to determine whether to appoint, remove, or continue the appointment of a private professional guardian.

Derived from Probate Code § 697(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.306. Use of Names and Business Addresses

Not later than January 31 of each year, the clerk shall submit to the guardianship certification program of the Judicial Branch Certification Commission [~~Guardianship Certification Board~~] the name and business address of each private professional guardian who has satisfied the registration requirements of this subchapter during the preceding year.

Derived from Probate Code § 697(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 42, § 2.16, eff. Jan. 1, 2014.

Subchapter H. Grounds for Disqualification

§ 1104.351. Incapacity or Inexperience

A person may not be appointed guardian if the person is:

(1) a minor or other incapacitated person; or

(2) a person who, because of inexperience, lack of education, or other good reason, is incapable of properly and prudently managing and controlling the person or estate of the ward.

Derived from Probate Code § 681.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.352. Unsuitability

A person may not be appointed guardian if the person is a person, institution, or corporation found by the court [~~finds the person~~] to be unsuitable.

Derived from Probate Code § 681.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.039, eff. Jan. 1, 2014.

§ 1104.353. Notoriously Bad Conduct; Presumption Concerning Best Interest

(a) A person may not be appointed guardian if the person's conduct is notoriously bad.

(b) It is presumed to be not in the best interests of a ward or incapacitated person to appoint as guardian of the ward or incapacitated person a person who has been finally convicted of:

(1) any sexual offense, including sexual assault, aggravated sexual assault, and prohibited sexual conduct;

(2) aggravated assault;

(3) injury to a child, elderly individual, or disabled individual; [~~or~~]

(4) abandoning or endangering a child;

(5) terroristic threat; or

(6) continuous violence against the family of the ward or incapacitated person.

Derived from Probate Code §§ 678 & 681.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2013, 83rd Leg., ch. 982, § 14, eff. Jan. 1, 2014.

§ 1104.354. Conflict of Interest

A person may not be appointed guardian if the person:

(1) is a party or is a person 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;

(2) is indebted to the proposed ward, unless the person pays the debt before appointment; or

(3) asserts a claim adverse to the proposed ward or the proposed ward's property.

Derived from Probate Code § 681.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.355. Disqualified in Declaration

A person may not be appointed guardian if the person is disqualified in a declaration under Section 1104.202(b).

Derived from Probate Code § 681.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.356. Lack of Certain Required Certification

A person may not be appointed guardian if the person does not have the certification to serve as guardian that is required by Subchapter F.

Derived from Probate Code § 681.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.357. Nonresident Without Resident Agent

A person may not be appointed guardian if the person is a nonresident who has failed to file with the court the name of a resident agent to accept service of process in all actions or proceedings relating to the guardianship.

Derived from Probate Code § 681.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.358. Subject to Protective Order for Family Violence

A person found to have committed family violence who is subject to a protective order issued under Chapter 85, Family Code, may not be appointed guardian of a proposed ward or ward who is protected by the protective order.

Added by Acts 2013, 83rd Leg., ch. 982, § 15, eff. Jan. 1, 2014.

Subchapter I. Access to Criminal History Records

§ 1104.401. Definition.

In this subchapter, "department" means the Department of Aging and Disability Services.

New.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.402. Court Clerk's Duty to Obtain Criminal History Record Information; Authority to Charge Fee

(a) Except as provided by Section 1104.403, 1104.404, or 1104.406(a), the clerk of the county having venue of 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 a ward 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 title, including a proposed temporary guardian and a proposed successor guardian, other than the ward's or proposed ward's family member or an attorney.

(b) The clerk may charge a $10 fee to recover the costs of obtaining criminal history record information under Subsection (a).

Derived from Probate Code §§ 698(a), (e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.403. Submission of Criminal History Record Information by Proposed Guardian

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 Section 1104.402(a)(5) that the person obtains not earlier than the 30th day before the date of the hearing from:

(1) the Department of Public Safety; or

(2) the Federal Bureau of Investigation.

Derived from Probate Code § 698(a-5).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.404. Exception for Information Concerning Certain Persons Holding a Certificate

(a) The clerk described by Section 1104.402 is not required to obtain criminal history record information for a person who holds a certificate issued under Section 155.102 [~~111.042~~], Government Code, or a provisional certificate issued under Section 155.103 [~~111.0421~~], Government Code, if the guardianship certification program of the Judicial Branch Certification Commission [~~Guardianship Certification Board~~] conducted a criminal history check on the person before issuing or renewing the certificate.

(b) 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.

Derived from Probate Code § 698(a-6).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2013, 83rd Leg., ch. 42, § 2.17, eff. Jan. 1, 2014.

§ 1104.405. Information for Exclusive Use of Court

(a) Criminal history record information obtained or provided under Section 1104.402, 1104.403, or 1104.404 is privileged and confidential and is for the exclusive use of the court. 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.

(b) The county clerk may destroy the criminal history record information after the information is used for the purposes authorized by this subchapter.

Derived from Probate Code § 698(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.406. Department's Duty to Obtain Criminal History Record Information

(a) The department 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;

(2) a volunteer or an applicant selected to volunteer with the department;

(3) an employee of or an applicant selected for an employment position with a business entity or other person who contracts with the department 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).

(b) The department must obtain the information in Subsection (a) before:

(1) making an offer of employment to an applicant for an employment position; or

(2) a volunteer contacts a ward of or referred by the department.

(c) The department must annually obtain the information in Subsection (a) regarding employees or volunteers providing guardianship services.

Derived from Probate Code §§ 698(a-1), (a-2), (a-3).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.407. Duty to Provide Information on Request

The department shall provide the information obtained under Section 1104.406(a) [~~1102.406(a)~~] to:

(1) the clerk of the county having venue of the guardianship proceeding at the court's request; and

(2) the guardianship certification program of the Judicial Branch Certification Commission [~~Guardianship Certification Board~~] at the commission's [~~board's~~] request.

Derived from Probate Code § 698(a-4).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 42, § 2.18, eff. Jan. 1, 2014.

§ 1104.408. Information for Exclusive Use of Court or Guardianship Certification Program of Judicial Branch Certification Commission [~~Board~~]

(a) Criminal history record information obtained under Section 1104.407 is privileged and confidential and is for the exclusive use of the court or guardianship certification program of the Judicial Branch Certification Commission [~~Guardianship Certification Board~~], as appropriate. The information may not be released or otherwise disclosed to any person or agency except:

(1) on court order;

(2) with the consent of the person being investigated; or

(3) as authorized by Section 1104.404 of this code or Section 411.1386(a-6), Government Code.

(b) The county clerk or guardianship certification program of the Judicial Branch Certification Commission [~~Guardianship Certification Board~~] may destroy the criminal history record information after the information is used for the purposes authorized by this subchapter.

Derived from Probate Code § 698(b-1).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 42, § 2.19, eff. Jan. 1, 2014.

§ 1104.409. Use of Information by Court

The court shall use the information obtained under this subchapter only in determining whether to:

(1) appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the department; or

(2) appoint any other person proposed to serve as a guardian under this title, including a proposed temporary guardian and a proposed successor guardian, other than the ward's or proposed ward's family member or an attorney.

Derived from Probate Code § 698(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.410. Use of Information by Guardianship Certification Program of Judicial Branch Certification Commission [~~Board~~]

Criminal history record information obtained by the guardianship certification program of the Judicial Branch Certification Commission [~~Guardianship Certification Board~~] under Section 1104.407(2) may be used for any purpose related to the issuance, denial, renewal, suspension, or revocation of a certificate issued by the commission [~~board~~].

Derived from Probate Code § 698(c-1).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 42, § 2.20, eff. Jan. 1, 2014.

§ 1104.411. Criminal Offense for Unauthorized Release or Disclosure

(a) A person commits an offense if the person releases or discloses any information received under this subchapter without the authorization prescribed by Section 1104.405 or 1104.408.

(b) An offense under this section is a Class A misdemeanor.

Derived from Probate Code § 698(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1104.412. Effect of Subchapter on Department's Authority to Obtain or Use Information

This subchapter does not prohibit the department from obtaining and using criminal history record information as provided by other law.

Derived from Probate Code § 698(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1105. Qualification of Guardians

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Chapter 1105. Qualification of Guardians

Subchapter A. General Provisions

§ 1105.001. Definitions

In this chapter:

(1) "Bond" means a bond required by this chapter to be given by a person appointed to serve as a guardian.

(2) "Oath" means an oath required by this chapter to be taken by a person appointed to serve as a guardian.

New.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.002. Manner of Qualification of Guardian

(a) Except as provided by Subsection (b), a guardian is considered to have qualified when the guardian has:

(1) taken and filed the oath required under Section 1105.051;

(2) given the required bond;

(3) filed the bond with the clerk; and

(4) obtained the judge's approval of the bond.

(b) A guardian who is not required to give a bond is considered to have qualified when the guardian has taken and filed the required oath.

Derived from Probate Code § 699.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.003. Period for Taking Oath and Giving Bond

(a) Except as provided by Section 1103.003, an oath may be taken and subscribed and a bond may be given and approved at any time before:

(1) the 21st day after the date of the order granting letters of guardianship; or

(2) the letters of guardianship are revoked for a failure to qualify within the period allowed.

(b) A guardian of an estate must give a bond before being issued letters of guardianship unless a bond is not required under this title.

Derived from Probate Code §§ 701, 703(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Oaths

§ 1105.051. Oath of Guardian

(a) A guardian shall take an oath to discharge faithfully the duties of guardian for the person or estate, or both, of a ward.

(b) If the Department of Aging and Disability Services is appointed guardian, a department representative shall take the oath required by Subsection (a).

Derived from Probate Code § 700.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.052. Administration of Oath

An oath may be taken before any person authorized to administer oaths under the laws of this state.

Derived from Probate Code § 701.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. General Provisions Relating to Bonds

§ 1105.101. Bond Generally Required; Exceptions

(a) Except as provided by this section, a guardian of the person or the estate of a ward shall give a bond.

(b) A bond is not required if the guardian is:

(1) a corporate fiduciary; or

(2) a guardianship program operated by a county.

(c) The court shall issue letters of guardianship of the person to a person without the requirement of a bond if:

(1) the person is named to be appointed guardian in a will made by a surviving parent that is probated by a court in this state, or in a written declaration made by a surviving parent, and the will or declaration directs that the guardian serve without a bond; and

(2) the court finds that the guardian is qualified.

(d) The court may not waive the requirement of bond for the guardian of the estate of a ward, regardless of whether a surviving parent's will or written declaration directs the court to waive the bond.

Derived from Probate Code § 702.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.102. Bond for Certain Guardians 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, a 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.

Derived from Probate Code § 702A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.103. Bond Required from Guardian Otherwise Exempt

(a) This section applies only to an individual guardian of the estate from whom a bond was not required.

(b) A person who has a debt, claim, or demand against the guardianship, with respect to the justice of which an oath has been made by the person, the person's agent or attorney, or another person interested in the guardianship, in person or as the representative of another person, may file a written complaint under oath in the court in which the guardian was appointed.

(c) After a complaint is filed under Subsection (b), the court shall cite the guardian to appear and show cause why the guardian should not be required to give a bond.

(d) On hearing a complaint filed under Subsection (b), if it appears to the court that the guardian is wasting, mismanaging, or misapplying the guardianship estate and that a creditor may probably lose the creditor's 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.

(e) A bond required under Subsection (d) must be:

(1) in an amount sufficient to protect the guardianship and the guardianship's creditors;

(2) approved by and payable to the judge; and

(3) conditioned that the guardian:

(A) will well and truly administer the guardianship; and

(B) will not waste, mismanage, or misapply the guardianship estate.

(f) If the guardian fails to give the bond required under Subsection (d) and the judge has not extended the period for giving the bond, the judge, without citation, shall remove the guardian and appoint a competent person as guardian, who shall:

(1) administer the guardianship according to the provisions of a will or law;

(2) take the oath required of a guardian under Section 1105.051 before the person enters on the administration of the guardianship; and

(3) give bond in the same manner and in the same amount provided by this title for the issuance of original letters of guardianship.

Derived from Probate Code §§ 722, 723, 724, 725.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.104. Bonds of Joint Guardians

If two or more persons are appointed as guardians and are required to give a bond by the court or under this title, the court may require:

(1) a separate bond from each person; or

(2) a joint bond from all of the persons.

Derived from Probate Code § 706.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.105. Bond of Married Person

(a) A married person appointed as guardian may jointly execute, with or without, the person's spouse, a bond required by law.

(b) A bond executed by a married person:

(1) binds the person's separate estate; and

(2) may bind the person's spouse only if the spouse signs the bond.

Derived from Probate Code § 707.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.106. Bond of Married Person Younger Than 18 Years of Age

A bond required to be executed by a person who is younger than 18 years of age, is or has been married, and accepts and qualifies as guardian is as valid and binding for all purposes as if the person were of legal age.

Derived from Probate Code § 708.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.107. Bond of Guardianship Program

The judge may require a guardianship program appointed guardian under this title to file one bond that:

(1) meets all the conditions required under this title; and

(2) is in an amount sufficient to protect all of the guardianships and the creditors of the guardianships of the wards receiving services from the guardianship program.

Derived from Probate Code § 708A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.108. Subscription of Bond by Principals and Sureties

A bond required under this title shall be subscribed by the principals and sureties.

Derived from Probate Code § 705.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.109. Form of Bond

The following form, or a form with the same substance, may be used for the bond of a guardian:

"The State of Texas

"County of _____

"Know all persons by these presents that we, _____ (insert name of each principal), as principal, and ____ (insert name of each surety), as sureties, are held and

firmly bound to the judge of ____ (insert reference to appropriate judge), and that judge's successors in office, in the sum of $_____; conditioned that the above bound principal or principals, appointed by the judge as guardian or temporary guardian of the person or of the estate, or both, of _____ (insert name of ward, stating in each case whether 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 by law under appointment."

Derived from Probate Code § 704.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.110. Filing of Bond

A bond required under this title shall be filed with the clerk after the court approves the bond.

Derived from Probate Code § 705.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.111. Failure to Give Bond

Another person may be appointed as guardian to replace a guardian who fails to give the bond required by the court within the period required under this title.

Derived from Probate Code § 721.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.112. Bond Not Void on First Recovery

A guardian's bond is not void on the first recovery, but the bond may be sued on and prosecuted from time to time until the entire amount of the bond is recovered.

Derived from Probate Code § 726.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Other Provisions Relating to Bonds of Guardians of the Estate

§ 1105.151. General Formalities

A bond given by a guardian of the estate must:

(1) be conditioned as required by law;

(2) be payable to the judge or that judge's successors in office;

(3) have the written approval of the judge in the judge's official capacity; and

(4) be executed and approved in accordance with this subchapter.

Derived from Probate Code § 703(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.152. General Standard Regarding Amount of Bond

(a) The judge shall set the amount of a bond for a guardian of an estate in an amount sufficient to protect the guardianship and the guardianship's creditors, as provided by this title.

(b) In determining the amount of the bond, the court may not consider estate assets placed in a management trust under Chapter 1301.

Derived from Probate Code §§ 703(b), (s).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.153. Evidentiary Hearing on Amount of Bond

Before setting the amount of a bond required of a guardian of an estate, the court shall hear evidence and determine:

(1) the amount of cash on hand and where that cash is deposited;

(2) 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;

(3) the revenue anticipated to be received in the succeeding 12 months from dividends, interest, rentals, or use of property belonging to the guardianship estate and the aggregate amount of any installments or periodic payments to be collected;

(4) the estimated value of certificates of stock, bonds, notes, or other securities of the ward, and the name of the depository in which the stocks, bonds, notes, or other securities are deposited;

(5) the face value of life insurance or other policies payable to the ward or the ward's estate;

(6) the estimated value of other personal property that is owned by the guardianship, or by a person with a disability; and

(7) the estimated amount of debts due and owing by the ward.

Derived from Probate Code § 703(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.154. Specific Bond Amount

(a) Except as otherwise provided by this section, the judge shall set the amount of a bond of a guardian of an estate in an amount equal to the sum of:

(1) the estimated value of all personal property belonging to the ward; and

(2) an additional amount to cover revenue anticipated to be derived during the succeeding 12 months from:

(A) interest and dividends;

(B) collectible claims;

(C) the aggregate amount of any installments or periodic payments, excluding income derived or to be derived from federal social security payments; and

(D) rentals for the use of property.

(b) The judge shall reduce the amount of the original bond under Subsection (a) in proportion to the amount of cash or the value of securities or other assets:

(1) authorized or required to be deposited by court order; or

(2) voluntarily deposited by the guardian or the sureties on the guardian's bond as provided in Sections 1105.156 and 1105.157(a).

(c) The judge shall set the amount of the bond for a temporary guardian.

Derived from Probate Code §§ 703(d), (q).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.155. Agreement Regarding Deposit of Estate Assets

(a) If the court considers it to be in the best interests of the ward, the court may require the guardian of the estate and the corporate or personal sureties on the guardian's bond to agree to deposit cash and other assets of the guardianship estate in a depository described by Subsection (b). 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 after notice to the surety.

(b) Cash and assets must be deposited under this section in a financial institution as defined by Section 201.101, Finance Code, that:

(1) has its main office or a branch office in this state; and

(2) is qualified to act as a depository in this state under the laws of this state or the United States.

(c) An agreement made by a guardian and the sureties on the guardian's bond under this section does not release the principal or sureties from liability, or change the liability of the principal or sureties, as established by the terms of the bond.

Derived from Probate Code § 703(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.156. Deposit of Estate Assets on Terms Prescribed by Court

(a) Cash, securities, or other personal assets of a ward to which the ward is entitled may, or if considered by the court to be in the best interests of the ward, shall, be deposited in one or more depositories described by this subchapter on terms prescribed by the court.

(b) The court in which the guardianship proceeding is pending may authorize or require additional estate assets currently on hand or that accrue during the pendency of the proceeding to be deposited as provided by Subsection (a) on:

(1) the court's own motion; or

(2) the written application of the guardian or any other person interested in the ward.

(c) The amount of the bond required to be given by the guardian of the estate shall be reduced in proportion to the amount of the cash or the value of the securities or other assets deposited under this section.

(d) Cash, securities, or other assets deposited under this section may be withdrawn wholly or partly from the depository only in accordance with a court order, and the amount of the guardian's bond shall be increased in proportion to the amount of the cash or the value of the securities or other assets authorized to be withdrawn.

Derived from Probate Code § 703(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.157. Deposits of Guardian

(a) Instead of giving a surety or sureties on a bond, or to reduce the amount of a bond, the guardian of an estate may deposit the guardian's own cash or securities acceptable to the court with a financial institution as defined by Section 201.101, Finance Code, that has its main office or a branch office in this state.

(b) If the deposit is otherwise proper, the deposit must be in an amount or value equal to the amount of the bond required or the bond shall be reduced by the value of assets that are deposited.

(c) A depository that receives a deposit made under Subsection (a) shall issue a receipt for the deposit that:

(1) shows the amount of cash deposited or the amount and description of the securities deposited, as applicable; and

(2) states that the depository agrees to disburse or deliver the cash or securities only on receipt of a certified copy of an order of the court in which the proceeding is pending.

(d) A receipt issued by a depository under Subsection (c) 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.

(e) 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 require.

(f) A deposit of cash or securities made instead of a surety on the bond may be withdrawn or released only on order of a court that has jurisdiction.

(g) A creditor has the same rights against a guardian of the estate and the deposits as are provided for recovery against sureties on a bond.

Derived from Probate Code §§ 703(g), (h), (i), (j), (k).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.158. Bond Required Instead of Deposits

(a) The court may on its own motion or on the written application by the guardian of an estate or any other person interested in the guardianship:

(1) require the guardian to give adequate bond instead of the deposit; or

(2) authorize withdrawal of the deposit and substitution of a bond with sureties.

(b) Before the 21st day after the date the guardian is personally served with notice of the filing of the application or the date the court enters the court's motion, the guardian shall file a sworn statement showing the condition of the guardianship.

(c) A guardian who fails to comply with Subsection (b) is subject to removal as in other cases.

(d) The deposit may not be released or withdrawn until the court:

(1) is satisfied as to the condition of the guardianship estate;

(2) determines the amount of the bond; and

(3) receives and approves the bond.

Derived from Probate Code § 703(l).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.159. Withdrawal of Deposits on Closing of Guardianship

(a) Any deposit of assets of the guardian of an estate, the guardianship, or a surety that remains at the time a guardianship is closed shall be released by court order and paid to the person entitled to the assets.

(b) Except as provided by Subsection (c), a writ of attachment or garnishment does not lie against a deposit described by Subsection (a).

(c) A writ of attachment or garnishment may lie against a deposit described by Subsection (a) as to a claim of a creditor of the guardianship or a person interested in the guardianship, including a distributee or ward, only to the extent the court has ordered distribution.

Derived from Probate Code § 703(m).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.160. Authorized Corporate or Personal Sureties

(a) The surety on a bond of a guardian of an estate may be an authorized corporate or personal surety.

(b) A bond of a guardian of an estate with sureties who are individuals must have at least two sureties, each of whom must:

(1) execute an affidavit in the manner provided by Subchapter E; and

(2) own property in this state, excluding property exempt by law, that the judge is satisfied is sufficient to qualify the person as a surety as required by law.

(c) A bond with an authorized corporate surety is only required to have one surety, except as otherwise provided by law.

Derived from Probate Code §§ 703(n), (p).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.161. Sureties for Certain Bonds

(a) If the amount of the bond of a guardian of an estate exceeds $50,000, the court may require that the bond be signed by:

(1) at least two authorized corporate sureties; or

(2) one corporate surety and at least two good and sufficient personal sureties.

(b) The guardianship shall pay the cost of a bond with corporate sureties.

Derived from Probate Code § 703(o).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.162. Deposits by Personal Surety

Instead of executing an affidavit under Section 1105.201 or creating a lien under Section 1105.202 when required, a personal surety may deposit the surety's own cash or securities in the same manner as a guardian instead of pledging real property as security, subject to the provisions governing the deposits if made by a guardian.

Derived from Probate Code § 703(p).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.163. Applicability of Subchapter to Certain Court Orders

To the extent applicable, the provisions of this subchapter relating to the deposit of cash and securities cover the orders entered by the court when:

(1) 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.

Derived from Probate Code § 703(r).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Provisions Relating to Personal Sureties

§ 1105.201. Affidavit of Personal Surety

(a) Before a judge considers a bond with a personal surety, each personal surety must execute an affidavit stating the amount by which the surety's assets that are reachable by creditors exceeds the surety's liabilities. The total of the surety's worth must equal at least twice the amount of the bond.

(b) Each affidavit must be presented to the judge for consideration and, if approved, shall be attached to and form part of the bond.

Derived from Probate Code § 709(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.202. Lien on Real Property Owned by Personal Surety

(a) If a judge finds that the estimated value of personal property of the guardianship that cannot be deposited, as provided by Subchapter D, is such that personal sureties cannot be accepted without the creation of a specific lien on the real property owned by the sureties, the judge shall enter an order requiring each surety to designate real property that is owned by the surety, located in this state, and subject to execution. The designated property must have a value that exceeds all liens and unpaid taxes by an amount at least equal to the amount of the bond and must have an adequate legal description, all of which the surety shall incorporate in an affidavit. Following approval by the judge, the affidavit shall be attached to and form part of the bond.

(b) A lien arises as security for the performance of the obligation of the bond only on the real property designated in the affidavit.

(c) Before letters of guardianship are issued to the guardian whose bond includes an affidavit under this section, the court clerk shall mail a statement to the office of the county clerk of each county in which any real property designated in the affidavit is located. The statement must be signed by the court clerk and include:

(1) a sufficient description of the real property;

(2) the names of the principal and sureties on the bond;

(3) the amount of the bond;

(4) the name of the guardianship; and

(5) the name of the court in which the bond is given.

(d) Each county clerk who receives a statement required by Subsection (c) shall record the statement in the county deed records. Each recorded statement shall be indexed in a manner that permits the convenient determination of the existence and character of the lien described in the statement.

(e) The recording and indexing required by Subsection (d) is constructive notice to a person regarding the existence of the lien on the real property located in the county, effective as of the date of the indexing.

(f) If each personal surety subject to a court order under this section does not comply with the order, the judge may require that the bond be signed by:

(1) an authorized corporate surety; or

(2) an authorized corporate surety and at least two personal sureties.

Derived from Probate Code §§ 709(b), 710.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.203. Subordination of Lien on Real Property Owned by Personal Surety

(a) A personal surety required to create a lien on specific real property under Section 1105.202 who wishes to lease the real property for mineral development may file a written application in the court in which the proceeding is pending requesting subordination of the lien to the proposed lease.

(b) The judge may enter an order granting the application.

(c) A certified copy of an order entered under this section 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 under the proposed lease.

Derived from Probate Code § 709(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.204. Release of Lien on Real Property Owned by Personal Sureties

(a) A personal surety who has given a lien under Section 1105.202 may apply to the court to have the lien released.

(b) The court shall order the lien released if:

(1) the court is satisfied that the bond is sufficient without the lien; or

(2) sufficient other real or personal property of the surety is substituted on the same terms required for the lien that is to be released.

(c) If the personal surety does not offer a lien on other substituted property under Subsection (b)(2) and 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.

(d) A certified copy of the court's order releasing the lien and describing the property that was subject to the lien has the effect of canceling the lien if the order is filed with the county clerk and recorded in the deed records of the county in which the property is located.

Derived from Probate Code §§ 719, 720.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter F. New Bonds

§ 1105.251. Grounds for Requiring New Bond

(a) A guardian may be required to give a new bond if:

(1) a surety on a bond dies, removes beyond the limits of this state, or becomes insolvent;

(2) in the court's opinion:

(A) the sureties on a bond are insufficient; or

(B) a bond is defective;

(3) the amount of a bond is insufficient;

(4) a surety on a bond petitions the court to be discharged from future liability on the bond; or

(5) a bond and the record of the bond have been lost or destroyed.

(b) A person interested in the guardianship may have the guardian cited to appear and show cause why the guardian should not be required to give a new bond by filing a written application with the county clerk of the county in which the guardianship proceeding is pending. The application must allege that:

(1) the bond is insufficient or defective; or

(2) the bond and the record of the bond have been lost or destroyed.

Derived from Probate Code §§ 711, 712.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.252. Court Order or Citation on New Bond

(a) When a judge is made aware that a bond is insufficient or that a bond and the record of the bond have 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 have the guardian cited to show cause why the guardian should not be required to give a new bond.

(b) An order entered under Subsection (a)(1) must state:

(1) the reasons for requiring a new bond;

(2) the amount of the new bond; and

(3) the period within which the new bond must be given, which may not expire earlier than the 10th day after the date of the order.

(c) A guardian who opposes an order entered under Subsection (a)(1) may demand a hearing on the order. The hearing must be held before the expiration of the period within which the new bond must be given.

Derived from Probate Code §§ 713, 714(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.253. Show Cause Hearing on New Bond Requirement

(a) On the return of a citation ordering a guardian to show cause why the guardian should not be required to give a new bond, the judge shall, on the date specified in the return of citation for the hearing of the matter, inquire into the sufficiency of the reasons for requiring a new bond.

(b) If the judge is satisfied that a new bond should be required, the judge shall enter an order requiring a new bond. The order must state:

(1) the amount of the new bond; and

(2) the period within which the new bond must be given, which may not expire later than the 20th day after the date of the order.

Derived from Probate Code § 714(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.254. Effect of Order Requiring New Bond

(a) An order requiring a guardian to give a new bond has the effect of suspending the guardian's powers.

(b) After the order is entered, the guardian may not pay out any of the guardianship's money or take any other official action, except to preserve the guardianship's property, until the new bond is given and approved.

Derived from Probate Code § 715.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.255. New Bond in Decreased Amount

(a) A guardian required to give a bond may at any time file with the clerk a written application requesting that the court reduce the amount of the bond.

(b) After the guardian files an application under Subsection (a), the clerk shall issue and have posted notice to all persons interested in the estate and to a surety on the bond. The notice must inform the interested persons and surety of:

(1) the fact that the application has been filed;

(2) the nature of the application; and

(3) the time the judge will hear the application.

(c) The judge may permit the filing of a new bond in a reduced amount if:

(1) proof is submitted that a bond in an amount less than the bond in effect will be adequate to meet the requirements of law and protect the guardianship; and

(2) the judge approves an accounting filed at the time of the application.

Derived from Probate Code § 716.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.256. Request by Surety for New Bond

(a) A surety on a guardian's bond may at any time file with the clerk a petition requesting that the court in which the proceeding is pending:

(1) require the guardian to give a new bond; and

(2) discharge the petitioner from all liability for the future acts of the guardian.

(b) If a petition is filed under Subsection (a), the guardian shall be cited to appear and give a new bond.

Derived from Probate Code § 718.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1105.257. Discharge of Former Sureties on Approval 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 on the bond.

Derived from Probate Code § 717.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1106. Letters of Guardianship

§ 1106.001. Issuance of Certificate as Letters of Guardianship
§ 1106.002. Expiration of Letters of Guardianship
§ 1106.003. Renewal of Letters of Guardianship
§ 1106.004. Replacement and Other Additional Letters of Guardianship
§ 1106.005. Effect of Letters or Certificate
§ 1106.006. Validation of Certain Letters of Guardianship

Chapter 1106. Letters of Guardianship

§ 1106.001. Issuance of Certificate as Letters of Guardianship

(a) When a person who is appointed guardian has qualified under Section 1105.002, the clerk shall issue to the guardian a certificate under seal stating:

(1) the fact of the appointment and of the qualification;

(2) the date of the appointment and of the qualification; and

(3) the date the letters of guardianship expire.

(b) The certificate issued by the clerk under Subsection (a) constitutes letters of guardianship.

Derived from Probate Code § 659(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1106.002. Expiration of Letters of Guardianship

Letters of guardianship expire one year and four months after the date the letters are issued, unless renewed.

Derived from Probate Code § 659(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1106.003. Renewal of Letters of Guardianship

(a) 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 account.

(b) 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 guardian's annual report.

(c) If a guardian's annual account or annual report is disapproved or is not timely filed, the clerk may not issue further letters of guardianship to the delinquent guardian unless ordered by the court.

(d) Except as otherwise provided by this subsection, regardless of the date the court approves an annual account or annual report for purposes of this section, a renewal of letters of guardianship relates back to the date the original letters were issued. If the accounting period has been changed as provided by this title, a renewal relates back to the first day of the accounting period.

Derived from Probate Code §§ 659(c), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1106.004. Replacement and Other Additional Letters of Guardianship

When letters of guardianship have been destroyed or lost, the clerk shall issue new letters that have the same effect as the original letters. The clerk shall also issue any number of letters on request of the person who holds the letters.

Derived from Probate Code § 661.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1106.005. Effect of Letters or Certificate

(a) Letters of guardianship or a certificate issued under Section 1106.001 under seal of the clerk of the court that granted the letters is sufficient evidence of:

(1) the appointment and qualification of the guardian; and

(2) 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 1106.001.

Derived from Probate Code § 660.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1106.006. Validation of Certain Letters of Guardianship

(a) Letters of guardianship existing on September 1, 1993, that were issued to a nonresident guardian without the procedure or any part of the procedure provided in this chapter, or without a notice or citation required of a resident guardian, are validated as of the letters' dates, to the extent that the absence of the procedure, notice, or citation 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 and under supporting orders of a county or probate court of this state is validated.

(b) This section does not apply to letters of guardianship, a conveyance, a lease, or another 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.

Derived from Probate Code § 663.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subtitle E. Administration of Guardianship

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Chapter 1151. Rights, Powers, and Duties Under Guardianship

Subchapter A. Rights, Powers, and Duties in General

§ 1151.001. 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.

Derived from Probate Code § 675.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.002. Rights of Good Faith Purchasers

(a) This section applies only to a guardian who has qualified acting as guardian and in conformity with the law and the guardian's authority.

(b) A guardian's act is valid for all purposes regarding the rights of an innocent purchaser of property of the guardianship estate who purchased the property from the guardian for valuable consideration, in good faith, and without notice of any illegality in the title to the property, regardless of whether the guardian's act or the authority under which the act was performed is subsequently set aside, annulled, or declared invalid.

Derived from Probate Code § 662.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.003. Guardian May Not Dispute Ward's Right to Property; Exception

A guardian, or an heir, executor, administrator, or assignee of a guardian, may not dispute the right of the ward to any property that came into the guardian's possession as guardian of the ward, except property:

(1) that is recovered from the guardian; or

(2) on which there is a personal action pending.

Derived from Probate Code § 778.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.004. Powers and Duties of Person Serving as Guardian of Both Person and Estate

The guardian of both the person and the estate of a ward has all the rights and powers and shall perform all the duties of the guardian of the person and the guardian of the estate.

Derived from Probate Code § 769.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Powers and Duties of Guardians Relating to Care of Ward

§ 1151.051. General Powers and Duties of Guardians of the Person

(a) The guardian of the person of a ward is entitled to take charge of the person of the ward.

(b) The duties of the guardian of the person correspond with the rights of the guardian.

(c) 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) 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; and

(6) the power to sign documents necessary or appropriate to facilitate employment of the ward if:

(A) the guardian was appointed with full authority over the person of the ward under Section 1101.151; or

(B) the power is specified in the court order appointing the guardian with limited powers over the person of the ward under Section 1101.152.

(d) Notwithstanding Subsection (c)(4), 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.

Derived from Probate Code § 767.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (c) amended by Acts 2013, 83rd Leg., ch. 982, § 16, eff. Jan. 1, 2014.

§ 1151.052. Care of Adult Ward

(a) The guardian of an adult ward may spend funds of the guardianship as provided by court order to care for and maintain the ward.

(b) The guardian of an adult ward who has decision-making ability may apply on the ward's behalf for residential care and services provided by a public or private facility if the ward agrees to be placed in the facility. The guardian shall report the condition of the ward to the court at regular intervals at least annually, unless the court orders more frequent reports. The guardian shall include in a report of an adult ward who is receiving residential care in a public or private residential care facility a statement as to the necessity for continued care in the facility.

Derived from Probate Code § 770(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.053. Commitment of Ward

(a) Except as provided by Subsection (b) or (c), a guardian may not voluntarily admit a ward to a public or private inpatient psychiatric facility operated by the Department of State Health Services for care and treatment or to a residential facility operated by the Department of Aging and Disability Services for care and treatment. If care and treatment in a psychiatric or residential facility is necessary, the ward or the ward'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 C or D, Title 7, Health and Safety Code, 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.

(b) A guardian of a person younger than 18 [~~16~~] years of age may voluntarily admit the ward [~~an incapacitated person~~] to a public or private inpatient psychiatric facility for care and treatment.

(c) 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.

Derived from Probate Code §§ 770(b), (c), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2013, 83rd Leg., ch. 161, § 6.040, eff. Jan. 1, 2014.

§ 1151.054. Administration of Medication

(a) In this section, "psychoactive medication" has the meaning assigned by Section 574.101, Health and Safety Code.

(b) The guardian of the person of a ward who is not a minor and who is under a protective custody order as provided by Subchapter B, Chapter 574, Health and Safety Code, 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.

Derived from Probate Code § 770A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. General Powers and Duties of Guardians of the Estate

§ 1151.101. General Powers and Duties

(a) Subject to Subsection (b), the guardian of the estate of a ward is entitled to:

(1) possess and manage all property belonging to the ward;

(2) collect all debts, rentals, or claims that are due to the ward;

(3) enforce all obligations in favor of the ward; and

(4) bring and defend suits by or against the ward.

(b) In the management of a ward's estate, the guardian of the estate is governed by the provisions of this title.

Derived from Probate Code § 768.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.102. Exercise of Authority Under Court Order

(a) The guardian of the estate may renew or extend any obligation owed by or to the ward on application and if authorized by order.

(b) On written application to the court, a guardian of the estate may take an action described by Subsection (c) if:

(1) the guardian considers the action in the best interests of the estate; and

(2) the action is authorized by court order.

(c) A guardian of the estate who complies with Subsection (b) may:

(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 personal property securing the claim:

(A) in full payment, liquidation, and satisfaction of the claim; and

(B) 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;

(7) purchase a prepaid funeral benefits contract; and

(8) establish a trust in accordance with 42 U.S.C. Section 1396p(d)(4)(B), 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.

(d) A mortgagee, another secured party, or a trustee may foreclose on property abandoned under Subsection (c)(6) without further court order.

Derived from Probate Code § 774(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.103. Exercise of Authority Without Court Order

(a) The guardian of the estate of a ward may, without application to or order of the court:

(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 estate property against fire, theft, and other hazards; and

(6) pay taxes, court costs, and bond premiums.

(b) A guardian of the estate may apply and obtain a court order if the guardian doubts the propriety of the exercise of any power listed in Subsection (a).

Derived from Probate Code § 774(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.104. Authority to Commence Suits

(a) The guardian of the estate of a ward appointed in this state may commence a suit for:

(1) the recovery of personal property, debts, or damages; or

(2) title to or possession of land, any right attached to or arising from that land, or injury or damage done.

(b) A judgment in a suit described by Subsection (a) is conclusive, but may be set aside by any person interested for fraud or collusion on the guardian's part.

Derived from Probate Code § 773.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff.

Jan. 1, 2014.

§ 1151.105. Ordinary Diligence Required

(a) If there is a reasonable prospect of collecting the claims or recovering the property, the guardian of the estate shall use ordinary diligence to:

(1) collect all claims and debts due the ward; and

(2) recover possession of all property to which the ward has claim or title.

(b) If the guardian wilfully neglects to use ordinary diligence, the guardian and the sureties on the guardian's bond are liable, on the suit of any person interested in the estate, for the use of the estate, the amount of the claims, or the value of the property that has been lost due to the guardian's neglect.

Derived from Probate Code § 772.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Possession and Care of Ward's Property by Guardian of the Estate

§ 1151.151. Duty Of Care

(a) The guardian of the estate shall take care of and manage the estate as a prudent person would manage the person's own property, except as otherwise provided by this title.

(b) The guardian of the estate shall account for all rents, profits, and revenues that the estate would have produced by prudent management as required by Subsection (a).

Derived from Probate Code § 768.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.152. Possession of Personal Property and Records

(a) Immediately after receiving letters of guardianship, the guardian of the estate shall collect and take possession of the ward's personal property, record books, title papers, and other business papers.

(b) The guardian of the estate shall deliver the ward's personal property, record books, title papers, and other business papers to a person legally entitled to that property when:

(1) the guardianship has been closed; or

(2) a successor guardian has received letters of guardianship.

Derived from Probate Code § 771.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.153. Possession of Property Held in Common Ownership

The guardian of the estate is entitled to possession of a ward's property held or owned in common with a part owner in the same manner as another owner in common or joint owner is entitled.

Derived from Probate Code § 775.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.154. Administration of Partnership Interest

(a) This section applies only to a general partnership governed by a partnership agreement or articles of partnership that 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 partnership.

(b) If a ward was a partner in a general partnership, the guardian who contracts to come into the partnership is, to the extent allowed by law, liable to a third person only to the extent of:

(1) the incapacitated partner's capital in the partnership; and

(2) the assets of the incapacitated partner's estate that are held by the guardian.

(c) This section does not exonerate a guardian from liability for the guardian's negligence.

Derived from Probate Code § 780.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.155. Operation or Rental of Farm, Ranch, Factory, or Other Business

(a) If the ward owns a farm, ranch, factory, or other business that is not required to be immediately sold for the payment of a debt or other lawful purpose, the guardian of the estate on order of the court shall, as it appears to be in the estate's best interests:

(1) continue to operate, or cause the continued operation of, the farm, ranch, factory, or other business; or

(2) rent the farm, ranch, factory, or other business.

(b) In deciding whether to issue an order under Subsection (a), the court:

(1) shall consider:

(A) the condition of the estate; and

(B) 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

(2) 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 ward's estate.

Derived from Probate Code § 779.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Authority of Guardian to Engage in Certain Borrowing

§ 1151.201. Mortgage or Pledge of Estate Property Authorized in Certain Circumstances

(a) Under court order, the guardian may mortgage or pledge any property of a guardianship estate by deed of trust or otherwise as security for an indebtedness when necessary for:

(1) the payment of any ad valorem, income, gift, or transfer tax due from a ward, regardless of whether the tax is assessed by a state, a political subdivision of the state, the federal government, or a foreign country;

(2) the payment of any expense of administration, including amounts necessary for the operation of a business, farm, or ranch owned by the estate;

(3) the payment of any claim allowed and approved, or established by suit, against the ward or the ward's estate;

(4) the renewal and extension of an existing lien;

(5) an improvement or repair to the ward's real estate if:

(A) the real estate 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) the purchase of a residence for the ward or a dependent of the ward, if the court finds that borrowing money for that purpose is in the ward's best interests; and

(7) funeral expenses of the ward and expenses of the ward's last illness, if the guardianship is kept open after the ward's death.

(b) Under court order, the guardian of the estate may also receive an extension of credit on the ward's behalf that is wholly or partly secured by a lien on real property that is the ward's homestead when necessary to:

(1) make an improvement or repair to the homestead; or

(2) pay for the ward's education or medical expenses.

(c) Proceeds of a home equity loan described by Subsection (b) may be used only for the purposes authorized under Subsection (b) and to pay the outstanding balance of the loan.

Derived from Probate Code §§ 781(a), (a-1), (a-2).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.202. Application; Order

(a) The guardian of the estate must file a sworn application with the court for authority to:

(1) borrow money for a purpose authorized by Section 1151.201(a) or (b); or

(2) create or extend a lien on estate property as security.

(b) The application must state fully and in detail the circumstances that the guardian of the estate believes make the granting of the authority necessary.

(c) On the filing of an application under Subsection (a), the clerk shall issue and have 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.

(d) If the court is satisfied by the evidence presented at the hearing on an application filed under Subsection (a) that it is in the interest of the ward or the ward's estate to borrow money or to extend and renew an existing lien, the court shall issue an order to that effect, setting out the terms of the authority granted.

(e) If a new lien is created on guardianship estate property, the court may require, for the protection of the guardianship estate and the estate's creditors, that the guardian's general bond be increased or an additional bond be given, as for the sale of real property belonging to the estate.

Derived from Probate Code §§ 781(b), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.203. Term of Loan or Renewal

The term of a loan or renewal authorized under Section 1151.202 must be for the length of time that the court determines to be in the best interests of the ward or the ward's estate.

Derived from Probate Code § 781(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter F. Guardians Appointed for Ward to Receive Government Funds

§ 1151.251. Powers and Duties of Guardian Appointed as Necessary for Ward to Receive 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 may:

(1) administer only:

(A) the funds received from the governmental source;

(B) all earnings, interest, or profits derived from the funds; and

(C) all property acquired with the funds; and

(2) receive the funds and pay the expenses of administering the guardianship and the expenses for the support, maintenance, or education of the ward or the ward's dependents.

(b) Expenditures under Subsection (a)(2) 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.

Derived from Probate Code § 782(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1151.252. Validation of Certain Prior Acts of Guardian

An act performed before September 1, 1993, by a guardian 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 is validated if the act was performed in conformance with an order 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 title and if the validity of the act was not an issue in a probate proceeding or civil lawsuit that was pending on September 1, 1993.

Derived from Probate Code § 782(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter G. Notice by Guardian to Department of Veterans Affairs

§ 1151.301. Notice of Filing Required; Hearing Date

(a) This section applies only to:

(1) a filing by a guardian whose ward is a beneficiary of the Department of Veterans Affairs of:

(A) an annual or other account of funds; or

(B) an application for the expenditure or investment of funds; or

(2) a filing of a claim against the estate of a ward who is a beneficiary of the Department of Veterans Affairs.

(b) The court shall set a date for a hearing of a matter initiated by a filing to which this section applies not earlier than 20 days from the date of the filing.

(c) Not later than the fifth day after the date of a filing to which this section applies, the person who makes the filing shall give notice of the date of the filing by mailing a certified copy of the filing to the office of the Department of Veterans Affairs in whose territory the court is located.

(d) An office of the Department of Veterans Affairs through its attorney may waive the service of notice or the time required for setting a hearing under this section.

Derived from Probate Code § 636.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1152. Guardianship Pending Appeal of Appointment

§ 1152.001. Guardian to Serve Pending Appeal of Appointment

§ 1152.002. Appeal Bond

Chapter 1152. Guardianship Pending Appeal of Appointment

§ 1152.001. Guardian to Serve Pending Appeal of Appointment

Pending an appeal from an order or judgment appointing a guardian, the appointee shall continue to:

(1) act as guardian; and

(2) prosecute a pending suit in favor of the guardianship.

Derived from Probate Code § 655.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1152.002. Appeal Bond

(a) Except as provided by Subsection (b), if a guardian appeals, an appeal bond is not required.

(b) A guardian must give an appeal bond if the appeal personally concerns the guardian.

Derived from Probate Code § 656.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1153. Notice to Claimants

§ 1153.001. Required Notice Regarding Presentment of Claims in General

§ 1153.002. Proof of Publication

§ 1153.003. Required Notice to Certain Claimants

§ 1153.004. Permissive Notice to Unsecured Creditor Regarding Period for Presentment of Claim

§ 1153.005. One Notice Sufficient; Liability for Failure to Give Required Notice

Chapter 1153. Notice to Claimants

§ 1153.001. Required Notice Regarding Presentment of Claims in General

(a) Within one month after receiving letters of guardianship, a guardian of an estate shall provide notice requiring each person who has a claim against the estate to present the claim within the period prescribed by law. The notice must be:

(1) published in a newspaper printed in the county in which the letters were issued; and

(2) sent to the comptroller by certified or registered mail, if the ward remitted or should have remitted taxes administered by the comptroller.

(b) Notice provided under Subsection (a) must include:

(1) the date the letters of guardianship were issued to the guardian of the estate;

(2) the address to which a claim may be presented; and

(3) an instruction of the guardian's choice that the claim be addressed in care of:

(A) the guardian;

(B) the guardian's attorney; or

(C) "Guardian, Estate of _____" (naming the estate).

(c) If a newspaper is not printed in the county in which the letters of guardianship were issued, the notice must be posted and the return made and filed as otherwise required by this title.

Derived from Probate Code §§ 783(a), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1153.002. Proof of Publication

A copy of the published notice required by Section 1153.001(a)(1), with the publisher's affidavit, sworn to and subscribed before a proper officer, to the effect that the notice was published as provided in this title for the service of citation or notice by publication, shall be filed in the court in which the cause is pending.

Derived from Probate Code § 783(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1153.003. Required Notice to Certain Claimants

(a) Within four months after receiving letters of guardianship, the guardian of an estate shall give notice of the issuance of the letters to each person who has a claim for money against the ward's estate:

(1) that 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; or

(2) about which the guardian has actual knowledge.

(b) Notice provided under this section must be:

(1) sent by certified or registered mail, return receipt requested; and

(2) addressed to the record holder of the claim at the record holder's last known post office address.

(c) The following shall be filed in the court from which the letters of guardianship were issued:

(1) a copy of each notice required by Subsection (a)(1) with the return receipt; and

(2) the guardian's affidavit stating:

(A) that the notice was mailed as required by law; and

(B) the name of the person to whom the notice was mailed, if that name is not shown on the notice or receipt.

Derived from Probate Code §§ 784(A), (b), (c), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1153.004. Permissive Notice to Unsecured Creditor Regarding Period for Presentment of Claim

The guardian of the estate may expressly state in a notice given to an unsecured creditor under Section 1153.003(a)(2) that the creditor must present a claim not later than the 120th day after the date the creditor receives the notice or the claim is barred, if the claim is not barred by the general statutes of limitation. A statement under this section must include:

(1) the address to which the claim may be presented; and

(2) an instruction that the claim be filed with the clerk of the court that issued the letters of guardianship.

Derived from Probate Code § 784(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1153.005. One Notice Sufficient; Liability for Failure to Give Required Notice

(a) A guardian of an estate is not required to give a notice required by Section 1153.003 if another person also appointed as guardian or a former guardian has given that notice.

(b) If the guardian fails to give a notice required by other sections of this title or to cause the notice to be given, the guardian and the sureties on the guardian's bond are liable for any damage a person suffers because of the neglect, unless it appears that the person otherwise had notice.

Derived from Probate Code § 785.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1154. Inventory, Appraisement, and List of Claims

Subchapter A. Appraisers

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§ 1154.103. Correction of Inventory, Appraisement, or List of Claims for Erroneous or Unjust Item
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Subchapter D. Use of Inventory, Appraisement, and List of Claims as Evidence

§ 1154.151. Use of Inventory, Appraisement, and List of Claims as Evidence

Chapter 1154. Inventory, Appraisement, and List of Claims

Subchapter A. Appraisers

§ 1154.001. Appointment of Appraisers

(a) After letters of guardianship of the estate are granted, the court, for good cause shown, on the court's own motion or the motion of any interested person, shall appoint at least one but not more than three disinterested persons who are residents of the county in which the letters were granted to appraise the ward's property.

(b) If the court makes an appointment under Subsection (a) and part of the estate is located in a county other than the county in which the letters were granted, the court, if the court considers it necessary, may appoint at least one but not more than three disinterested persons who are residents of the county in which the relevant part of the estate is located to appraise the estate property located in that county.

Derived from Probate Code § 727.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1154.002. Appraisers' Fees

An appraiser appointed by the court is entitled to receive a reasonable fee, payable out of the estate, for the performance of the appraiser's duties as an appraiser.

Derived from Probate Code § 732.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1154.003. Failure or Refusal to Act by Appraisers

If an appraiser appointed under Section 1154.001 fails or refuses to act, the court shall remove the appraiser and appoint one or more appraisers.

Derived from Probate Code § 728.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Requirements for Inventory, Appraisement, and List of Claims

§ 1154.051. Inventory and Appraisement

(a) Not later than the 30th day after the date the guardian of the estate qualifies, unless a longer period is granted by the court, the guardian shall file with the court clerk a single written instrument that contains a verified, full, and detailed inventory of all the ward's property that has come into the guardian's possession or of which the guardian has knowledge. The inventory must:

(1) include:

(A) all the ward's real property located in this state; and

(B) all the ward's personal property regardless of where the property is located; and

(2) specify:

(A) which portion of the property is separate property and which is community property; and

(B) if the property is owned in common with other persons, the ward's interest in that property [~~and the names and relationship, if known, of the co-owners~~].

(b) The guardian shall:

(1) set out in the inventory the guardian's appraisement of the fair market value of each item in the inventory on the date of the grant of letters of guardianship; or

(2) if the court has appointed an appraiser for the estate:

(A) determine the fair market value of each item in the inventory with the assistance of the appraiser; and

(B) set out in the inventory the appraisement made by the appraiser.

(c) The court for good cause shown may require the guardian to file the inventory and appraisement not later than the 30th day after the date of qualification of the guardian.

(d) The inventory, when approved by the court and filed with the court clerk, is for all purposes the inventory and appraisement of the estate referred to in this title.

Derived from Probate Code § 729.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2013, 83rd Leg., ch. 161, § 6.041, eff. Jan. 1, 2014.

§ 1154.052. List of Claims

The guardian of the estate shall make and attach to the inventory and appraisement required by Section

1154.051 a complete list of claims due or owing to the ward. The list of claims must state:

(1) the name and, if known, address of each person indebted to the ward; and

(2) regarding each claim:

(A) 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;

(B) the date the debt was incurred;

(C) the date the debt was or is due;

(D) the amount of the claim, the rate of interest on the claim, and the period for which the claim bears interest; and

(E) if any portion of the claim is held in common with others, the interest of the estate in the claim [~~and the names and relationships of the other part owners~~].

Derived from Probate Code § 730.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.042, eff. Jan. 1, 2014.

§ 1154.053. Affidavit of Guardian

The guardian of the estate shall attach to the inventory, appraisement, 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, appraisement, and list of claims are a true and complete statement of the property and claims of the estate of which the guardian has knowledge.

Derived from Probate Code § 731.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1154.054. Approval or Disapproval by the Court

(a) On the filing of the inventory, appraisement, and list of claims with the court clerk, the judge shall examine and approve or disapprove the inventory, appraisement, and list of claims.

(b) If the judge approves the inventory, appraisement, and list of claims, the judge shall enter an order to that effect.

(c) If the judge does not approve the inventory, appraisement, or list of claims, the judge:

(1) shall enter an order to that effect requiring the filing of another inventory, appraisement, or list of claims, whichever is not approved, within a period specified in the order not to exceed 20 days after the date the order is entered; and

(2) may, if considered necessary, appoint new appraisers.

Derived from Probate Code § 733.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1154.055. Failure of Joint Guardians to File Inventory, Appraisement, and List of Claims

(a) If more than one guardian of the estate qualifies to serve, any one or more of the guardians, on the neglect of the other guardians, may make and file an inventory, appraisement, and list of claims.

(b) A guardian who neglects to make or file an inventory, appraisement, and list of claims may not interfere with and does not have any power over the estate after another guardian makes and files an inventory, appraisement, and list of claims.

(c) The guardian who files the inventory, appraisement, and list of claims is entitled to the whole administration unless, not later than the 60th day after the date the guardian files the inventory, appraisement, and list of claims, each of the delinquent guardians files with the court a written, sworn, and reasonable excuse that the court considers satisfactory. The court shall enter an order removing one or more delinquent guardians and revoking those guardians' letters if:

(1) an excuse is not filed; or

(2) the court does not consider the filed excuse sufficient.

Derived from Probate Code § 738.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Changes to Inventory, Appraisement, and List of Claims

§ 1154.101. Discovery of Additional Property or Claims

If after the filing of the inventory, appraisement, and list of claims the guardian of the estate acquires possession or knowledge of property or claims of the estate not included in the inventory, appraisement, and list of claims, the guardian shall promptly file with the court clerk a verified, full, and detailed supplemental inventory, appraisement, and list of claims.

Derived from Probate Code § 734.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1154.102. Additional Inventory and Appraisement or List of Claims

(a) On the written complaint of any interested person that property or claims of the estate have not been included in the filed inventory, appraisement, and list of claims, the guardian of the 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 file an additional inventory and appraisement or list of claims, or both.

(b) After hearing the complaint, if the court is satisfied of the truth of the complaint, the court shall enter an order requiring the guardian to make and file an additional inventory and appraisement or list of

claims, or both. The additional inventory and appraisement or list of claims:

(1) must be made and filed in the same manner as the original inventory and appraisement or list of claims within the period prescribed by the court, not to exceed 20 days after the date of the order; and

(2) may include only property or claims not previously included in the inventory and appraisement or list of claims.

Derived from Probate Code § 735.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1154.103. Correction of Inventory, Appraisement, or List of Claims for Erroneous or Unjust Item

(a) A person interested in an estate who considers an inventory, appraisement, or list of claims filed by the guardian of the estate to be erroneous or unjust in any particular form may:

(1) file a written complaint setting forth the alleged erroneous or unjust item; and

(2) have the guardian cited to appear before the court and show cause why the item should not be corrected.

(b) On the hearing of the complaint, if the court is satisfied from the evidence that the inventory, appraisement, or list of claims is erroneous or unjust as alleged in the complaint, the court shall enter an order:

(1) specifying the erroneous or unjust item and the corrections to be made; and

(2) appointing an appraiser to make a new appraisement correcting the erroneous or unjust item and requiring the filing of the new appraisement not later than the 20th day after the date of the order.

(c) The court, on the court's own motion or a motion of the guardian of the estate, may also have a new appraisement made for the purposes described by this section.

Derived from Probate Code § 736.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1154.104. Reappraisement

(a) A reappraisement made, filed, and approved by the court replaces the original appraisement. Not more than one reappraisement may be made.

(b) Notwithstanding Subsection (a), a person interested in an estate may object to a reappraisement regardless of whether the court has approved the reappraisement. If the court finds that the reappraisement is erroneous or unjust, the court shall appraise the property on the basis of the evidence before the court.

Derived from Probate Code § 737.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Use of Inventory, Appraisement, and List of Claims as Evidence

§ 1154.151. Use of Inventory, Appraisement, and List of Claims as Evidence

Each inventory, appraisement, and list of claims that has been made, filed, and approved in accordance with law; the record of the inventory, appraisement, and list of claims; or a copy of an original or the record that has been certified under the seal of the county court affixed by the clerk:

(1) may be given in evidence in any court of this state in any suit by or against the guardian of the estate; and

(2) is not conclusive for or against the guardian of the estate if it is shown that:

(A) any property or claim of the estate is not shown in the inventory, appraisement, or list of claims; or

(B) the value of the property or claim of the estate exceeded the value shown in the appraisement or list of claims.

Derived from Probate Code § 739.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1155. Compensation, Expenses, and Court Costs

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§ 1155.201. Definitions

§ 1155.202. Compensation and Costs Payable Under Medical Assistance Program

Chapter 1155. Compensation, Expenses, and Court Costs

Subchapter A. Compensation of Guardians in General

§ 1155.001. Definitions

In this subchapter:

(1) "Gross income" does not include United States 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 a guardianship or a tax-motivated gift made by a ward.

Derived from Probate Code § 665(h).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1155.002. Compensation for Certain Guardians of the Person

(a) The court may authorize compensation for a 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 to exceed five percent of the ward's gross income.

(b) If the ward's estate is insufficient to pay for the services of a private professional guardian or a licensed attorney serving as a guardian of the person, the court may authorize compensation for that guardian if funds in the county treasury are budgeted for that purpose.

Derived from Probate Code §§ 665(a), (g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1155.003. Compensation for Guardian of the Estate

(a) The guardian of an estate is entitled to reasonable compensation on application to the court at the time the court approves an annual or final accounting filed by the guardian under this title.

(b) 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 Section 1155.006(a) following a review under Section 1155.006(a)(1), is considered reasonable under this section if the court finds that the guardian has taken care of and managed the estate in compliance with the standards of this title.

Derived from Probate Code § 665(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1155.004. Considerations in Authorizing Compensation

In determining whether to authorize compensation for a guardian under this subchapter, the court shall consider:

(1) the ward's monthly income from all sources; and

(2) whether the ward receives medical assistance under the state Medicaid program.

Derived from Probate Code § 665(a-1).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1155.005. Maximum Aggregate Compensation

Except as provided by Section 1155.006(a) for a fee the court determines is 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.

Derived from Probate Code § 665(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1155.006. Modification of Unreasonably Low Compensation; Authorization for Payment of Estimated Quarterly Compensation

(a) On application of an interested person or on the court's own motion, the court may:

(1) review and modify the amount of compensation authorized under Section 1155.002(a) or 1155.003 if the court finds that the amount is unreasonably low when considering the services provided as guardian; and

(2) authorize compensation for the guardian in an estimated amount the court finds reasonable, to be paid on a quarterly basis before the guardian files an annual or final accounting, if the court finds that delaying the payment of compensation until the guardian files an accounting would create a hardship for the guardian.

(b) A finding of unreasonably low compensation may not be established under Subsection (a) solely because the amount of compensation is less than the usual and customary charges of the person or entity serving as guardian.

Derived from Probate Code §§ 665(c), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1155.007. Reduction or Elimination of Estimated Quarterly Compensation

(a) A court that authorizes payment of estimated quarterly compensation under Section 1155.006(a) may later reduce or eliminate the guardian's compensation if, on review of an annual or final accounting or otherwise, the court finds that the guardian:

(1) received compensation in excess of the amount permitted under this subchapter;

(2) has not adequately performed the duties required of a guardian under this title; or

(3) has been removed for cause.

(b) If a court reduces or eliminates a guardian's compensation as provided by Subsection (a), the guardian and the surety on the guardian's bond are liable to the guardianship estate for any excess compensation received.

Derived from Probate Code § 665(d), (d-1).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1155.008. Denial of Compensation

On application of an interested person or on the court's own motion, the court may wholly or partly deny a fee authorized under this subchapter if:

(1) the court finds that the guardian has not adequately performed the duties required of a guardian under this title; or

(2) the guardian has been removed for cause.

Derived from Probate Code § 665(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Compensation for Professional Services

~~§ 1155.051. Compensation for Professional Services in General~~

~~(a) The court shall order the payment of a fee set by the court as compensation to any attorneys, mental health professionals, and interpreters appointed under this title to be taxed as costs in the case.~~

~~(b) If after examining a 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 title, as applicable, the county is responsible for the cost of those services.~~

Derived from Probate Code § 665A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Repealed by Acts 2011, 82nd Leg., ch. 982, §35, eff. Jan. 1, 2014.

§ 1155.052. Attorney Serving as Guardian and Providing Related Legal Services

(a) Notwithstanding any other provision of this chapter [~~or Section 665B~~], 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) 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) for the performance of guardianship services in accordance with Subchapter A. The court shall set attorney's fees for an attorney described by Subsection (a) for legal services provided in accordance with Sections 1155.054 [~~1155.051~~], 1155.101, and 1155.151 [~~665B~~].

Derived from Probate Code § 665D.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (a) and (c) amended by Acts 2013, 83rd Leg., ch. 982, § 17, eff. Jan. 1, 2014.

§ 1155.053. Compensation for Services to Recover Property

(a) Subject only to the approval of the court in which the estate is being administered and except as provided by Subsection (b), a guardian of an estate may convey or contract to convey a contingent interest in any property sought to be recovered, not to exceed one-third of the property for services of attorneys.

(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) 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 guardian 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.

Derived from Probate Code § 665C.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1155.054 [~~665B~~]. Payment Of Attorney's Fees To Certain Attorneys.

(a) A court that creates a guardianship or creates a management trust under Chapter 1301 [~~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, in amounts the court considers equitable and just, 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, subject to Subsections (b) and (d).

(b) The court may authorize amounts that otherwise would be paid from the ward's estate or the management trust as provided by Subsection (a) to instead be paid from the county treasury,[~~; or~~

[~~(2)~~] subject to Subsection (e), [~~(c) of this section, the county treasury~~] if:

(1) [~~(A)~~] the ward's estate or[~~, if created,~~] management trust[~~,~~] is insufficient to pay [~~for~~] the amounts [~~services provided by the attorney~~]; and

(2) [~~(B)~~] funds in the county treasury are budgeted for that purpose.

(c) [~~(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.

(d) If the court finds that a party in a guardianship proceeding acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding, the court may require the party to reimburse the ward's estate for all or part of the attorney's fees awarded under this section and shall issue judgment against the party and in favor of the estate for the amount of attorney's fees required to be reimbursed to the estate.

(e) [~~(c)~~] The court may authorize the payment of attorney's fees from the county treasury under Subsection (b) [~~(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.

Derived from Probate Code §§ 665B.

Added by Acts 2013, 83rd Leg., ch. 982, § 18, eff. Jan. 1, 2014.

Subchapter C. Expenses

§ 1155.101. Reimbursement of Expenses in General

A guardian is entitled to reimbursement 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 [~~guardianship~~] matter in the guardianship.

Derived from Probate Code § 666.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.043, eff. Jan. 1, 2014.

§ 1155.102. Reimbursement of Expenses for Collection of Claim or Debt

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 title or a claim.

Derived from Probate Code § 665C(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1155.103. Expense Charges: Requirements

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.

Derived from Probate Code § 667.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Costs in General

§ 1155.151. Costs in Guardianship [~~Cost of~~] Proceeding Generally [~~in Guardianship Matter~~]

(a) In a guardianship proceeding [~~Except as provided by Subsection (b)~~], the court costs [~~cost~~] of the proceeding [~~in a guardianship matter~~], including the cost of the guardians [~~guardian~~] ad litem, attorneys ad litem, [~~or~~] court visitor, mental health professionals, and interpreters appointed under this title, shall be set in an amount the court considers equitable and just and, except as provided by Subsection (c), shall be paid out of the guardianship estate, or [~~the cost of the proceeding shall be paid out of~~] the county treasury if the estate is insufficient to pay the cost, and the court shall issue the judgment accordingly.

(b) The costs attributable to the services of a person described by Subsection (a) shall be paid under this section at any time after the commencement of the proceeding as ordered by the court.

(c) If the court finds that a party in a guardianship proceeding acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding, the court may order the party to pay all or part of the costs of the proceeding. If the party found to be acting in bad faith or without just cause was required to provide security for the probable costs of the proceeding under Section 1053.052, the court shall first apply the amount provided as security as payment for costs ordered by the court under this subsection. If the amount provided as security is insufficient to pay the entire amount ordered by the court, the court shall render judgment in favor of the estate against the party for the remaining amount. [~~An applicant for the appointment of a guardian under this title shall pay the cost of the proceeding if the court denies the application based on the recommendation of a court investigator.~~]

Derived from Probate Code § 669.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 982, § 19, eff. Jan. 1, 2014 and Acts 2013, 83rd Leg., ch. 161, §§ 6.044 & 6.045, eff. Jan. 1, 2014.

§ 1155.152. Certain Costs Adjudged Against Guardian

If costs are incurred because a guardian neglects to perform a required duty or is removed for cause, the guardian and the sureties on the guardian's bond are liable for:

(1) any costs of removal and other additional costs incurred that are not expenditures authorized under this title; and

(2) reasonable attorney's fees incurred in:

(A) removing the guardian; or

(B) obtaining compliance regarding any statutory duty the guardian has neglected.

Derived from Probate Code § 668.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Compensation and Costs in Guardianships for Certain Medical Assistance Recipients

§ 1155.201. Definitions

In this subchapter:

(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 [~~a nursing home~~] in which the recipient resides.

(2) "Medical assistance" has the meaning assigned by Section 32.003, Human Resources Code.

Derived from Probate Code § 670(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsection (1) amended by Acts 2013, 83rd Leg., ch. 161, § 6.046, eff. Jan. 1, 2014.

§ 1155.202. Compensation and Costs Payable Under Medical Assistance Program

(a) Notwithstanding any other provision of this title 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 [~~paid under the medical assistance program~~]:

(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 (b); and

(3) other administrative costs related to the guardianship, not to exceed $1,000 during any three-year period.

(b) Costs ordered to be deducted [~~paid~~] under Subsection (a)(2) 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.

(c) A court may not order:

(1) that the deduction for compensation and costs under Subsection (a) 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).

Derived from Probate Code § 670(b) & (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.047, eff. Jan. 1, 2014.

Chapter 1156. Education and Maintenance Allowances Paid from Ward's Estate

Subchapter A. Allowances for Ward

§ 1156.001. Application for Allowance
§ 1156.002. Court Determination of Allowance Amount
§ 1156.003. Court Order Setting Allowance
§ 1156.004. Expenditures Exceeding Allowance

Subchapter B. Allowances for Ward's Family

§ 1156.051. Certain Allowances Prohibited When Parent is Guardian of Minor Ward
§ 1156.052. Allowance for Ward's Spouse or Dependent

Chapter 1156. Education and Maintenance Allowances Paid from Ward's Estate

Subchapter A. Allowances for Ward

§ 1156.001. Application for Allowance

(a) Subject to Section 1156.051, if a monthly allowance for a ward was not ordered in the court's order appointing a guardian, the guardian of the estate of the ward shall file with the court an application requesting a monthly allowance to be spent from the income and corpus of the ward's estate for:

(1) the education and maintenance of the ward; and

(2) the maintenance of the ward's property.

(b) The guardian must file the application not later than the 30th day after the date the guardian qualifies as guardian or the date specified by the court, whichever is later.

(c) The application must clearly separate amounts requested for the ward's education and maintenance from amounts requested for maintenance of the ward's property.

Derived from Probate Code §§ 776(a), (a-1).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1156.002. Court Determination of Allowance Amount

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.

Derived from Probate Code § 776(a-2).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1156.003. Court Order Setting Allowance

(a) 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.

(b) If different persons have the guardianship of the person and of the estate of a ward, the court's order setting a monthly allowance must specify:

(1) the amount, if any, set by the court for the ward's education and maintenance that the guardian of the estate shall pay; and

(2) the amount, if any, that the guardian of the estate shall pay to the guardian of the person, at a time specified by the court, for the ward's education and maintenance.

(c) 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 by court order to make the payment after the guardian is cited to appear.

(d) 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 Subchapter A, Chapter 1163.

Derived from Probate Code §§ 776(a-2), (a-3).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1156.004. Expenditures Exceeding Allowance

If a guardian in good faith has spent money from the income and corpus of the estate of the ward for the ward's support and maintenance 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.

Derived from Probate Code § 776(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Allowances for Ward's Family

§ 1156.051. Certain Allowances Prohibited When Parent is Guardian of Minor Ward

(a) Except as provided by Subsection (b), 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 to the court clear and convincing evidence that the ward's parents are unable without unreasonable hardship to pay for all of the expenses related to the ward's support.

Derived from Probate Code § 777.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1156.052. Allowance for Ward's Spouse or Dependent

(a) Subject to Section 1156.051 and on application to the court, the court may order the guardian of the estate of a ward to spend money 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 money from a ward's estate for the ward's spouse or dependent, as appropriate, under 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.

Derived from Probate Code § 776A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1157. Presentment and Payment of Claims

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Chapter 1157. Presentment and Payment of Claims

Subchapter A. Presentment of Claims Against Guardianship Estate in General

§ 1157.001. Presentment of Claim to Guardian of the Estate

A claim may be presented to the guardian of the estate at any time if:

(1) the estate has not been closed; and

(2) suit on the claim has not been barred by the general statutes of limitation.

Derived from Probate Code § 786(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.002. Presentment of Claim to Clerk

(a) A claim may also be presented by depositing the claim with the clerk with vouchers and the necessary exhibits and affidavit attached to the claim. On receiving a claim deposited under this subsection, the clerk shall advise the guardian of the estate or the guardian's attorney of the deposit of the claim by a letter mailed to the guardian's last known address.

(b) A claim deposited under Subsection (a) is presumed to be rejected if the guardian fails to act on the claim on or before the 30th day after the date the claim is filed.

(c) Failure of the clerk to give the notice required under Subsection (a) does not affect the validity of the presentment or the presumption of rejection of the claim because the guardian does not act on the claim within the 30-day period prescribed by Subsection (b).

Derived from Probate Code § 795.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.003. Inclusion of Attorney's Fees in Claim

If the instrument evidencing or supporting a claim provides for attorney's fees, the claimant may include as a part of the claim the portion of the attorney's fees the claimant has paid or contracted to pay to an attorney to prepare, present, and collect the claim.

Derived from Probate Code § 794.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.004. Affidavit Authenticating Claim for Money in General

(a) Except as provided by Sections 1157.005 and 1157.102, a claim for money against an estate must be supported by an affidavit that states:

(1) that the claim is just;

(2) that all legal offsets, payments, and credits known to the affiant have been allowed; and

(3) if the claim is not founded on a written instrument or account, the facts on which the claim is founded.

(b) 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 attaching the original.

Derived from Probate Code § 788.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.005. Affidavit Authenticating Claim of Corporation or by Certain Other Representatives

(a) The cashier, treasurer, or managing official of a corporation shall make the affidavit required to authenticate a claim of the corporation.

(b) In an affidavit made by an officer of a corporation, or by an executor, administrator, guardian, trustee, assignee, agent, or attorney, it is sufficient to state that the affiant has made diligent inquiry and examination and believes the claim is just and that all legal offsets, payments, and credits made known to the affiant have been allowed.

Derived from Probate Code § 791.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.006. Lost or Destroyed Evidence Concerning Claim

If evidence of a claim is lost or destroyed, the claimant or the claimant's representative may make an affidavit to the fact of the loss or destruction. The affidavit must state:

(1) the amount, date, and nature of the claim;

(2) the due date of the claim;

(3) that the claim is just;

(4) that all legal offsets, payments, and credits known to the affiant have been allowed; and

(5) that the claimant is still the owner of the claim.

Derived from Probate Code § 790.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.007. Waiver of Certain Defects of Form or Claims of Insufficiency

A defect of form or a claim of insufficiency of a presented exhibit or voucher is considered waived by the guardian of the estate unless a written objection to the form, exhibit, or voucher is:

(1) made not later than the 30th day after the date the claim is presented; and

(2) filed with the county clerk.

Derived from Probate Code § 789.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.008. Effect on Statutes of Limitation of Filing of or Suit on Claim

The general statutes of limitation are tolled by:

(1) filing a claim that is legally allowed and approved; or

(2) bringing a suit on a rejected and disapproved claim not later than the 90th day after the date the claim is rejected or disapproved.

Derived from Probate Code § 787.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Action on Claims

§ 1157.051. Allowance or Rejection of Claim

A guardian of the estate shall, not later than the 30th day after the date an authenticated claim against the guardianship estate is presented to the guardian or filed with the clerk as provided by this chapter, endorse on or attach to the claim a memorandum signed by the guardian stating:

(1) the date of presentation or filing of the claim; and

(2) whether the guardian allows or rejects the claim, or, if the guardian allows or rejects a part of the claim, the portion of the claim the guardian allows or rejects.

Derived from Probate Code § 796.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.052. Failure to Endorse or Attach Memorandum or Allow or Reject Claim

The failure of a guardian of the estate to endorse on or attach to a claim presented to the guardian the memorandum required by Section 1157.051 or, not later than the 30th day after the date a claim is presented, to allow or reject the claim or portion of the claim constitutes a rejection of the claim. If the claim is later established by suit:

(1) the costs shall be taxed against the guardian, individually; or

(2) 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.

Derived from Probate Code § 797.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.053. Claim Entered on Claim Docket

After a claim against a ward's estate has been presented to and allowed by the guardian of the estate, wholly or partly, the claim must be filed with the county clerk of the proper county. The clerk shall enter the claim on the claim docket.

Derived from Probate Code § 798.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.054. Contest of Claim

(a) A person interested in a ward may, at any time before the court has acted on a claim, appear and object in writing to the approval of the claim or any part of the claim.

(b) If a person objects under Subsection (a):

(1) the parties are entitled to process for witnesses; and

(2) the court shall hear evidence and render judgment as in ordinary suits.

Derived from Probate Code § 799(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.055. Court's Action On Claim

The court shall:

(1) approve, wholly or partly, or reject a claim that has been allowed and entered on the claim docket for a period of 10 days; and

(2) concurrently classify the claim.

Derived from Probate Code § 799(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.056. Hearing on Certain Claims

(a) If a claim is properly authenticated and allowed, but the court is not satisfied that the claim is just, the court shall:

(1) examine the claimant and the guardian of the estate under oath; and

(2) hear other evidence necessary to determine the issue.

(b) If after the examination and hearing the court is not convinced that the claim is just, the court shall disapprove the claim.

Derived from Probate Code § 799(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.057. Court Order Regarding Action on Claim

(a) The court acting on a claim shall endorse on or attach to the claim a written memorandum that:

(1) is dated and officially signed; and

(2) states:

(A) the exact action taken by the court on the claim, whether the claim is approved or disapproved, or is approved in part and rejected in part; and

(B) the classification of the claim.

(b) An order under Subsection (a) has the effect of a final judgment.

Derived from Probate Code § 799(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.058. Appeal of Court's Action on Claim

If a claimant or any person interested in a ward is dissatisfied with the court's action on a claim, the claimant or interested person may appeal the action to the court of appeals in the manner other judgments of the county court in probate matters are appealed.

Derived from Probate Code § 799(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.059. Allowance and Approval Prohibited Without Affidavit

Except as provided by Section 1157.102, 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 meets the applicable requirements of Sections 1157.004 and 1157.005.

Derived from Probate Code § 788.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.060. Unsecured Claims Barred Under Certain Circumstances

A claim of an unsecured creditor for money that is not presented within the time prescribed by the notice of presentment permitted by Section 1153.004 is barred.

Derived from Probate Code § 786(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.061. Allowing Barred Claim Prohibited; Court Disapproval

A guardian of the estate may not allow a claim against a ward if a suit on the claim is barred by an applicable general statute of limitation. A claim against a ward that is allowed by the guardian shall be disapproved if the court is satisfied that the limitation has run.

Derived from Probate Code § 786(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.062. Certain Actions on Claims With Lost or Destroyed Evidence Void

(a) Before a claim the evidence for which is lost or destroyed is approved, the claim must be proved by disinterested testimony taken in open court or by oral or written deposition.

(b) The allowance or approval of a claim the evidence for which is lost or destroyed is void if the claim is:

(1) allowed or approved without the affidavit under Section 1157.006; or

(2) approved without satisfactory proof.

Derived from Probate Code § 790.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.063. Suit on Rejected Claim

(a) A claim or part of a claim that has been rejected by the guardian of the estate is barred unless not later than the 90th day after the date of rejection the claimant commences 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.

(b) In a suit commenced on the rejected claim, the memorandum endorsed on or attached to the claim is taken to be true without further proof unless denied under oath.

Derived from Probate Code § 800.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.064. Presentment of Claim Prerequisite for Judgment

(a) Except as provided by Subsection (b), a judgment may not be rendered in favor of a claimant on a claim for money that has not been:

(1) legally presented to the guardian of the estate of the ward; and

(2) wholly or partly rejected by the guardian or the court.

(b) Subsection (a) does not apply to a claim against the estate of a ward for delinquent ad valorem taxes that is being administered in probate in a county other than the county in which the taxes were imposed.

Derived from Probate Code § 801.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.065. Judgment in Suit on Rejected Claim

No execution may issue on a rejected claim or part of a claim that is established by suit. The judgment in the suit shall be:

(1) 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;

(2) filed in the court in which the guardianship is pending;

(3) entered on the claim docket;

(4) classified by the court; and

(5) handled as if originally allowed and approved in due course of administration.

Derived from Probate Code § 800.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Payment of Claims, Allowances, and Expenses

§ 1157.101. Payment of Approved or Established Claim

Except as provided for payment of an unauthenticated claim at the risk of a guardian, a claim or any part of a claim for money against the estate of a ward may not be paid until the claim or part of the claim has been approved by the court or established by the judgment of a court of competent jurisdiction.

Derived from Probate Code § 804.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.102. Payment of Unauthenticated Claim

(a) Subject to Subsection (b), a guardian of the estate may pay an unauthenticated claim against the ward's estate if the guardian believes the claim to be just.

(b) A guardian who pays a claim under Subsection (a) and the sureties on the guardian's bond are liable for the amount of any payment of the claim if the court finds that the claim is not just.

Derived from Probate Code § 792.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.103. Priority of Payment of Claims

(a) Except as provided by Subsection (b), the guardian of the estate shall pay a claim against the ward's estate that has been allowed and approved or established by suit, as soon as practicable and in the following order:

(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 ward's death as provided under this title, except that any claim against the ward's estate that has been allowed and approved or established by suit before the ward's death 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).

Derived from Probate Code §§ 805(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.104. Payment of Proceeds from Sale of Property Securing Debt

(a) If a guardian of the estate has on hand the proceeds of a sale made to satisfy 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.

(b) If the guardian fails to pay the proceeds as required by this section, the holder of a mortgage or other lien, on proof of the mortgage or other lien, may obtain an order from the court directing the payment of proceeds to be made.

Derived from Probate Code § 808.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.105. Claimant's Petition for Allowance and Payment of Claim

A claimant whose claim has not been paid may:

(1) petition the court for determination of the claim at any time before the claim is barred by an applicable statute of limitations; and

(2) procure on due proof an order for the claim's allowance and payment from the estate.

Derived from Probate Code § 805(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.106. Payment When Assets Insufficient to Pay Certain Claims

(a) If there are insufficient assets to pay all claims of the same class, the claims in that class shall be paid pro rata, as directed by the court, and in the order directed.

(b) A guardian of the estate may not be allowed to pay any claims other than with the pro rata amount of the estate funds that have come into the guardian's possession, regardless of whether the estate is solvent or insolvent.

Derived from Probate Code § 806.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.107. Payment of Court Costs Relating to Claim

All costs incurred in the probate court with respect to a claim are taxed as follows:

(1) if the claim is allowed and approved, the guardianship estate shall pay the costs;

(2) if the claim is allowed but disapproved, the claimant shall pay the costs;

(3) if the claim is rejected but established by suit, the guardianship estate shall pay the costs;

(4) if the claim is rejected but not established by suit, the claimant shall pay the costs; or

(5) in a suit to establish the claim after the claim is rejected in part, if the claimant fails to recover judgment for a greater amount than was allowed or approved for the claim, the claimant shall pay all costs.

Derived from Probate Code § 802.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.108. Liability for Nonpayment of Claim

(a) A person or claimant, except the state treasury, entitled to payment from a guardianship estate of money the court orders to be paid is authorized to have execution issued against the property of the guardianship for the amount due, with interest and costs, if:

(1) a guardian of the estate fails to pay the money on demand;

(2) guardianship estate funds are available to make the payment; and

(3) the person or claimant makes an affidavit of the demand for payment and the guardian's failure to pay.

(b) The court may cite the guardian and the sureties on the guardian's bond to show cause why the guardian or sureties should not be held liable for the debt, interest, costs, or damages:

(1) on return of the execution under Subsection (a) not satisfied; or

(2) on the affidavit of demand and failure to pay under Subsection (a).

(c) On the return of citation served under Subsection (b), the court shall render judgment against the cited guardian and sureties, in favor of the claim holder, if good cause why the guardian and sureties should not be held liable is not shown. The judgment must be for:

(1) the unpaid amount ordered to be paid or established by suit, with interest and costs; and

(2) 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 for payment was made.

(d) Damages ordered under Subsection (c)(2) may be collected in any court of competent jurisdiction.

Derived from Probate Code § 809.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Presentment and Payment of Secured Claims

§ 1157.151. Option to Treat Claim as Matured Secured Claim or Preferred Debt and Lien

(a) If 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 the claim, whether the claim shall be:

(1) allowed and approved as a matured secured claim to be paid in due course of administration, in which case the claim shall be paid in that manner if allowed and approved; or

(2) 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 case the claim shall be so allowed and approved if it is a valid lien.

(b) Notwithstanding Subsection (a)(2), the guardian of the estate may pay a claim that the claimant specified as a claim to be allowed, approved, and fixed as a preferred debt and lien as described by Subsection (a)(2) before maturity if that payment is in the best interests of the estate.

(c) If a secured claim is not presented within the time provided by law, the claim shall be treated as a claim to be paid in accordance with Subsection (a)(2).

Derived from Probate Code §§ 793(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.152. Preferred Debt and Lien

When a claim for a debt has been allowed and approved under Section 1157.151(a)(2):

(1) a further claim for the debt may not be made against other estate assets;

(2) the claim remains a preferred lien against the property securing the claim; and

(3) the property remains security for the debt in any distribution or sale of the property before final maturity and payment of the debt.

Derived from Probate Code § 793(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.153. Payment of Maturities on Preferred Debt and Lien

(a) If, not later than the 12th month after the date letters of guardianship are granted, the property securing a debt for which a claim is allowed, approved, and fixed under Section 1157.151(a)(2) is not sold or distributed, the guardian of the estate shall:

(1) promptly pay all maturities that have accrued on the debt according to the terms of the maturities; and

(2) perform all the terms of any contract securing the maturities.

(b) If the guardian defaults in payment or performance under Subsection (a):

(1) on the motion of the claim holder, the court shall 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; or

(2) at the claim holder's option, a motion may be made in the same manner as a motion under Subdivision (1) to require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt.

Derived from Probate Code § 793(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Claims Involving Guardians

§ 1157.201. Claim by Guardian

(a) A claim that a guardian of the person or estate held against the ward at the time of the guardian's appointment, or that accrues after the appointment, 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 and the claim shall take the same course as other claims.

(b) A claim by a guardian that has been filed with the court within the required period shall be entered on the claim docket and acted on by the court in the same manner as in other cases.

(c) An appeal from a judgment of the court acting on a claim under this section may be taken as in other cases.

Derived from Probate Code § 803.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1157.202. Purchase of Claim by Guardian Prohibited

(a) A guardian may not purchase, for the guardian's own use or for any other purpose, a claim against the guardianship the guardian represents.

(b) On written complaint by a person interested in the guardianship estate and on satisfactory proof of a violation of Subsection (a), the court after citation and hearing shall enter an order canceling the claim described by Subsection (a). No part of the canceled claim may be paid out of the guardianship.

(c) The court may remove a guardian for a violation of this section.

Derived from Probate Code § 807.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

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Chapter 1158. Sale or Partition of Ward's Property

Subchapter A. General Provisions

§ 1158.001. Court Order Authorizing Sale

(a) Except as provided by this chapter, any property of a ward may not be sold without a court order authorizing the sale.

(b) Except as otherwise specifically provided by this title, the court may order property of a ward to be sold for cash or on credit, at public auction or privately, as the court considers most advantageous to the estate.

Derived from Probate Code § 811.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Certain Estate Property Required to be Sold

§ 1158.051. Sale of Certain Personal Property Required

(a) After approval of the inventory, appraisement, and list of claims, the guardian of the estate of a ward promptly shall apply for a court order to sell, at public auction or privately, for cash or on credit for a term not to exceed six months, all estate property that is liable to perish, waste, or deteriorate in value, or that will be an expense or disadvantage to the estate if kept.

(b) The following may not be included in a sale under Subsection (a):

(1) property exempt from forced sale;

(2) property that is the subject of a specific legacy; and

(3) personal property necessary to carry on a farm, ranch, factory, or other business that is thought best to operate.

(c) In determining whether to order the sale of an asset under Subsection (a), the court shall consider:

(1) the guardian's duty to take care of and manage the estate in the manner a person of ordinary prudence, discretion, and intelligence would manage the person's own affairs; and

(2) whether the asset constitutes an asset that a trustee is authorized to invest under Subchapter F, Chapter 113, Property Code, or Chapter 117, Property Code.

Derived from Probate Code § 812.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Sale of Personal Property

§ 1158.101. Order for Sale

(a) Except as provided by Subsection (b), on the application of the guardian of the estate of a ward or any interested person, the court may order the sale of any estate personal property not required to be sold by Section 1158.051, including livestock or growing or harvested crops, if the court finds that the sale of the property is in the best interests of the ward or the ward's estate to pay, from the proceeds of the sale:

(1) expenses of the care, maintenance, and education of the ward or the ward's dependents;

(2) expenses of administration;

(3) allowances;

(4) claims against the ward or the ward's estate; and

(5) if the guardianship is kept open after the death of the ward, the ward's funeral expenses and expenses of the ward's last illness.

(b) The court may not order under this section the sale of exempt property.

Derived from Probate Code § 813.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.102. Requirements for Application and Order

To the extent possible, an application and order for the sale of estate personal property under Section 1158.101 must conform to the requirements under Subchapter F for an application and order for the sale of real estate.

Derived from Probate Code § 813.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.103. Sale at Public Auction

Unless the court directs otherwise, before estate personal property is sold at public auction, notice must be:

(1) issued by the guardian of the estate; and

(2) posted in the manner notice is posted for original proceedings in probate.

Derived from Probate Code § 815.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.104. Sale on Credit

(a) Estate personal property may not be sold on credit at public auction for a term of more than six months from the date of sale.

(b) Estate personal property purchased on credit at public auction may not be delivered to the purchaser until the purchaser gives a note for the amount due, with good and solvent personal security. The requirement that security be provided may be waived if the property will not be delivered until the note, with interest, has been paid.

Derived from Probate Code § 816.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.105. Report; Evidence of Title

(a) A sale of estate personal property shall be reported to the court. The laws regulating the confirmation or disapproval of a sale of real estate apply to the sale of personal property, except that a conveyance is not required.

(b) The court's order confirming the sale of estate personal property:

(1) vests the right and title of the ward's estate in the purchaser who has complied with the terms of the sale; and

(2) is prima facie evidence that all requirements of the law in making the sale have been met.

(c) The guardian of the estate, on request, may issue a bill of sale without warranty to the purchaser of estate personal property as evidence of title. The expense of the bill of sale if requested must be paid by the purchaser.

Derived from Probate Code § 818.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Sale of Livestock

§ 1158.151. Authority for Sale

(a) A guardian of the estate who has possession of livestock and who considers selling the livestock to be necessary or to the estate's advantage 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:

(1) a bonded livestock commission merchant; or

(2) a bonded livestock auction commission merchant.

(b) The court may authorize the sale of livestock in the manner described by Subsection (a) on a written and sworn application by the guardian or any person interested in the estate.

Derived from Probate Code §§ 814(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.152. Contents of Application; Hearing

(a) An application under Section 1158.151 must:

(1) describe the livestock sought to be sold; and

(2) state why granting the application is necessary or to the estate's advantage.

(b) The court:

(1) shall consider the application; and

(2) may hear evidence for or against the application, with or without notice, as the facts warrant.

Derived from Probate Code § 814(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.153. Grant of Application

If the court grants an application for the sale of livestock, the court shall:

(1) enter an order to that effect; and

(2) authorize delivery of the livestock to a commission merchant described by Section 1158.151(a) for sale in the regular course of business.

Derived from Probate Code § 814(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.154. Report; Passage of Title

The guardian of the estate shall promptly report to the court a sale of livestock, supported by a verified copy of the commission merchant's account of the sale. A court order of confirmation is not required to pass title to the purchaser of the livestock.

Derived from Probate Code § 814(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.155. Commission Merchant Charges

The commission merchant shall be paid the commission merchant's usual and customary charges, not to exceed five percent of the sale price, for the sale of the livestock.

Derived from Probate Code § 814(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Sale of Mortgaged Property

§ 1158.201. Application for Sale of Mortgaged Property

On the filing of a written application, a creditor holding 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 requiring that the property securing the lien, or as much of the property as is necessary to satisfy the creditor's claim, be sold.

Derived from Probate Code § 817.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.202. Citation

On the filing of an application under Section 1158.201, the clerk shall issue a citation requiring the guardian of the estate to appear and show cause why the application should not be granted.

Derived from Probate Code § 817.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.203. Order

The court may order the lien securing the claim of a creditor who files an application under Section 1158.201 to be discharged out of general estate assets or refinanced if the discharge or refinance of the lien appears to the court to be advisable. Otherwise, the court shall grant the application and order that the property securing the lien be sold at public or private sale, as the court considers best, as in an ordinary sale of real estate.

Derived from Probate Code § 817.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter F. Sale of Real Property: Application and Order for Sale

§ 1158.251. Application for Order of Sale

An application may be made to the court for an order to sell real property of a ward's estate if the sale appears necessary or advisable to:

(1) pay:

(A) expenses of administration, allowances, and claims against the ward or the ward's estate; and

(B) if the guardianship is kept open after the death of the ward, the ward's funeral expenses and expenses of the ward's last illness;

(2) make up the deficiency if the income of a ward's estate, the personal property of the 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 wholly or partly of an undivided interest in real estate if considered 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, if:

(A) the improvement of the real estate with a view to making the property productive is not considered advantageous or advisable; and

(B) the sale of the real estate and the investment of the money derived from that sale appears to be in the estate's best interests; or

(5) conserve the ward's estate by selling mineral interest or royalties on minerals in place owned by the ward.

Derived from Probate Code § 820.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.252. Contents of Application

An application for the sale of real estate must:

(1) be in writing;

(2) describe:

(A) the real estate sought to be sold; or

(B) the interest in or part of the real estate sought to be sold; and

(3) be accompanied by an exhibit, verified by an affidavit, showing fully and in detail:

(A) the estate's condition;

(B) the charges and claims that have been approved or established by suit or that have been rejected and may be established later;

(C) the amount of each claim described by Paragraph (B);

(D) the estate property remaining on hand that is liable for the payment of the claims described by Paragraph (B); and

(E) any other facts showing the necessity for or advisability of the sale.

Derived from Probate Code § 821.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.253. Citation

On the filing of an application for the sale of real estate under Section 1158.251, accompanied by an exhibit described by Section 1158.252, the clerk shall issue a citation to all persons interested in the guardianship. The citation must:

(1) describe the real estate or the interest in or part of the real estate sought to be sold;

(2) inform the interested persons of the right under Section 1158.254 to file an opposition to the sale during the period prescribed by the court in the citation; and

(3) be served by posting.

Derived from Probate Code § 823.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.254. Opposition to Sale

During the period prescribed in a citation issued under Section 1158.253, a person interested in the guardianship may file:

(1) a written opposition to the sale; or

(2) an application for the sale of other estate property.

Derived from Probate Code § 824.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.255. Hearing on Application and Any Opposition

(a) The clerk of the court in which an application for an order of sale is filed shall immediately call to the judge's attention any opposition to the sale that is filed during the period prescribed in the citation issued under Section 1158.253. The court shall hold a hearing on the application if an opposition to the sale is filed during the period prescribed 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 prescribed in the citation. The court may determine that a hearing on the application is necessary even if no opposition is filed during that period.

(c) If the court orders a hearing under Subsection (a) or (b), the court shall designate in writing a date and time for the hearing on the application and any opposition, together with the evidence pertaining to the application and any opposition. The clerk shall issue a notice of the date and time of the hearing to the applicant and to each person who files an opposition to the sale, if applicable.

(d) The judge, by entries on the docket, may continue a hearing held under this section from time to time until the judge is satisfied concerning the application.

Derived from Probate Code § 824A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.256. Order

(a) The court shall order the sale of the property of the estate described in an application under Section 1158.251 if the court is satisfied that the sale is necessary or advisable. Otherwise, the court may deny the application and, if the court considers it best, may order the sale of other estate property the sale of which would be more advantageous to the estate.

(b) An order for the sale of real estate under this section must specify:

(1) the property to be sold, including a description that identifies that property;

(2) whether the property is to be sold at public auction or private sale and, if at public auction, the time and place of the sale;

(3) the necessity or advisability of, and the purpose of, the sale;

(4) except in a case in which a guardian of the estate was not required to give a general bond, that the court, after examining the general bond given by the guardian, finds that:

(A) the bond is sufficient as required by law; or

(B) the bond is insufficient;

(5) if the court finds that the general bond is insufficient under Subdivision (4)(B), the amount of the necessary or increased bond, as applicable;

(6) that the sale is to be made and the report returned in accordance with law; and

(7) the terms of the sale.

Derived from Probate Code § 825.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.257. Sale for Payment of Debts

Real property of a ward selected to be sold for the payment of expenses or claims must be that property the sale of which the court considers most advantageous to the guardianship.

Derived from Probate Code § 819.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter G. Sale of Real Estate: Terms of Sale

§ 1158.301. Permissible Terms

Real estate of an 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 estate's best interests.

Derived from Probate Code § 827(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.302. Sale on Credit

(a) The cash payment for real estate of an estate sold partly on credit may not be less than one-fifth of the purchase price. The purchaser shall execute a note for the deferred payments, payable in monthly, quarterly, semiannual, or annual installments, in amounts that appear to the court to be in the guardianship's best interests. The note must bear interest from the date at a rate of not less than four percent per year, payable as provided in the note.

(b) A note executed by a purchaser under Subsection (a) must be secured by a vendor's lien retained in the deed and in the note on the property sold, and be additionally secured by a 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.

(c) At the election of the holder of a note executed by a purchaser under Subsection (a), default in the payment of principal or interest or any part of the payment when due matures the entire debt.

Derived from Probate Code § 827(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter H. Reconveyance of Real Estate Following Foreclosure

§ 1158.351. Applicability of Subchapter

This subchapter applies only to real estate owned by an estate as a result of the foreclosure of a vendor's lien or mortgage belonging to the estate:

(1) by a judicial sale;

(2) by a foreclosure suit;

(3) through a sale under a deed of trust; or

(4) by acceptance of a deed in cancellation of a lien or mortgage owned by the estate.

Derived from Probate Code § 827(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.352. Application and Order for Reconveyance

On proper application and proof, the court may dispense with the requirements for a credit sale prescribed by Section 1158.302 and order the reconveyance of foreclosed real estate to the former mortgage debtor or former owner if it appears to the court that:

(1) an application to redeem the real estate has been made by the former owner to a corporation or agency created by an act of the United States Congress 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

(2) owning bonds of one of those federal or state corporations or agencies instead of the real estate would be in the estate's best interests.

Derived from Probate Code § 827(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.353. Exchange for Bonds

(a) If a court orders the reconveyance of foreclosed real estate under Section 1158.352, vendor's lien notes shall be reserved for the total amount of the indebtedness due or for the total amount of bonds that the corporation or agency to which the application to redeem the real estate was submitted as described by Section 1158.352(1) is allowed to advance under the corporation's or agency's rules or regulations.

(b) On obtaining the order for reconveyance, it shall be proper for the guardian to endorse and assign the reserved vendor's lien notes over to any one of the corporations or agencies described by Section 1158.352(1) in exchange for bonds of that corporation or agency.

Derived from Probate Code § 827(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter I. Sale of Real Estate: Public Sale

§ 1158.401. Required Notice

(a) Except as otherwise provided by this title, the guardian of the estate shall advertise a public sale of real estate of the estate by a notice published in the county in which the estate is pending, as provided by this title for publication of notices or citations. The notice must include a reference to:

(1) the order of sale;

(2) the time, place, and required terms of sale; and

(3) a brief description of the real estate to be sold.

(b) The reference described by Subsection (a)(1) is not required to contain field notes, but if the real estate to be sold is rural property, the reference must include:

(1) the name of the original survey of the real estate;

(2) the number of acres the real estate consists of;

(3) the location of the real estate in the county; and

(4) the name by which the real estate is generally known.

Derived from Probate Code § 828(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.402. Method of Sale

A public sale of real estate of an estate shall be made at public auction to the highest bidder.

Derived from Probate Code § 828(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.403. Time and Place of Sale

(a) Except as provided by Subsection (c), a public sale of real estate of an estate shall be made at:

(1) the courthouse door in the county in which the guardianship proceedings are pending; or

(2) another place in that county at which sales of real estate are specifically authorized to be made.

(b) The sale must occur between 10 a.m. and 4 p.m. on the first Tuesday of the month after publication of notice has been completed.

(c) If the court considers it advisable, the court may order the sale to be made in the county in which the real estate is located, in which event notice shall be published both in that county and in the county in which the proceedings are pending.

Derived from Probate Code § 828(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.404. Continuance of Sale

(a) A public sale of real estate of an estate that is not completed on the day advertised may be continued from day to day by an oral public announcement of the continuance made at the conclusion of the sale each day.

(b) A continued sale must occur within the hours prescribed by Section 1158.403(b).

(c) The continuance of a sale under this section shall be shown in the report of the sale made to the court.

Derived from Probate Code § 828(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.405. Failure of Bidder to Comply

(a) If a person who bids on real estate of the guardianship estate offered for sale at public auction fails to comply with the terms of the sale, the real estate shall be readvertised and sold without any further order.

(b) The person defaulting on a bid as described by Subsection (a) is liable for payment to the guardian of the estate, for the estate's benefit, of:

(1) 10 percent of the amount of the bid; and

(2) the amount of any deficiency in price on the second sale.

(c) The guardian shall recover the amounts under Subsection (b) by suit in any court in the county in which the sale was made that has jurisdiction over the amount claimed.

Derived from Probate Code § 828(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter J. Sale of Real Estate: Private Sale

§ 1158.451. Manner of Sale

A private sale of real estate of the estate shall be made in the manner the court directs in the order of sale. Unless the court directs otherwise, additional advertising, notice, or citation concerning the sale is not required.

Derived from Probate Code § 829.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter K. Sale of Easement or Right-of-Way

§ 1158.501. Authorization

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 court order, regardless of whether the sale proceeds are

required to pay charges or claims against the estate, or for other lawful purposes.

Derived from Probate Code § 830.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.502. Procedure

The procedure for the sale of an easement or right-of-way authorized under Section 1158.501 is the same as the procedure provided by law for a sale of real property of a ward at private sale.

Derived from Probate Code § 830.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter L. Confirmation of Sale of Real Property and Transfer of Title

§ 1158.551. Report

A sale of estate real property shall be reported to the court ordering the sale not later than the 30th day after the date the sale is made. The report must:

(1) be in writing, sworn to, and filed with the clerk;

(2) include:

(A) the date of the order of sale;

(B) a description of the property sold;

(C) the time and place of sale;

(D) the purchaser's name;

(E) the amount for which each parcel of property or interest in the parcel of property was sold;

(F) the terms of the sale;

(G) whether the sale was made at public auction or privately; and

(H) whether the purchaser is ready to comply with the order of sale; and

(3) be noted on the guardianship docket.

Derived from Probate Code § 832.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.552. Action of Court on Report of Sale

After the expiration of five days from the date a report of sale is filed under Section 1158.551, the court shall:

(1) inquire into the manner in which the sale was made;

(2) hear evidence in support of or against the report; and

(3) determine the sufficiency or insufficiency of the guardian's general bond, if any has been required and given.

Derived from Probate Code § 834.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.553. Confirmation of Sale When Bond Not Required

If the guardian of the estate of a ward is not required by Subtitle D to give a general bond, the court may confirm the sale of estate real property in the manner provided by Section 1158.556(a) if the court finds that the sale is satisfactory and made in accordance with law.

Derived from Probate Code § 833.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.554. Sufficiency of Bond

(a) If the guardian of an estate is required by Subtitle D to give a general bond, before the court confirms any sale of real estate, the court shall determine whether the bond is sufficient to protect the estate after the sale proceeds are received.

(b) If the court finds that the general bond is sufficient, the court may confirm the sale as provided by Section 1158.556(a).

(c) If the court finds that the general bond is 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.

(d) An increase in the amount of the general bond, or the additional bond, as applicable under Subsection (c), must be equal to the sum of:

(1) the amount for which the real estate is sold; and

(2) any additional amount the court finds necessary and sets for the estate's protection.

Derived from Probate Code § 833.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.555. Increased or Additional Bond Not Required

Notwithstanding Sections 1158.554(c) and (d), if 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 the secured claim 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 any cash paid to the guardian of the estate in excess of the amount necessary to pay, liquidate, and satisfy the claim in full.

Derived from Probate Code § 833.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.556. Confirmation or Disapproval Order

(a) If the court is satisfied that a sale reported under Section 1158.551 was for a fair price, was properly made, and was in conformity with law, and the court has approved any increased or additional bond that the

court found necessary to protect the estate, the court shall enter an order:

(1) confirming the sale;

(2) showing conformity with the provisions of this chapter relating to the sale;

(3) detailing the terms of the sale; and

(4) authorizing the guardian of the estate to convey the property on the purchaser's compliance with the terms of the sale.

(b) If the court is not satisfied that the sale was for a fair price, was properly made, and was in conformity with law, the court shall issue an order setting aside the sale and ordering a new sale to be made, if necessary.

(c) The court's action in confirming or disapproving a report of a sale has the effect of a final judgment. Any person interested in the guardianship estate or in the sale is entitled to have an order entered under this section reviewed as in other final judgments in probate proceedings.

Derived from Probate Code § 834.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.557. Deed

Real estate of an estate that is sold shall be conveyed by a proper deed that refers to and identifies the court order confirming the sale. The deed:

(1) vests in the purchaser all right and title of the estate to, and all interest of the estate in, the property; and

(2) is prima facie evidence that the sale has met all applicable requirements of law.

Derived from Probate Code § 835.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.558. Delivery Of Deed

(a) After the court has confirmed a sale and one purchaser has complied with the terms of the sale, the guardian of the estate shall execute and deliver to the purchaser a proper deed conveying the property.

(b) If the sale is made partly on credit:

(1) the vendor's lien securing a purchase money note must be expressly retained in the deed and may not be waived; and

(2) 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 ordered by the court, and a deed of trust or mortgage on the property as additional security for the payment of the note.

(c) On completion of the transaction, the guardian of the estate shall promptly file and record the deed of trust or mortgage in the appropriate records in the county in which the land is located.

Derived from Probate Code § 836.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.559. Damages; Removal

(a) If the guardian of the estate neglects to comply with Section 1158.558, including to file the deed of trust securing a lien in the proper county, the guardian and the sureties on the guardian's bond shall, after complaint and citation, be held liable for the use of the estate and for all damages resulting from the guardian's neglect, and the court may remove the guardian.

(b) Damages under this section may be recovered in a court of competent jurisdiction.

Derived from Probate Code § 837.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter M. Procedure on Failure to Apply for Sale

§ 1158.601. Failure to Apply for Sale

If the guardian of the estate of a ward neglects to apply for an order to sell sufficient property to pay charges and claims against the estate that have been allowed and approved or established by suit, an interested person, on written application, may have the guardian cited to appear and make a full exhibit of the estate's condition and show cause why a sale of the property should not be ordered.

Derived from Probate Code § 826.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.602. Court Order

On hearing an application under Section 1158.601, if the court is satisfied that a sale of estate property is necessary or advisable to satisfy the charges and claims described by Section 1158.601, the court shall enter an order of sale as provided by Section 1158.256.

Derived from Probate Code § 826.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter N. Purchase of Estate Property by Guardian

§ 1158.651. General Prohibition on Purchase

Except as otherwise provided by Section 1158.652 or 1158.653, the guardian of the estate of a ward may not purchase, directly or indirectly, any estate property sold by the guardian or any co-representative of the guardian.

Derived from Probate Code § 831(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.652. Exception: Executory Contract

The guardian of the estate of a ward may purchase estate property in compliance with the terms of a

written executory contract signed by the ward before the ward became incapacitated, including:

(1) a contract for deed;
(2) an earnest money contract;
(3) a buy/sell agreement; and
(4) a stock purchase or redemption agreement.

Derived from Probate Code § 831(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.653. Exception: Best Interest of Estate

(a) The guardian of the estate may purchase estate property on the court's determination that the sale is in the estate's best interest.

(b) 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.

(c) The court may require notice for a sale made under this section.

Derived from Probate Code § 831(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.654. Purchase in Violation of Subchapter

(a) If the guardian of the estate of a ward purchases estate property in violation of this subchapter, a person interested in the estate may file a written complaint with the court in which the guardianship proceedings are pending.

(b) On service of citation on the guardian on a complaint filed under Subsection (a) and after hearing and proof, the court shall:

(1) declare the sale void;
(2) set aside the sale; and
(3) order the reconveyance of the property to the estate.

(c) The court shall adjudge against the guardian all costs of the sale, protest, and suit, if found necessary.

Derived from Probate Code § 831(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter O. Partition of Ward's Interest in Real Estate

§ 1158.701. Partition by Agreement

(a) The guardian of the estate of a ward may agree to a partition of real estate in which the ward owns an interest in common with one or more other part owners if, in the opinion of the guardian, it is in the best interests of the ward's estate to partition the real estate.

(b) An agreement under Subsection (a) is subject to the approval of the court in which the guardianship proceeding is pending.

Derived from Probate Code § 853(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.702. Application for Approval of Partition Agreement

(a) When a guardian has reached an agreement with the other part owners on how to partition real estate as described by Section 1158.701, the guardian shall file with the court in which the guardianship proceedings are pending an application to have the agreement approved by the court.

(b) The application must:

(1) describe the real estate to be divided;
(2) state why it is in the best interests of the ward's estate to partition the real estate; and
(3) show that the proposed partition agreement is fair and just to the ward's estate.

Derived from Probate Code § 853(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.703. Hearing

(a) The county clerk shall immediately call to the attention of the judge of the court in which the guardianship proceeding is pending the filing of an application required by Section 1158.702. The judge shall designate a day to hear the application.

(b) The application must remain on file at least 10 days before any orders are entered.

(c) The judge may continue a hearing held under this section from time to time until the judge is satisfied concerning the application.

Derived from Probate Code § 853(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.704. Order

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 implementing the order and partition.

Derived from Probate Code § 853(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.705. Partition Without Court Approval; Ratification of Partition Agreement

(a) If a guardian, without court approval as provided by this subchapter, executes or intends to execute an agreement to partition any real estate in which the ward has an interest, 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.

(b) The application must:

(1) refer to the agreement in a manner in which the court can fully understand the nature of the partition and the real estate being divided; and

(2) 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.

(c) On the filing of an application under Subsection (a), the court shall hold a hearing on the application as provided by Section 1158.703. The court shall enter an order ratifying and approving the partition agreement if the court is of the opinion that the partition is:

(1) fairly made; and

(2) in the best interests of the ward's estate.

(d) On ratification and approval, the partition is effective and binding as if originally executed after a court order.

Derived from Probate Code § 853(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1158.706. Partition by Suit

(a) The guardian of the estate of a ward may bring a suit in the court in which the guardianship proceeding is pending for the partition of any real estate that the ward owns in common with one or more other part owners if the guardian is of the opinion that it is in the best interests of the ward's estate that the real estate be partitioned.

(b) The court may enter an order partitioning the real estate to the owner of the real estate, if after hearing the suit, the court is satisfied that the partition of the real estate is necessary.

Derived from Probate Code § 853(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1159. Renting Estate Property

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§ 1159.052. Court Action on Report

Chapter 1159. Renting Estate Property

Subchapter A. Rental and Return of Estate Property

§ 1159.001. Renting Estate Property Without Court Order

(a) The guardian of an estate, without a court order, may rent any of the estate property for one year or less, at public auction or privately, as is considered to be in the best interests of the estate.

(b) On the sworn complaint of any person interested in the estate, the court shall require a guardian of the estate who, without a court order, rents estate property to account to the estate for the reasonable value of the rent of the property, to be ascertained by the court on satisfactory evidence.

Derived from Probate Code §§ 839, 840.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1159.002. Renting Estate Property With Court Order

(a) The guardian of an estate may file a written application with the court setting forth the property the guardian seeks to rent. 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 the guardian seeks to rent.

(b) If the court finds that granting an application filed under Subsection (a) is in the interests of the estate, the court shall grant the application and issue an order that:

(1) describes the property to be rented; and

(2) states whether the property will be rented 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.

(c) If, under Subsection (b), the court orders property to be rented at public auction, the court shall prescribe whether notice of the auction shall be published or posted.

Derived from Probate Code § 841.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1159.003. Estate Property Rented on Credit

(a) Possession of estate property rented on credit may not be delivered until the renter executes and delivers to the guardian of the estate a note with good personal security for the amount of the rent. If the property is delivered without the guardian receiving the required security, the guardian and the sureties on the guardian's bond are liable for the full amount of the rent.

(b) Subsection (a) does not apply to a rental that is paid in installments in advance of the period to which the installments relate.

Derived from Probate Code § 843.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff.

Jan. 1, 2014.

§ 1159.004. Condition of Returned Estate Property

(a) Estate property that is rented must be returned to the estate's possession in as good a condition, except for reasonable wear and tear, as when the property was rented.

(b) The guardian of the estate shall:

(1) ensure that rented estate property is returned in the condition required by Subsection (a);

(2) report to the court any damage to, or loss or destruction of, estate property rented under this chapter; and

(3) ask the court for the authority to take any necessary action.

(c) A guardian who fails to act as required by this section and the sureties on the guardian's bond are liable to the estate for any loss or damage suffered as a result of the guardian's failure.

Derived from Probate Code § 844.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1159.005. Complaint for Failure to Rent

(a) A person interested in a guardianship may:

(1) file a written and sworn complaint in the court in which the estate is pending; and

(2) have the guardian of the estate cited to appear and show cause why the guardian did not rent any estate property.

(b) The court, on hearing the complaint, shall issue an order that is in the best interests of the estate.

Derived from Probate Code § 842.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Report on Rented Estate Property

§ 1159.051. Reports Concerning Rentals

(a) A guardian of an estate who rents estate property with an appraised value of $3,000 or more, not later than the 30th day after the date of the rental, shall file with the court a sworn and written report stating:

(1) the property rented and the property's appraised value;

(2) the date the property was rented and whether the rental occurred at public auction or privately;

(3) the name of the person renting the property;

(4) the rental amount;

(5) whether the rental was for cash or on credit; and

(6) if the rental was on credit, the length of time, the terms, and the security received for the credit.

(b) A guardian of an estate who rents estate property with an appraised value of less than $3,000 may report the rental in the next annual or final account that must be filed as required by law.

Derived from Probate Code § 845.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1159.052. Court Action on Report

(a) After the fifth day after the date the report of the rental is filed, the court shall:

(1) examine the report; and

(2) by order approve and confirm the rental if the court finds the rental just and reasonable.

(b) If the court disapproves the rental, the guardianship is not bound and the court may order another offering for rent of the property in the same manner and subject to the provisions of this chapter.

(c) If the court approves the rental and it later appears that, by reason of the fault of the guardian of the estate, the property was not rented for the property's reasonable value, the court shall have the guardian and the sureties on the guardian's bond appear and show cause why the reasonable value of the rental of the property should not be adjudged against the guardian or sureties.

Derived from Probate Code § 846.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

CHAPTER 1160. Matters Relating to Mineral Properties

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Chapter 1160. Matters Relating to Mineral Properties

Subchapter A. General Provisions

§ 1160.001. Definitions

In this chapter:

(1) "Gas" includes all liquid hydrocarbons in the gaseous phase in the reservoir.

(2) "Land" includes minerals or an interest in minerals in place.

(3) "Mineral development" includes exploration for, whether by geophysical or other means, drilling for, mining for, development of, operations in connection with, production of, and saving of oil, other liquid hydrocarbons, gas, gaseous elements, sulphur, metals, and all other minerals, whether solid or otherwise.

(4) "Property" includes land, minerals in place, whether solid, liquid, or gaseous, and an interest of any kind in the property, including a royalty interest, owned by an estate.

Derived from Probate Code § 847(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Mineral Leases After Public Notice

§ 1160.051. Authorization for Leasing of Minerals

(a) The court in which a guardianship proceeding is pending may authorize the guardian, acting solely under a court order, to make, execute, and deliver a lease, with or without a unitization clause or pooling provision, providing for the exploration for and development and production of oil, other liquid hydrocarbons, gas, metals and other solid minerals, and other minerals, or any of those minerals in place, belonging to the estate.

(b) A lease authorized by Subsection (a) must be made and entered into under and in conformity with this subchapter.

Derived from Probate Code §§ 847(b), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.052. Lease Application

(a) The guardian of the estate shall file with the court a written application for authority to lease estate property for mineral exploration and development, with or without a pooling provision or unitization clause.

(b) The lease application must:

(1) describe the property fully enough by reference to the amount of acreage, the survey name or number, or the abstract number, or by another method that adequately identifies the property and the property's 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 request authority to include all of the interest owned by the estate if that is the intention; and

(3) set out the reasons the estate property described in the application should be leased.

(c) The lease application is not required to set out or suggest:

(1) the name of any proposed lessee; or

(2) the terms, provisions, or form of any desired lease.

Derived from Probate Code § 847(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.053. Scheduling of Hearing on Application; Continuance

(a) Immediately after the filing of a lease application under Section 1160.052, the county clerk shall call the filing of the application to the court's attention. The judge shall promptly make and enter a brief order designating the time and place for hearing the application.

(b) If the hearing is not held at the time originally designated by the court or by a timely continuance order entered, the hearing shall be continued automatically without further notice to the same time on the following

day, other than Sundays and holidays on which the county courthouse is officially closed, and from day to day until the lease application is finally acted on and disposed of by court order. Notice of an automatic continuance is not required.

Derived from Probate Code § 847(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.054. Notice of Hearing on Application

(a) At least 10 days before the date set for the hearing on a lease application filed under Section 1160.052, excluding the date of notice and the date set for the hearing, the guardian of the estate shall give notice of the hearing by:

(1) publishing the notice in one issue of a newspaper of general circulation in the county in which the proceeding is pending; or

(2) if there is no newspaper in the county, posting the notice or having the notice posted.

(b) If the notice is published, the date of notice is the date printed on the newspaper.

(c) The notice must:

(1) be dated;

(2) be directed to all persons interested in the estate;

(3) state the date on which the lease application was filed;

(4) describe briefly the property sought to be leased;

(5) specify the fractional interest sought to be leased if less than the entire interest in the tract identified; and

(6) state the time and place designated by the judge for the hearing.

Derived from Probate Code § 847(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.055. Requirements Regarding Order and Notice Mandatory

A court order authorizing any act to be performed in accordance with a lease application filed under Section 1160.052 is void in the absence of:

(1) a written order originally designating a time and place for the 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 under Section 1160.054.

Derived from Probate Code § 847(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.056. Hearing on Application; Order

(a) At the time and place designated for the hearing under Section 1160.053(a), or at the time to which the hearing is continued as provided by Section 1160.053(b), the judge shall:

(1) hear a lease application filed under Section 1160.052; and

(2) require proof as to the necessity or advisability of leasing for mineral development the property described in the application and the notice.

(b) The judge shall enter an order authorizing one or more leases affecting and covering the property or portions of property described in the lease application, with or without pooling provisions or unitization clauses, and with or without cash consideration if considered by the court to be in the best interest of the estate, if the judge is satisfied that:

(1) the application is in proper form;

(2) notice has been given in the manner and for the time required by law;

(3) proof of necessity or advisability of leasing is sufficient; and

(4) the application should be granted.

(c) The order must contain:

(1) the name of the lessee;

(2) any actual cash consideration to be paid by the lessee;

(3) a finding that the requirements of Subsection (b) have been satisfied; and

(4) one of the following findings:

(A) a finding that the guardian of the estate is exempt by law from giving a bond; or

(B) if the guardian of the estate is required to give a bond, a finding as to whether the guardian's general bond on file is sufficient to protect the personal property on hand, including any cash bonus to be paid.

(d) If the court finds the general bond insufficient to meet the requirements of Subsection (c)(4)(B), the order must show the amount of increased or additional bond required to cover the deficiency.

(e) A complete exhibit copy, either written or printed, of each authorized lease must be set out in, attached to, incorporated by reference in, or made part of the order. The exhibit copy must show:

(1) the name of the lessee;

(2) the date of the lease;

(3) an adequate description of the property being leased;

(4) any delay rental to be paid to defer commencement of operations; and

(5) all other authorized terms and provisions.

(f) If the date of a lease does not appear in the exhibit copy of the lease or in the order, the date of the order is considered for all purposes to be the date of the lease.

(g) If the name or address of a depository bank for receiving rental is not shown in the exhibit copy of a lease, the guardian of the estate may insert the name or address, or cause the name or address to be inserted, in the lease at the time of the lease's execution or at any other time agreeable to the lessee or the lessee's successors or assigns.

Derived from Probate Code §§ 847(h), (i).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.057. Making of Lease on Granting of Application

(a) If on the hearing of a lease application filed under Section 1160.052 the court grants the application, the guardian of the estate may make the lease, as evidenced by the exhibit copies, in accordance with the order.

(b) The lease must be made not later than the 30th day after the date of the order unless an extension is granted by the court on a sworn application showing good cause.

(c) It is not necessary for the judge to make an order confirming the lease.

Derived from Probate Code § 847(j).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.058. Bond Requirements

(a) Unless the guardian of the estate is not required to give a general bond, a lease for which a cash consideration is required, although ordered, executed, and delivered, is not valid:

(1) unless the order authorizing the lease makes a finding with respect to the general bond; and

(2) if the general bond has been found insufficient, until:

(A) the bond has been increased or an additional bond given with the sureties required by law, as required by the order; and

(B) the increased or additional bond has been approved by the judge and filed with the clerk of the court in which the proceeding is pending.

(b) If two or more leases of different land are authorized by the same order, the general bond shall be increased or additional bonds given to cover all of the leases.

Derived from Probate Code § 847(j).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.059. Term of Lease Binding

A lease executed and delivered in compliance with this subchapter is valid and binding on the property or interest owned by the estate and covered by the lease for the full term provided by the lease, subject only to the lease's terms and conditions, even if the primary term extends beyond the date the estate is closed in accordance with law. For the lease to be valid and binding under this subchapter, the authorized primary term of the lease may not exceed five years, subject to the lease terms and provisions extending the lease beyond the primary term by:

(1) paying production;

(2) bona fide drilling or reworking operations, whether in or on the same well or wells or an additional well or wells without a cessation of operations of more than 60 consecutive days before production has been restored or obtained; or

(3) a shut-in gas well.

Derived from Probate Code § 847(k).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.060. Amendment of Lease Regarding Effect of Shut-In Gas Well

(a) An oil, gas, and mineral lease executed by a guardian of an estate under this chapter or former Chapter XIII, Texas Probate Code, 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 part of the land covered by the lease continues the lease in effect after the lease's five-year primary term.

(b) The guardian of the estate, with court approval, shall execute the instrument according to the terms and conditions prescribed in the instrument.

Derived from Probate Code § 847(m).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Mineral Leases at Private Sale

§ 1160.101. Authorization for Leasing of Minerals at Private Sale

(a) Notwithstanding the mandatory requirements for setting a time and place for hearing a lease application under Subchapter B and the issuance, service, and return of notice, the court may authorize the making of oil, gas, and mineral leases at a private sale without public notice or advertising if, in the court's opinion, facts are set out in the application sufficient to show that it would be more advantageous to the estate that a lease be made privately and without compliance with those mandatory requirements.

(b) Leases authorized under this subchapter may include pooling provisions or unitization clauses as in other cases.

Derived from Probate Code § 848(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.102. Action of Court if Public Advertising Not Required

(a) At any time after the fifth day and before the 11th day after the filing date of an application to lease at a private sale and without an order setting the hearing time and place, the court shall:

(1) hear the application;

(2) inquire into the manner in which the proposed lease has been or will be made; and

(3) hear evidence for or against the application.

(b) 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 law, the court shall enter an order authorizing the execution of the lease without the necessity of advertising, notice, or citation. The order must comply in all other respects with the requirements essential to the validity of mineral leases set out in Subchapter B as if advertising or notice were required.

(c) 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 any increased or additional bond required by the court has been approved by the court and filed with the court clerk.

Derived from Probate Code § 848(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Pooling or Unitization of Royalties or Minerals

§ 1160.151. Authorization for Pooling or Unitization

(a) If an existing lease on property owned by an estate being administered does not adequately provide for pooling or unitization, the court in which the proceeding is pending may, in the manner provided by this subchapter, authorize the commitment of royalty or mineral interests in oil, liquid hydrocarbons, gas, gaseous elements, and other minerals or any one or more of them owned by the estate to agreements that provide for the operation of areas as a pool or unit for the exploration for, development of, and production of all of those minerals, if the court finds that:

(1) the pool or unit to which the agreement relates will be operated in a manner that protects correlative rights or prevents the physical or economic waste of oil, liquid hydrocarbons, gas, gaseous elements, or other minerals subject to the agreement; and

(2) it is in the best interests of the estate to execute the agreement.

(b) An agreement authorized under Subsection (a) may provide that:

(1) operations incident to the drilling of or production from a well on any portion of a pool or unit are considered 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 continues in effect in its entirety as long as:

(A) oil, gas, or other minerals subject to the agreement are produced in paying quantities from any part of the pooled or unitized area;

(B) operations are conducted as provided in the lease on any part of the pooled or unitized area; or

(C) 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 under 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 considered 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 land or leases committed to the agreement, and that royalties are not required to be paid on the gas 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 royalties are not required to be paid on the gas injected when the gas is produced from the unit.

Derived from Probate Code §§ 849(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.152. Pooling or Unitization Application

(a) The guardian of the estate shall file with the county clerk of the county in which the guardianship proceeding is pending a written application for authority to:

(1) enter into a pooling or unitization agreement supplementing, amending, or otherwise relating to any existing lease covering property owned by the estate; or

(2) commit royalties or other interests in minerals, whether or not subject to a lease, to a pooling or unitization agreement.

(b) The pooling or unitization application must also:

(1) sufficiently describe the property as required in an original lease application;

(2) describe briefly the lease to which the interest of the estate is subject; and

(3) set out the reasons the proposed agreement concerning the property should be entered into.

(c) A copy of the proposed agreement must be attached to the pooling or unitization application and made a part of the application by reference.

(d) The agreement may not be recorded in the judge's guardianship docket.

(e) Immediately after the pooling or unitization application is filed, the clerk shall call the application to the judge's attention.

Derived from Probate Code § 849(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.153. Notice Not Required

Notice by advertising, citation, or otherwise of the filing of a pooling or unitization application under Section 1160.152 is not required.

Derived from Probate Code § 849(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.154. Hearing on Application

(a) The judge may hold a hearing on a pooling or unitization application filed under Section 1160.152 at any time agreeable to the parties to the proposed agreement.

(b) The judge shall hear evidence and determine to the judge's satisfaction whether it is in the best interests of the estate that the proposed agreement be authorized.

(c) The hearing may be continued from day to day and from time to time as the court finds necessary.

Derived from Probate Code § 849(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.155. Action of Court and Contents of Order

(a) The court shall enter an order setting out the court's findings and authorizing execution of the proposed pooling or unitization agreement, with or without payment of cash consideration according to the agreement, if the court finds that:

(1) the pool or unit to which the agreement relates will be operated in a manner that protects correlative rights or prevents the physical or economic waste of oil, liquid hydrocarbons, gas, gaseous elements, or other minerals subject to the pool or unit;

(2) it is in the best interests of the estate that the agreement be executed; and

(3) the agreement conforms substantially with the permissible provisions of Section 1160.151.

(b) If cash consideration is to be paid for the pooling or unitization 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 any required increased or additional bond has been approved by the judge and filed with the clerk.

(c) If the effective date of the pooling or unitization agreement is not stipulated in the agreement, the effective date of the agreement is the date of the court's order.

Derived from Probate Code § 849(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Special Ancillary Instruments That May be Executed Without Court Order

§ 1160.201. Authorization for Execution of Certain Instruments

As to any mineral lease or pooling or unitization agreement, executed on behalf of an estate before September 1, 1993, pursuant to provisions, or executed by a former owner of land, minerals, or royalty affected by the lease or agreement, the guardian of the estate being administered, without further court order and without consideration, may execute:

(1) division orders;

(2) transfer orders;

(3) instruments of correction;

(4) instruments designating depository banks for the receipt of delay rentals or shut-in gas well royalty to accrue or become payable under the terms of the lease; or

(5) similar instruments relating to the lease or agreement and the property covered by the lease or agreement.

Derived from Probate Code § 850.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter F. Procedure if Guardian of Estate Neglects to Apply for Authority

§ 1160.251. Application to Show Cause

If a guardian of an estate neglects to apply for authority to subject estate property to a lease for mineral development, pooling, or unitization, or authority to commit royalty or another interest in minerals to pooling or unitization, any person interested in the estate may, on written application filed with the county clerk, have the guardian cited to show cause why it is not in the best interests of the estate to make the lease or enter into an agreement.

Derived from Probate Code § 851.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.252. Hearing on Application

(a) The county clerk shall immediately call the filing of an application under Section 1160.251 to the attention of the judge of the court in which the guardianship proceeding is pending.

(b) The judge shall set a time and place for a hearing on the application, and the guardian of the estate shall be cited to appear and show cause why the execution of a lease or agreement described by Section 1160.251 should not be ordered.

Derived from Probate Code § 851.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.253. Order

On a hearing conducted under Section 1160.252 and if satisfied from the evidence that it would be in the best interests of the estate, the court shall enter an order requiring the guardian of the estate to file an application to subject the estate property to a lease for mineral development, with or without pooling or unitization provisions, or to commit royalty or other minerals to pooling or unitization, as appropriate.

Derived from Probate Code § 851.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1160.254. Procedure to be Followed After Entry of Order

After entry of an order under Section 1160.253, the procedures prescribed with respect to an original lease application, or with respect to an original application for authority to commit royalty or minerals to pooling or unitization, shall be followed.

Derived from Probate Code § 851.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

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Chapter 1161. Investments and Loans of Estates of Wards

Subchapter A. General Provisions

§ 1161.001. Guardian's Duty to Keep Estate Invested

(a) The guardian of the estate shall invest any funds and assets of a ward's estate available for investment except:

(1) if the court orders otherwise under this chapter; or

(2) as provided by Subsection (b).

(b) 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 any others the ward supports as provided by this title.

Derived from Probate Code § 854(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.002. Standard for Management and Investment of Estate

(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 a person of ordinary prudence, discretion, and intelligence exercises in the management of the person's own affairs, considering the probable income from, probable increase in value of, and safety of the person's 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.

(b) In determining whether a guardian of the estate has exercised the standard of investment required by this section with respect to an investment decision, the court shall, absent fraud or gross negligence, consider the investment of all the estate assets over which the guardian has management or control, rather than considering the prudence of only a single investment made by the guardian.

Derived from Probate Code §§ 855(a), (a-1).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.003. Investments That Meet Standard for Investment

A guardian of the estate is considered to have exercised the standard required by Section 1161.002(a) 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 Sections 1161.004(b) and (c), tax-supported bonds of a county, district, political subdivision, or municipality in this state;

(4) if the payment of the shares or share accounts is insured by the Federal Deposit Insurance Corporation, shares or share accounts of:

(A) a state savings and loan association or savings bank that has its main office or a branch office in this state; or

(B) a federal savings and loan association or savings bank that has its main office or a branch office in this state;

(5) collateral bonds that:

(A) are issued by a company incorporated under the laws of this state that has a paid-in capital of $1 million or more;

(B) are a direct obligation of the company; and

(C) are specifically secured by first mortgage real estate notes or other securities pledged with a trustee; or

(6) interest-bearing time deposits that may be withdrawn on or before one year after demand in a bank that does business in this state, if the payment of the time deposits is insured by the Federal Deposit Insurance Corporation.

Derived from Probate Code § 855(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.004. Restrictions on Investment in Certain Bonds

(a) In this section, "net funded debt" means the total funded debt less sinking funds on hand.

(b) A guardian of the estate may purchase the bonds of a county, district, or political subdivision other than a municipality only if the net funded debt of the county, district, or political subdivision that issues the bonds does not exceed 10 percent of the assessed value of taxable property in the county, district, or political subdivision.

(c) A guardian of the estate may purchase the bonds of a municipality only if the net funded debt of the municipality does not exceed 10 percent of the assessed value of taxable property in the municipality less that part of the debt incurred for acquisition or improvement of revenue-producing utilities, the revenue of which is not pledged to support other obligations of the municipality.

(d) Subsections (b) and (c) do not apply to bonds issued for road purposes in this state under Section 52, Article III, Texas Constitution, that are supported by a tax unlimited as to rate or amount.

Derived from Probate Code §§ 855(c), (d), (e), (f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.005. Modification or Elimination of Duty or Standard

On a showing by clear and convincing evidence that the action is in the best interests of the ward and the ward's estate, the court may modify or eliminate:

(1) the duty of the guardian of the estate to keep the estate invested; or

(2) the standard required by Section 1161.002(a) with regard to investments of estate assets.

Derived from Probate Code § 855(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.006. Retention of Certain Assets

(a) Without court approval a guardian of the estate may retain until the first anniversary of the date of receipt any property received into the guardianship estate at the estate's 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.

(b) 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.

(c) On application and a hearing, the court may issue an order authorizing the guardian to continue retaining the property after the period prescribed by Subsection (a) if the retention is an element of the guardian's investment plan as provided by Subchapter B.

Derived from Probate Code § 855A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.007. Hearing to Protect Estate

(a) The court may, on the court's own motion or on written request of a person interested in the guardianship, cite the guardian of the estate to appear and show cause why the estate is not invested or not properly invested.

(b) Except as provided by Subsection (d), at any time after giving notice to all parties, the court may conduct a hearing to protect the estate.

(c) On the hearing of the court's motion or a request made under this section, the court shall issue an order the court considers to be in the ward's best interests.

(d) The court may not hold a final hearing on whether the estate is properly invested until the 31st day after the date the guardian is originally cited to appear under Subsection (a).

(e) 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.

Derived from Probate Code §§ 854(b), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.008. 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 chapter, 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 chapter.

(b) In addition to the liability under Subsection (a), 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 section.

Derived from Probate Code § 863.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Procedure for Making Investments or Loans or Retaining Estate Assets

§ 1161.051. Procedure in General

(a) Not later than the 180th day after the date the guardian of the estate qualifies as guardian or another date specified by the court, the guardian shall:

(1) invest estate assets according to Section 1161.003; 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);

(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.

(b) The court may approve an investment plan under Subsection (a)(2) without a hearing.

Derived from Probate Code §§ 855B(a), (a-1).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.052. Court Action

(a) 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 issue an order:

(1) granting the authority requested in the application; or

(2) modifying or eliminating the guardian's duty to keep the estate invested.

(b) An order under Subsection (a) 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 any authority to invest in and sell securities in accordance with the investment plan's objectives;

(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) A citation or notice is not necessary to invest in or sell securities under an investment plan authorized by the court under this section.

Derived from Probate Code §§ 855B(b), (e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.053. Applicability of Procedure to Certain Assets

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) the 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.

Derived from Probate Code § 855B(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.054. Inapplicability of Procedure to Certain Assets

(a) The procedure prescribed by this subchapter does not apply if a different procedure is prescribed for an investment or sale by a guardian.

(b) A guardian of the estate is not required to follow the procedure prescribed by this subchapter with respect to an investment or sale that is specifically authorized by other law.

Derived from Probate Code § 855B(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Investments in Certain Insurance or Annuities

§ 1161.101. Definition

In this subchapter, "authorized life insurance company" means a stock or mutual legal reserve life insurance company that:

(1) is licensed by the Texas Department of Insurance to transact the business of life insurance in this state; and

(2) maintains the legal reserve required by the laws of this state.

Derived from Probate Code § 857(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.102. Authority to Invest in Certain Insurance or Annuities

Subject to this subchapter, the guardian of the estate may invest in life, term, or endowment insurance policies, in annuity contracts, or in both, issued by an authorized life insurance company or administered by the Department of Veterans Affairs.

Derived from Probate Code § 857(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.103. Investment Requirements

(a) An insurance policy in which the guardian of the estate invests must be issued on the life of:

(1) the ward;

(2) the ward's parent, spouse, child, sibling, or grandparent; or

(3) another person in whose life the ward may have an insurable interest.

(b) The ward must be the annuitant in the annuity contract in which the guardian of the estate invests.

(c) Only the ward, the ward's estate, or the ward's parent, spouse, child, sibling, or grandparent may be a beneficiary of the insurance policy or of the death benefit of the annuity contract.

(d) The insurance policy or annuity contract may not be amended or changed during the ward's life and disability, except on application to and order of the court.

Derived from Probate Code §§ 857(d), (e), (g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.104. Procedure for Investing in Insurance or Annuities

(a) Before the guardian of the estate may invest in life, term, or endowment insurance policies, in annuity contracts, or in both, the guardian must first apply to the court for an order that authorizes the investment.

(b) The application must include a report that shows:

(1) in detail the estate's financial condition on the date the application is filed;

(2) the name and address of the authorized life insurance company from which the insurance policy or annuity contract is to be purchased and that:

(A) the company is licensed by the Texas Department of Insurance to transact that business in this state on the date the application is filed; or

(B) the policy or contract is administered by the Department of Veterans Affairs;

(3) a statement of:

(A) the face amount and plan of the insurance policy sought to be purchased; and

(B) 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 insurance policy or annuity contract; and

(5) a statement of the cash value of the insurance policy or annuity contract at the policy's or contract's anniversary nearest the ward's 21st birthday, 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.

(c) If satisfied by the application and the evidence presented at the hearing that it is in the ward's interests to grant the application, the court shall enter an order granting the application.

Derived from Probate Code §§ 857(c), (i).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.105. Continuation of Preexisting Policies or Annuities

(a) A life, term, or endowment insurance policy or an annuity contract owned by the ward when a proceeding for the appointment of a guardian of the estate is commenced may be continued in full effect if it is shown that:

(1) the company issuing the policy or contract is an authorized life insurance company; or

(2) the policy or contract is administered by the Department of Veterans Affairs.

(b) All future premiums for an insurance policy or annuity contract described by Subsection (a) may be paid out of surplus funds of the ward's estate.

(c) The guardian of the estate must apply to the court for an order to:

(1) continue the policy, the contract, or both according to the existing terms of the policy or contract; or

(2) modify the policy or contract to fit any new developments affecting the ward's welfare.

(d) Before the court grants an application filed under Subsection (c), the guardian must file a report in the court that shows in detail the financial condition of the ward's estate on the date the application is filed.

Derived from Probate Code § 857(h).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.106. Control and Ownership of Policies or Annuities

(a) Control of an insurance policy or an annuity contract and of the incidents of ownership in the policy or contract is vested in the guardian of the estate during the ward's life and disability.

(b) A right, benefit, or interest that accrues under an insurance policy or annuity contract subject to this subchapter becomes the ward's exclusive property when the ward's disability is terminated.

Derived from Probate Code §§ 857(f), (j).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Investments in Real Estate

§ 1161.151. Authority to Invest in Real Estate; Procedure and Requirements

(a) The guardian of the estate may invest estate assets in real estate if:

(1) the guardian believes that the investment is in the ward's best interests;

(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, in the guardian's opinion, the investment would be for the ward's benefit; and

(4) the court issues an order authorizing the investment as provided by this subchapter.

(b) If the ward's money is 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 the guardian does with other real estate of the ward.

Derived from Probate Code §§ 860(a), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.152. Court Authorization to Make Investments

(a) If the guardian of the estate files an application under this subchapter, the judge shall investigate as necessary to obtain all the facts concerning the investment.

(b) Subject to Subsection (c), on the hearing of the application, the court shall issue an order that authorizes the guardian to make the investment if the court is satisfied that the investment benefits the ward. The order must specify the investment to be made and contain other directions the court considers advisable.

(c) The judge may not issue an opinion or order on the application until after the 10th day after the date the application is filed.

Derived from Probate Code § 860(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.153. Court Approval of Contracts Required

(a) If a contract is made for the investment of money in real estate under a court order, the guardian of

the estate shall report the contract in writing to the court.

(b) The court shall inquire fully into the contract. If satisfied that the investment will benefit the ward's estate and that the title of the real estate is valid and unencumbered, the court may approve the contract and authorize the guardian to pay money in performance of the contract.

(c) The guardian may not pay any money on the contract until the contract is approved by a court order to that effect.

Derived from Probate Code § 860(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Loans and Security for Loans

§ 1161.201. Inapplicability of Subchapter

This subchapter does not apply to an investment in a debenture, bond, or other publicly traded debt security.

Derived from Probate Code § 858(h).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.202. Authority to Make 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 interest rate.

(b) The guardian of the estate is considered to have obtained a reasonable interest rate for a loan for purposes of Subsection (a) if the interest rate 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, for the month during which the loan was made.

Derived from Probate Code §§ 858(a) (part), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.203. Loan Requirements

(a) Except as provided by Subsection (b), the guardian of the estate shall take as collateral the borrower's note for the money that is loaned, secured by:

(1) 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

(2) collateral notes secured by vendor's lien notes.

(b) 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.

(c) Except as provided by Subsection (d), 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 a reputable 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) are regular and that the title to relevant bonds, notes, or real estate is clear.

(d) A guardian of the estate may obtain a mortgagee's title insurance policy on any real estate loan instead of an abstract and attorney's opinion under Subsection (c).

(e) The borrower shall pay attorney's fees for any legal services required by Subsection (c).

Derived from Probate Code §§ 858(a) (part), (d), (e), (f), 861.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.204. Guardian's Duty to Report Loan to Court

(a) 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 and verified by an affidavit, stating fully the facts related to the loan.

(b) This section does not apply to a loan made in accordance with a court order.

Derived from Probate Code §§ 858(g), 862.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1161.205. Guardian's Liability

(a) Except as provided by Subsection (b), 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.

(b) If the guardian committed fraud or was negligent in making or managing the loan, including in collecting 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.

Derived from Probate Code § 858(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1162. Tax-Motivated, ~~[and]~~ Charitable, ~~[and]~~ Nonprofit, and Other Gifts

Subchapter A. Certain [Tax-Motivated] Gifts and Transfers

§ 1162.001. Authority to Establish Estate or Other Transfer Plan
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Subchapter B. Charitable and Nonprofit Gifts

§ 1162.051. Application to Make Gift
§ 1162.052. Hearing on Application to Make Gift
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Chapter 1162. Tax-Motivated, [~~and~~] Charitable, [~~and~~] Nonprofit, and Other Gifts

Subchapter A. Certain [~~Tax-Motivated~~] Gifts and Transfers

§ 1162.001. Authority To Establish Estate or Other Transfer Plan

On application of the guardian of the estate or any interested person [~~party~~], after the posting of notice and hearing, and on a showing that the ward will probably remain incapacitated during the ward's lifetime, the court 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 the ward's behalf, the court may authorize the guardian to make gifts or transfers described by this section, outright or in trust, of the ward's [~~personal~~] property [~~or real estate~~] to or for the benefit of:

(1) an organization to which charitable contributions may be made under the Internal Revenue Code of 1986 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 is 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 Subdivision (2) or (3).

Derived from Probate Code § 865(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.050, eff. Jan. 1, 2014.

§ 1162.002. Estate or Other Transfer Plan: Contents and Modification

(a) The person making an application to the court under Section 1162.001 shall:

(1) outline the proposed estate or other transfer plan; and

(2) state all the benefits that are to be derived from the [~~estate~~] plan.

(b) 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 Sections 1162.001 and 1162.004.

(c) A subsequent modification of an approved [~~estate~~] plan may be made by similar application to the court.

Derived from Probate Code § 865(b) & (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.051, eff. Jan. 1, 2014.

§ 1162.003. Notice of Application for Establishment of Estate or Other Transfer Plan

A person who makes an application to the court under Section 1162.001 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.

Derived from Probate Code § 865(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.052, eff. Jan. 1, 2014.

§ 1162.004. Authority to Make Periodic Gifts

(a) In an order entered under Section 1162.001, the court may authorize the guardian to make, without subsequent application to or order of the court, gifts as provided by that section on an annual or other periodic basis if the court finds it to be in the best interest of the ward and the ward's estate.

(b) 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 Subsection (a) 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.

Derived from Probate Code § 865(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1162.005. Application for Inspection of Certain Documents

(a) On the filing of an application under Section 1162.001 and for the purpose of establishing an estate plan under that section, the guardian of the ward's estate may apply to the court for an order to seek an in camera inspection of a copy of a will, codicil, trust, or other estate planning instrument of the ward as a means of obtaining access to the instrument.

(b) An application filed under this section must:

(1) be sworn to by the guardian;

(2) list each instrument 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).

Derived from Probate Code §§ 865A(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1162.006. Notice of Application for Inspection

(a) A person who files an application under Section 1162.005 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.

(b) Notice required by Subsection (a) must be delivered by:

(1) registered or certified mail to a person described by Subsection (a)(1); and

(2) certified mail to a person described by Subsection (a)(2), (3), (4), or (5).

Derived from Probate Code §§ 865A(c), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1162.007. Hearing on Application for Inspection; Inspection

(a) After the 10th day after the date on which the applicant complies with the notice requirement under Section 1162.006, 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 Section 1162.006(a)(1) when the court sets a date for a hearing on the application.

(b) After the conclusion of a hearing on the application for inspection and on a finding that good cause exists 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 copy of the instrument to the court for in camera inspection only. After conducting an in camera inspection 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 Section 1162.005(a).

(c) An attorney does not violate the attorney-client privilege solely by complying with a court order to release an instrument subject to this section and Sections 1162.005 and 1162.006. Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this subsection.

Derived from Probate Code §§ 865A(d), (e), (g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1162.008. Guardian Ad Litem

The court may appoint a guardian ad litem for the ward or an interested party at any stage of proceedings under this subchapter if it is considered advisable for the protection of the ward or the interested party.

Derived from Probate Code §§ 865(c), 865A(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Charitable and Nonprofit Gifts

§ 1162.051. Application to Make Gift

The guardian of the estate may at any time file with the county clerk the guardian's sworn, written application requesting from the court in which the guardianship is pending an order authorizing the guardian to contribute from the income of the ward's estate the specific amount of money stated in the application to one or more designated:

(1) corporations, trusts, or community chests, funds, or foundations, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes; or

(2) nonprofit federal, state, county, or municipal projects operated exclusively for public health or welfare.

Derived from Probate Code § 866(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1162.052. Hearing on Application to Make Gift

(a) The county clerk shall immediately call the filing of an application under Section 1162.051 to the attention of the judge of the court.

(b) The judge shall designate, by written order filed with the clerk, a day to hear the application. The application must remain on file for at least 10 days before the hearing is held.

(c) The judge may postpone or continue the hearing from time to time until the judge is satisfied concerning the application.

Derived from Probate Code § 866(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1162.053. Order Authorizing Gift

On the conclusion of a hearing under Section 1162.052, 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.

Derived from Probate Code § 866(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1163. Annual Account and Other Exhibits and Reports

Subchapter A. Annual Account and Other Exhibits by Guardian of the Estate

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Chapter 1163. Annual Account and Other Exhibits and Reports

Subchapter A. Annual Account and Other Exhibits by Guardian of the Estate

§ 1163.001. Initial Annual Account of Estate

(a) Not later than the 60th day after the first anniversary of the date the guardian of the estate of a ward qualifies, unless the court extends that period, the guardian shall file with the court an account consisting of a written exhibit made under oath that:

(1) lists all claims against the estate presented to the guardian during the period covered by the account; and

(2) specifies:

(A) which claims have been:

(i) allowed by the guardian;

(ii) paid by the guardian; or

(iii) rejected by the guardian and the date the claims were rejected; and

(B) which claims have been the subject of a lawsuit and the status of that lawsuit.

(b) The account must:

(1) show all property that has come to the guardian's knowledge or into the guardian's possession that was not previously listed or inventoried as the ward's property;

(2) show any change in the ward's property that was not previously reported;

(3) provide a complete account of receipts and disbursements for the period covered by the account, including the source and nature of the receipts and disbursements, with separate listings for principal and income receipts;

(4) provide a complete, accurate, and detailed description of:

(A) the property being administered;

(B) the condition of the property and the use being made of the property; and

(C) if rented, the terms on which and the price for which the property was rented;

(5) show the cash balance on hand and the name and location of the depository where the balance is kept;

(6) show any other cash held in a savings account or other manner that was deposited subject to court order and the name and location of the depository for that cash; and

(7) provide a detailed description of the personal property of the estate that shows how and where the property is held for safekeeping.

(c) For bonds, notes, and other securities, the description required by Subsection (b)(7) must include:

(1) the names of the obligor and obligee or, if payable to bearer, a statement that the bond, note, or other security is payable to bearer;

(2) the date of issue and maturity;

(3) the interest rate;

(4) the serial number or other identifying numbers;

(5) the manner in which the property is secured; and

(6) other information necessary to fully identify the bond, note, or other security.

Derived from Probate Code § 741(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.002. Annual Account Required Until Estate Closed

(a) A guardian of the estate shall file an annual account conforming to the essential requirements of Section 1163.001 regarding changes in the estate assets occurring since the date the most recent previous account was filed.

(b) The annual account must be filed in a manner that allows the court or an interested person to ascertain the true condition of the estate, with respect to money, securities, and other property, by adding to the balances forwarded from the most recent previous account the amounts received during the period covered by the account and subtracting the disbursements made during that period.

(c) The description of property sufficiently described in an inventory or previous account may be made in the annual account by reference to the property.

Derived from Probate Code § 741(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.003. Supporting Vouchers and Other Documents Attached to Account

(a) The guardian of the estate shall attach to each annual account:

(1) a voucher for each item of credit claimed in the account or, to support the item in the absence of the voucher, other evidence satisfactory to the court;

(2) an official letter from the bank or other depository where the money on hand of the estate or ward is deposited that shows the amounts in general or special deposits; and

(3) proof of the existence and possession of:

(A) securities owned by the estate or shown by the account; and

(B) other assets held by a depository subject to court order.

(b) An original voucher submitted to the court may on application be returned to the guardian after approval of the annual account.

Derived from Probate Code § 741(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.004. Method of Proof for Securities and Other Assets

(a) The proof required by Section 1163.003(a)(3) must be by:

(1) an official letter from the bank or other depository where the securities or other assets are held for safekeeping, and if the depository is the guardian, the official letter must be signed by a representative of the depository other than the depository verifying the annual account;

(2) a certificate of an authorized representative of a corporation that is surety on the guardian's bonds;

(3) a certificate of the clerk or a deputy clerk of a court of record in this state; or

(4) an affidavit of any other reputable person designated by the court on request of the guardian or other interested party.

(b) A certificate or affidavit described by Subsection (a) must:

(1) state that the affiant has examined the assets that the guardian exhibited to the affiant as assets of the estate for which the annual account is made;

(2) describe the assets by reference to the account or in another manner that sufficiently identifies the assets exhibited; and

(3) state the time and the place the assets were exhibited.

(c) Instead of attaching a certificate or an affidavit, the guardian may exhibit the securities to the judge of the court, who shall endorse on the annual 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 exhibited to the judge and that the securities

were the same as those shown in the account, or note any variance. If the securities are exhibited at a location other than where the securities are deposited for safekeeping, that exhibit is at the guardian's own expense and risk.

(d) The judge of the court may require:

(1) additional evidence of the existence and custody of the securities and other personal property as the judge considers proper; and

(2) the guardian at any time to exhibit the securities to the judge or another person designated by the judge at the place where the securities are held for safekeeping.

Derived from Probate Code §§ 741(c), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.005. Verification of Account and Statement Regarding Taxes and Status as Guardian

(a) The guardian of the estate shall attach to an account the guardian's affidavit stating:

(1) that the account contains a correct and complete statement of the matters to which the account relates;

(2) that the guardian has paid the bond premium for the next accounting period;

(3) that the guardian has filed all tax returns of the ward due during the accounting period; [~~and~~]

(4) that the guardian has paid all taxes the ward owed during the accounting period, 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; and

(5) if the guardian is a private professional guardian, a guardianship program, or the Department of Aging and Disability Services, whether the guardian or an individual certified under Subchapter C, Chapter 111, Government Code, who is providing guardianship services to the ward and who is swearing to the account on the guardian's behalf, is or has been the subject of an investigation conducted by the Guardianship Certification Board during the accounting period.

(b) If on the filing of the account the guardian of the estate has failed on the ward's behalf to file a tax return or pay taxes due, the guardian 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.

Derived from Probate Code § 741(e) & (f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 982, § 20, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2013, 83rd Leg., ch. 982, § 21, eff. Jan. 1, 2014.

§ 1163.006. Waiver of Account Filing

If the ward's estate produces negligible or fixed income, the court may waive the filing of annual accounts and may permit the guardian to:

(1) receive all estate income and apply the income to the support, maintenance, and education of the ward; and

(2) account to the court for the estate income and corpus when the estate must be closed.

Derived from Probate Code § 741(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Action on Annual Account

§ 1163.051. Filing and Consideration of Annual Account

(a) The guardian of the estate shall file an annual account with the county clerk. The county clerk shall note the filing on the judge's docket.

(b) An annual account must remain on file for 10 days after the date the account is filed before being considered by the judge. After the expiration of that period, the judge shall consider the account and may continue the hearing on the account until fully advised on all account items.

(c) The court may not approve the annual account unless possession of cash, listed securities, or other assets held in safekeeping or on deposit under court order has been proven as required by law.

Derived from Probate Code §§ 742(a), (b), (c), (d), (e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.052. Correction and Approval of Annual Account

(a) If an annual account is found to be incorrect, the account shall be corrected.

(b) The court by order shall approve an annual account that is corrected to the satisfaction of the court and shall act with respect to unpaid claims in accordance with Sections 1163.053 and 1163.054.

Derived from Probate Code § 742(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.053. Order for Payment of Claims in Full

After approval of an annual account as provided by Section 1163.052, if it appears to the court from the exhibit or other evidence that the estate is wholly solvent and that the guardian has sufficient funds to pay every claim against the estate, the court shall order immediate payment of all claims allowed and approved or established by judgment.

Derived from Probate Code § 742(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.054. Order for Pro Rata Payment of Claims

After approval of an annual account as provided by Section 1163.052, if it appears to the court from the

account or other evidence that the funds on hand are not sufficient to pay all claims against the estate or if the estate is insolvent and the guardian has any funds on hand, the court shall order the funds to be applied:

(1) first to the payment of any unpaid claims having a preference in the order of their priority; and

(2) then to the pro rata payment of the other claims allowed and approved or established by final judgment, considering also:

(A) claims that were presented not later than the first anniversary of the date letters of guardianship were granted; and

(B) claims that are in litigation or on which a lawsuit may be filed.

Derived from Probate Code § 742(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Annual Report by Guardian of the Person

§ 1163.101. Annual Report Required

(a) Once each year for the duration of the guardianship, a guardian of the person shall file with the court a report that contains the information required by this section.

(b) The guardian of the person shall file a sworn, written report that shows each receipt and disbursement for:

(1) the support and maintenance of the ward;

(2) when necessary, the education of the ward; and

(3) when authorized by court order, the support and maintenance of the ward's dependents.

(c) The guardian of the person shall file a sworn affidavit that contains:

(1) the guardian's current name, address, and telephone number;

(2) the ward's date of birth and current name, address, telephone number, and age;

(3) a description of the type of home in which the ward resides, which shall be described as:

(A) the ward's own home;

(B) a nursing home;

(C) a guardian's home;

(D) a foster home;

(E) a boarding home;

(F) a relative's home, in which case the description must specify the relative's relationship to the ward;

(G) a hospital or medical facility; or

(H) another type of residence;

(4) statements indicating:

(A) the length of time the ward has resided in the present home;

(B) the reason for a change in the ward's residence, if a change in the ward's residence has occurred in the past year;

(C) the date the guardian most recently saw the ward;

(D) how frequently the guardian has seen the ward in the past year;

(E) whether the guardian has possession or control of the ward's estate;

(F) whether the ward's mental health has improved, deteriorated, or remained unchanged during the past year, including a description of the change if a change has occurred;

(G) whether the ward's physical health has improved, deteriorated, or remained unchanged during the past year, including a description of the change if a change has occurred;

(H) whether the ward has regular medical care; and

(I) the ward's treatment or evaluation by any of the following persons during the past year, including the person's name and a description of the treatment:

(i) a physician;

(ii) a psychiatrist, psychologist, or other mental health care provider;

(iii) a dentist;

(iv) a social or other caseworker; or

(v) any other individual who provided treatment;

(5) a description of the ward's activities during the past year, including recreational, educational, social, and occupational activities, or a statement that no activities were available or that the ward was unable or refused to participate in activities;

(6) the guardian's evaluation of:

(A) the ward's living arrangements as excellent, average, or below average, including an explanation if the conditions are below average;

(B) whether the ward is content or unhappy with the ward's living arrangements; and

(C) unmet needs of the ward;

(7) a statement indicating whether the guardian's power should be increased, decreased, or unaltered, including an explanation if a change is recommended;

(8) a statement indicating that the guardian has paid the bond premium for the next reporting period; [~~and~~]

(9) <u>if the guardian is a private professional guardian, a guardianship program, or the Department of Aging and Disability Services, whether the guardian or an individual certified under Subchapter C, Chapter 111, Government Code, who is providing guardianship services to the ward and who is swearing to the affidavit on the guardian's behalf, is or has been the subject of an investigation conducted by the Guardianship Certification Board during the preceding year; and</u>

(10) any additional information the guardian desires to share with the court regarding the ward, including:

(A) whether the guardian has filed for emergency detention of the ward under Subchapter A, Chapter 573, Health and Safety Code; and

(B) if applicable, the number of times the guardian has filed for emergency detention and the dates of the applications for emergency detention.

Derived from Probate Code § 743(a), (b), (g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (c) amended by Acts 2013, 83rd Leg., ch. 982, § 22, eff. Jan. 1, 2014.

§ 1163.1011. Use of Unsworn Declaration for Electronic Filing of Annual Report

(a) A guardian of the person who files the annual report required by Section 1163.101 electronically with the court may use an unsworn declaration made as provided by this section instead of a written sworn declaration or affidavit required by Section 1163.101.

(b) An unsworn declaration authorized by this section must be:

(1) in writing; and

(2) subscribed by the person making the declaration as true under penalty of perjury.

(c) The form of an unsworn declaration authorized by this section must be substantially as follows:

I, (insert name of guardian of the person), the guardian of the person for (insert name of ward) in _____ County, Texas, declare under penalty of perjury that the foregoing is true and correct.

Executed on (insert date)

_____

(signature)

(d) An unsworn declaration authorized by Section 132.001, Civil Practice and Remedies Code, may not be used instead of a written sworn declaration or affidavit required by Section 1163.101.

New.

Added by Acts 2013, 83rd Leg., ch. 982, § 23, eff. Jan. 1, 2014.

§ 1163.102. Reporting Period

(a) Except as provided under Subsection (b), an annual report required by Section 1163.101 must cover a 12-month reporting period that begins on the date or the anniversary of the date the guardian of the person qualifies to serve.

(b) The court may change a reporting period for purposes of this subchapter but may not extend a reporting period so that it covers more than 12 months.

(c) Each report is due not later than the 60th day after the date the reporting period ends.

Derived from Probate Code §§ 743(g), (h), (i).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.103. Report in Case of Deceased Ward

If the ward is deceased, the guardian of the person shall provide the court with the date and place of death, if known, instead of the information about the ward otherwise required to be provided in the annual report.

Derived from Probate Code § 743(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.104. Approval of Report

(a) If the judge is satisfied that the facts stated in the report are true, the court shall approve the report.

(b) Unless the judge is satisfied that the facts stated in the report are true, the judge shall issue orders necessary for the ward's best interests.

(c) The court on the court's own motion may waive the costs and fees related to the filing of a report approved under Subsection (a).

Derived from Probate Code § 743(d), (e), & (f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1163.105. Attorney Not Required

A guardian of the person may complete and file the report required under this subchapter without the assistance of an attorney.

Derived from Probate Code § 743(j).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Penalties

§ 1163.151. Penalty for Failure to File Required Account, Exhibit, or Report

(a) If a guardian does not file an account, an exhibit, a report of the guardian of the person, or another report required by this title, any person interested in the estate, on written complaint filed with the court clerk, or the court on the court's own motion, may have the guardian cited to appear and show cause why the guardian should not file the account, exhibit, or report.

(b) On hearing, the court may:

(1) order the guardian to file the account, exhibit, or report; and

(2) unless good cause is shown for the failure to file:

(A) revoke the guardian's letters of guardianship;

(B) fine the guardian in an amount not to exceed $1,000; or

(C) revoke the guardian's letters of guardianship and fine the guardian in an amount not to exceed $1,000.

Derived from Probate Code § 744.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff.

Jan. 1, 2014.

Chapter 1164. Liability of Guardian or Guardianship Program

§ 1164.001. Liability of Guardian
§ 1164.002. Immunity of Guardianship Program

Chapter 1164. Liability of Guardian or Guardianship Program

§ 1164.001. Liability of Guardian

A person is not liable to a third person solely because the person has been appointed guardian of a ward under this title.

Derived from Probate Code § 673.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1164.002. 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 was:

(1) wilfully wrongful;
(2) taken or made:
(A) with conscious indifference to or reckless disregard for the safety of the ward or another;
(B) in bad faith; or
(C) with malice; or
(3) grossly negligent.

Derived from Probate Code § 674.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

SUBTITLE F. EVALUATION, MODIFICATION, OR TERMINATION OF GUARDIANSHIP

Chapter 1201. Evaluation of Guardianship

Subchapter A. Review of Guardianship

§ 1201.001. Determining Guardian's Performance of Duties
§ 1201.002. Annual Examination of Guardianship; Bond of Guardian
§ 1201.003. Judge's Liability
§ 1201.004. Identifying Information

Subchapter B. Annual Determination to Continue, Modify, or Terminate Guardianship

§ 1201.051. Applicability
§ 1201.052. Annual Determination
§ 1201.053. Method of Determination
§ 1201.054. Form of Determination

Chapter 1201. Evaluation of Guardianship

Subchapter A. Review of Guardianship

§ 1201.001. Determining Guardian's Performance of Duties

The court shall use reasonable diligence to determine whether a guardian is performing all of the duties required of the guardian that relate to the guardian's ward.

Derived from Probate Code § 671(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1201.002. Annual Examination of Guardianship; Bond of Guardian

(a) At least annually, the judge shall examine the well-being of each ward of the court and the solvency of the bond of the guardian of the ward's estate.

(b) If after examining the solvency of a guardian's bond as provided by Subsection (a) the 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.

(c) The judge shall notify the guardian and the sureties on the guardian's bond as provided by law.

Derived from Probate Code § 671(b), (c), & (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1201.003. Judge's Liability

A judge is liable on the judge's bond to those damaged if damage or loss results to a guardianship or ward because of the gross neglect of the judge to use reasonable diligence in the performance of the judge's duty under this subchapter.

Derived from Probate Code § 671(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1201.004. Identifying Information

(a) The court may request an applicant or court-appointed fiduciary to produce other information identifying an applicant, ward, or guardian, including a social security number, in addition to identifying information the applicant or fiduciary is required to produce under this title.

(b) The court shall maintain any information required under this section, and the information may not be filed with the clerk.

Derived from Probate Code § 671(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Annual Determination to Continue, Modify, or Terminate Guardianship

§ 1201.051. Applicability

This subchapter 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.

Derived from Probate Code § 672(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1201.052. Annual Determination

To determine whether a guardianship should be continued, modified, or terminated, the court in which the guardianship proceeding is pending:

(1) shall review annually each guardianship in which the application to create the guardianship was filed after September 1, 1993; and

(2) may review annually any other guardianship.

Derived from Probate Code § 672(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1201.053. Method of Determination

(a) In reviewing a guardianship under Section 1201.052, a statutory probate court may:

(1) review any report prepared by:

(A) a court investigator under Section 1054.153 or 1202.054;

(B) a guardian ad litem under Section 1202.054; or

(C) a court visitor under Section 1054.104;

(2) conduct a hearing; or

(3) review an annual account prepared under Subchapter A, Chapter 1163, or a report prepared under Subchapter C, Chapter 1163.

(b) A court that is not a statutory probate court may use any method to review a guardianship under Section 1201.052 that is determined appropriate by the court according to the court's caseload and available resources.

Derived from Probate Code § 672(b), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1201.054. Form of Determination

A determination under this subchapter must be in writing and filed with the clerk.

Derived from Probate Code § 672(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1202. Modification or Termination of Guardianship

Subchapter A. Termination and Settlement of Guardianship

§ 1202.001. Term of Guardian or Guardianship

§ 1202.002. Termination of Guardianship if Parent Is No Longer Incapacitated

Subchapter B. Application for Complete Restoration of Ward's Capacity or Modification of Guardianship

§ 1202.051. Application Authorized

§ 1202.052. Contents of Application

§ 1202.053. Citation Required

§ 1202.054. Informal Request for Order by Ward; Investigation and Report

§ 1202.055. Restriction on Subsequent Application Regarding Capacity or Modification

Subchapter C. Representation of Ward in Proceeding for Complete Restoration of Ward's Capacity or Modification of Guardianship

§ 1202.101. Appointment of Attorney Ad Litem

§ 1202.102. Compensation for Attorney Ad Litem and Guardian Ad Litem

§ 1202.103. Retention and Compensation of Attorney for Ward

Subchapter D. Hearing, Evidence, and Orders in Proceeding for Complete Restoration of Ward's Capacity or Modification of Guardianship

§ 1202.151. Evidence and Burden of Proof at Hearing

§ 1202.152. Physician's Letter or Certificate Required

§ 1202.153. Findings Required

§ 1202.154. General Requirements for Order

§ 1202.155. Additional Requirements for Order Restoring Ward's Capacity

§ 1202.156. Additional Requirements for Order Modifying Guardianship

§ 1202.157. Additional Requirements for Order Dismissing Application

Subchapter E. Restoration of Rights on Termination of Guardianship

§ 1202.201. Removal of Firearm Disability on Complete Restoration of Ward's Capacity

Chapter 1202. Modification or Termination of Guardianship

Subchapter A. Termination and Settlement of Guardianship

§ 1202.001. Term of Guardian or Guardianship

(a) Unless otherwise discharged as provided by law, a guardian remains in office until the estate is closed.

(b) A guardianship shall be settled and closed when the ward:

(1) dies and, if the ward was married, the ward'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 ward's property;

(3) is no longer a minor; or

(4) no longer must have a guardian appointed to receive funds due the ward 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 ward 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 title, any resident guardian's guardianship may be terminated.

Derived from Probate Code § 694.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1202.002. Termination of Guardianship if Parent Is No Longer Incapacitated

(a) 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 Section 1104.053 and Subchapter D, Chapter 1104, terminate when a probate court enters an order finding that the surviving parent is no longer an incapacitated person.

(b) 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 Section 1104.103 and Subchapter D, Chapter 1104, 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.

Derived from Probate Code §§ 676(g), 677(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Application for Complete Restoration of Ward's Capacity or Modification of Guardianship

§ 1202.051. Application Authorized

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 guardian's powers or duties; 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.

Derived from Probate Code § 694A(A).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1202.052. Contents of Application

An application filed under Section 1202.051 must be sworn to by the applicant and must state:

(1) the ward's name, sex, date of birth, and address;

(2) the name and address of any person serving as guardian of the person of the ward on the date the application is filed;

(3) the name and address of any person serving as guardian of the estate of the ward on the date the application is filed;

(4) the nature and description of the ward's guardianship;

(5) the specific areas of protection and assistance and any limitation of rights that exist;

(6) 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):

(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) 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, 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.

Derived from Probate Code § 694B.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1202.053. Citation Required

When an application is filed under Section 1202.051, citation shall be served on:

(1) the ward's guardian; and

(2) the ward if the ward is not the applicant.

Derived from Probate Code § 694A(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1202.054. Informal Request for Order by Ward; Investigation and Report

(a) A ward may request an order under Section 1202.051 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.

(b) On receipt of an informal letter under Subsection (a), the court shall appoint the court investigator or a guardian ad litem to investigate the ward's circumstances, including any circumstances alleged in the letter, to determine whether:

(1) the ward is no longer an incapacitated person; or

(2) a modification of the guardianship is necessary.

(c) The court investigator or guardian ad litem shall file with the court a report of the investigation's findings and conclusions. If the court investigator or 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 shall file an application under Section 1202.051 on the ward's behalf.

(d) A guardian ad litem appointed under this section may also be appointed by the court to serve as attorney ad litem under Section 1202.101.

Derived from Probate Code § 694A(b), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1202.055. Restriction on Subsequent Application Regarding Capacity or Modification

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, except as otherwise provided by the court on good cause shown by the applicant.

Derived from Probate Code § 694A(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Representation of Ward in Proceeding for Complete Restoration of Ward's Capacity or Modification of Guardianship

§ 1202.101. Appointment of Attorney Ad Litem

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. Unless otherwise provided by the court, the attorney ad litem shall represent the ward only for purposes of the restoration or modification proceeding.

Derived from Probate Code § 694C(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1202.102. Compensation for Attorney Ad Litem and Guardian Ad Litem

(a) An attorney ad litem appointed under Section 1202.101 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.

(b) 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, as provided by Section 1054.055(a), regardless of whether the proceeding results in the restoration of the ward's capacity or a modification of the ward's guardianship.

Derived from Probate Code §§ 694C(c), 694L.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1202.103. Retention and Compensation of Attorney for Ward

(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.

Derived from Probate Code § 694K.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Hearing, Evidence, and Orders in Proceeding for Complete Restoration of Ward's Capacity or Modification of Guardianship

§ 1202.151. Evidence and Burden of Proof at Hearing

(a) Except as provided by Section 1202.201, at [~~At~~] a hearing on an application filed under Section 1202.051, 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 complete restoration of the ward's capacity or modification of the ward's guardianship.

(b) The party who filed the application has the burden of proof at the hearing.

Derived from Probate Code § 694D.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2013, 83rd Leg., ch. 684, § 2, eff. Jan. 1, 2014.

§ 1202.152. Physician's Letter or Certificate Required

(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 1202.051 unless the applicant presents to the court a written letter or certificate from a physician licensed in this state that is dated:

(1) not earlier than the 120th day before the date the application was filed; or

(2) after the date the application was filed but before the date of the hearing.

(b) A letter or certificate presented under Subsection (a) 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:

(A) provide food, clothing, and shelter for himself or herself;

(B) care for the ward's own physical health; and

(C) manage the ward's financial affairs;

(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 ward's physical or mental health;

(4) state whether any current medication affects the ward's demeanor 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.

(c) 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 1101.103 or 1101.104.

Derived from Probate Code § 694F.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1202.153. Findings Required

(a) Before ordering the settlement and closing of a guardianship under an application filed under Section 1202.051, 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 1202.051, 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 1202.051, 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.

Derived from Probate Code § 694E.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1202.154. General Requirements for Order

(a) A court order entered with respect to an application filed under Section 1202.051 to completely

restore a ward's capacity or modify a ward's guardianship must state:

(1) the guardian's name;

(2) the ward's name; and

(3) 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.

Derived from Probate Code § 694J.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1202.155. Additional Requirements for Order Restoring 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, in addition to the information required by Section 1202.154:

(1) that the ward is no longer an incapacitated person;

(2) that there is no further need for a guardianship of the person or estate of the ward;

(3) 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 title; 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.

Derived from Probate Code § 694G.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1202.156. Additional Requirements for Order Modifying 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, in addition to the information required by Section 1202.154:

(1) the specific powers, limitations, or duties of the guardian with respect to the care of the ward or the management of the ward's property, as appropriate;

(2) the specific areas of protection and assistance to be provided to the ward;

(3) any limitation of the ward's rights;

(4) if the ward's incapacity resulted from a mental condition, whether the ward retains the right to vote; and

(5) that the clerk shall modify the letters of guardianship to the extent applicable to conform to the order.

Derived from Probate Code § 694H.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1202.157. Additional Requirements for Order Dismissing Application

If the court finds that a modification of the ward's guardianship is not necessary or 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, in addition to the information required by Section 1202.154, that the guardian's powers, limitations, or duties with respect to the ward's care or the management of the ward's property remain unchanged.

Derived from Probate Code § 694I.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Restoration of Rights on Termination of Guardianship

§ 1202.201. Removal of Firearm Disability on Complete Restoration of Ward's Capacity

(a) A person whose guardianship was terminated because the person's capacity was completely restored may file an application with the court that created the guardianship for an order requesting the removal of the person's disability to purchase a firearm imposed under 18 U.S.C. Section 922(g)(4).

(b) At a proceeding involving the complete restoration of the ward's capacity under Subchapter B, the ward or a person interested in the ward's welfare may request an order seeking relief from a firearms disability described by Subsection (a).

(c) In determining whether to grant the relief sought under Subsection (a) or (b), the court must hear and consider evidence about:

(1) the circumstances that led to imposition of the firearms disability;

(2) the person's mental history;

(3) the person's criminal history; and

(4) the person's reputation.

(d) A court may not grant relief under this section unless the court makes and enters in the record the following affirmative findings:

(1) the person or ward is no longer likely to act in a manner dangerous to public safety; and

(2) removing the person's or ward's disability to purchase a firearm is in the public interest.

New.

Added by Acts 2013, 83rd Leg., ch. 684, § 1, eff. Jan. 1, 2014.

Chapter 1203. Resignation, Removal, or Death of Guardian; Appointment of Successor

Subchapter A. Resignation of Guardian

§ 1203.001. Resignation Application
§ 1203.002. Immediate Acceptance of Resignation; Discharge and Release
§ 1203.003. Delivery of Estate Property to Successor Guardian Following Resignation
§ 1203.004. Hearing Date; Citation
§ 1203.005. Hearing
§ 1203.006. Requirements for Discharge

Subchapter B. Removal and Reinstatement of Guardian

§ 1203.051. Removal Without Notice; Appointment of Guardian ad Litem and Attorney ad Litem
§ 1203.052. Removal With Notice
§ 1203.053. Removal Order
§ 1203.0531. Notice of Removal Order
§ 1203.054. Discharge and Release Following Removal
§ 1203.055. Delivery of Estate Property to Successor Guardian Following Removal
§ 1203.056. Removal and Reinstatement of Guardian Under Certain Circumstances
§ 1203.057. Removal of Joint Guardian

Subchapter C. Appointment of Successor Guardian; Revocation of Letters

§ 1203.101. Requirements for Revocation of Letters
§ 1203.102. Appointment Because of Resignation, Removal, or Death; Hearing to Set Aside Immediate Appointment
§ 1203.103. Appointment Because of Existence of Prior Right
§ 1203.104. Appointment When Guardian Named in Will Becomes an Adult
§ 1203.105. Appointment of Formerly Ill or Absent Guardian Named in Will
§ 1203.106. Appointment When Will Discovered After Grant of Letters
§ 1203.107. Appointment on Removal of Litigation Conflict
§ 1203.108. Appointment of Department of Aging and Disability Services as Successor Guardian

Subchapter D. Successor Guardians for Wards of Guardianship Programs or Governmental Entities

§ 1203.151. Notice of Availability of Successor Guardian
§ 1203.152. Determination of Proposed Successor Guardian's Qualification to Serve
§ 1203.153. Application to Appoint Successor Guardian

Subchapter E. Procedures After Resignation, Removal, or Death of Guardian

§ 1203.201. Payment to Ward While Office of Guardian Is Vacant
§ 1203.202. Rights, Powers, and Duties of Successor Guardian
§ 1203.203. Successor Guardian to Return Inventory, Appraisement, and List of Claims

Chapter 1203. Resignation, Removal, or Death of Guardian; Appointment of Successor

Subchapter A. Resignation of Guardian

§ 1203.001. Resignation Application

A guardian of the estate or guardian of the person who wishes to resign the guardian's trust shall file a written application with the court clerk, accompanied by:

(1) in the case of a guardian of the estate, a complete and verified exhibit and final account showing the true condition of the guardianship estate entrusted to the guardian's care; or

(2) in the case of a guardian of the person, a verified report containing the information required in the annual report required under Subchapter C, Chapter 1163, showing the condition of the ward entrusted to the guardian's care.

Derived from Probate Code § 760(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.002. Immediate Acceptance of Resignation; Discharge and Release

(a) If the necessity exists, the court may immediately accept the resignation of a guardian and appoint a successor guardian as provided by Section 1203.102(b).

(b) The court may not discharge a person resigning as guardian of the estate whose resignation is accepted under Subsection (a), or release the person or the sureties on the person's bond, until a final order has

been issued, or a final judgment has been rendered, on the final account required under Section 1203.001.

Derived from Probate Code § 760(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.003. Delivery of Estate Property to Successor Guardian Following Resignation

The court at any time may order a resigning guardian who has any part of a ward's estate to deliver any part of the estate to a person who has been appointed and has qualified as successor guardian.

Derived from Probate Code § 760(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.004. Hearing Date; Citation

(a) When an application to resign as guardian is filed under Section 1203.001, supported by the exhibit and final account or report required under that section, the court clerk shall bring the application to the judge's attention and the judge shall set a date for a hearing on the matter.

(b) After a hearing is set under Subsection (a), the clerk shall issue a citation to all interested persons, showing:

(1) that an application that complies with Section 1203.001 has been filed; and

(2) the time and place set for the hearing at which the interested persons may appear and contest the exhibit and final account or report supporting the application.

(c) Unless the court directs that the citation under Subsection (b) be published, the citation must be posted.

Derived from Probate Code § 760(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.005. Hearing

(a) At the time set for the hearing under Section 1203.004, unless the court continues the hearing, and if the court finds that the citation required under that section has been properly issued and served, the court shall:

(1) examine the exhibit and final account or report required by Section 1203.001;

(2) hear all evidence for and against the exhibit, final account, or report; and

(3) if necessary, restate and audit and settle the exhibit, final account, or report.

(b) If the court is satisfied that the matters entrusted to the guardian applying to resign have been handled and accounted for in accordance with the law, the court shall:

(1) enter an order approving the exhibit and final account or report; and

(2) require that any estate property remaining in the applicant's possession be delivered to the person entitled by law to receive the property.

(c) A guardian of the person shall comply with all court orders concerning the guardian's ward.

Derived from Probate Code § 760(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.006. Requirements for Discharge

(a) A guardian applying to resign may not be discharged until:

(1) the resignation application has been heard;

(2) the exhibit and final account or report required under Section 1203.001 has been examined, settled, and approved; and

(3) the applicant has satisfied the court that the applicant has:

(A) delivered any estate property remaining in the applicant's possession; or

(B) complied with all court orders relating to the applicant's trust as guardian.

(b) When a guardian applying to resign has fully complied with the court orders, the court shall enter an order:

(1) accepting the resignation; and

(2) discharging the applicant and, if the applicant is under bond, the applicant's sureties.

Derived from Probate Code § 760(e) & (f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Removal and Reinstatement of Guardian

§ 1203.051. Removal Without Notice; Appointment of Guardian ad Litem and Attorney ad Litem

(a) The court, on the court's own motion or on the motion of an interested person, including the ward, and without notice, may remove a guardian appointed under this title who:

(1) neglects to qualify in the manner and time required by law;

(2) fails to return, not later than the 30th day after the date the guardian qualifies, an inventory of the guardianship estate property and a list of claims that have come to the guardian's knowledge, unless that deadline is extended by court order;

(3) if required, fails to give a new bond within the period prescribed;

(4) is absent from the state for a consecutive period of three or more months without the court's permission, or removes from the state;

(5) cannot be served with notices or other processes because:

(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) subject to Section 1203.056(a):

(A) has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, any of the property entrusted to the guardian's care; or

(B) 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 [~~neglected or cruelly treated a ward~~]; or

(7) 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.

(b) In a proceeding to remove a guardian under Subsection (a)(6) or (7), the court shall appoint a guardian ad litem as provided by Subchapter B, Chapter 1054, and an attorney ad litem. The attorney ad litem has the duties prescribed by Section 1054.004. 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.

Derived from Probate Code § 761(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.053, eff. Jan. 1, 2014

§ 1203.052. Removal With Notice

(a) The court may remove a guardian on the court's 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, if:

(1) sufficient grounds appear to support a belief that the guardian has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, any of the property entrusted to the guardian's care;

(2) the guardian fails to return any account or report that is required by law to be made;

(3) the guardian fails to obey a proper order of the court that has 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 guardian's duties;

(5) the guardian:

(A) becomes incapacitated;

(B) is sentenced to the penitentiary; or

(C) 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 [~~neglects or cruelly treats the ward~~];

(7) 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;

(8) the guardian interferes with the ward's progress or participation in programs in the community;

(9) the guardian fails to comply with the requirements of Subchapter G, Chapter 1104;

(10) 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

(11) the guardian would be ineligible for appointment as a guardian under Subchapter H, Chapter 1104.

(b) In addition to the authority granted to the court under Subsection (a), the court may, on the complaint of the guardianship certification program of the Judicial Branch Certification Commission [~~Guardianship Certification Board~~], remove a guardian who would be ineligible for appointment under Subchapter H, Chapter 1104, because of the guardian's failure to maintain the certification required under Subchapter F, Chapter 1104. The guardian shall be cited to appear and contest the request for removal under this subsection in the manner provided by Subsection (a).

Derived from Probate Code § 761(c), (c-1).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2013, 83rd Leg., ch. 161, § 6.054, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2013, 83rd Leg., ch. 42, § 2.21, eff. Jan. 1, 2014.

§ 1203.053. Removal Order

An order removing a guardian shall:

(1) state the cause of the removal;

(2) require that, if the removed guardian has been personally served with citation, any letters of guardianship issued to the removed guardian be surrendered and that, regardless of whether the letters have been delivered, all the letters be canceled of record; and

(3) require the removed guardian to:

(A) deliver any estate property in the guardian's possession to the persons entitled to the property or to one who has been appointed and has qualified as successor guardian; and

(B) relinquish control of the ward's person as required in the order.

Derived from Probate Code § 761(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.0531. Notice of Removal Order

The court clerk shall issue notice of an order rendered by the court removing a guardian under Section 1203.051(a)(1), (2), (3), (4), (6), or (7). 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 1203.051(a)(6)(A) or (B), Estates Code, you have the right to contest the order of removal by filing an application with the court for a hearing under Section 1203.056, Estates 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.

New.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.055, eff. Jan. 1, 2014.

§ 1203.054. Discharge and Release Following Removal

With respect to a person who is removed as guardian of the estate and whose successor is appointed without citation or notice as provided by Section 1203.102(b), the court may not discharge the person or release the person or the sureties on the person's bond until a final order has been issued or final judgment has been rendered on the guardian's final account.

Derived from Probate Code § 761(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.055. Delivery of Estate Property to Successor Guardian Following Removal

The court at any time may order a person removed as guardian under this subchapter who has any part of a ward's estate to deliver any part of the estate to a person who has been appointed and has qualified as successor guardian.

Derived from Probate Code § 761(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.056. Removal and Reinstatement of Guardian Under Certain Circumstances

(a) The court may remove a guardian under Section 1203.051(a)(6)(A) [~~1203.051(6)(A)~~] or (B) only on the presentation of clear and convincing evidence given under oath.

(b) Not later than the 30th [~~10th~~] day after the date the court signs the order of removal, a guardian who is removed under Section 1203.051(a)(6)(A) [~~1203.051(6)(A)~~] or (B) may file an application with the court for a hearing to determine whether the guardian should be reinstated.

(c) On the filing of an application under Subsection (b), the court clerk shall issue to the applicant, the ward, a person interested in the ward's welfare or estate, and, if applicable, a person who has control of the care and custody of the ward a notice stating:

(1) that an application for reinstatement has been filed;

(2) the name of the ward; and

(3) the name of the applicant for reinstatement.

(d) The notice required by Subsection (c) must cite all persons interested in the ward's welfare or estate to appear at the time and place stated in the notice if the persons wish to contest the application.

(e) 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 [~~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:

(1) set aside any order appointing a successor guardian; and

(2) enter an order reinstating the applicant as guardian of the ward or estate.

(f) 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 estate property.

Derived from Probate Code §§ 761(b), 762.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsecs. (a), (b), & (e) amended by Acts 2013, 83rd Leg., ch. 161, § 6.056, eff. Jan. 1, 2014.

§ 1203.057. Removal of Joint Guardian

If a joint guardian is removed under Section 1203.052(a)(10), 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.

Derived from Probate Code § 761(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Appointment of Successor Guardian; Revocation of Letters

§ 1203.101. Requirements for Revocation of Letters

Except as otherwise expressly provided by this title, letters of guardianship may be revoked only:

(1) on application; and

(2) after personal service of citation on the person whose letters are sought to be revoked requiring the person to appear and show cause why the application should not be granted.

Derived from Probate Code § 759(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.102. Appointment Because of Resignation, Removal, or Death; Hearing to Set Aside Immediate Appointment

(a) If a guardian resigns, is removed, or dies, the court may appoint a successor guardian on application and on service of notice as directed by the court, except as provided by Subsection (b). In the event the guardian of the person or of the estate of a ward dies, a personal representative of the deceased guardian, at the time and in the manner ordered by the court, shall account for, pay, and deliver all guardianship property entrusted to the representative's care to a person legally entitled to receive the property.

(b) The court may appoint a successor guardian under this section without citation or notice if the court finds that a necessity exists for the immediate appointment. Subject to an order of the court, a successor guardian has the rights and powers of the removed guardian.

(c) The appointment of a successor guardian under Subsection (b) 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 Subchapter B or C, Chapter 1104, as applicable.

(d) 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.

Derived from Probate Code §§ 695(a), 759(a), 760(b), 761(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Sec. title amended by Acts 2013, 83rd Leg., ch. 161, § 6.057, eff. Jan. 1, 2014. Subsecs. (b) amended, (c) and (d) added by Acts 2013, 83rd Leg., ch. 161, § 6.058, eff. Jan. 1, 2014.

§ 1203.103. Appointment Because of Existence of Prior Right

If letters of guardianship have been granted to a person and another person applies for letters, the previously issued letters shall be revoked, and letters shall be granted to the subsequent applicant if that applicant:

(1) is qualified;

(2) has a prior right to be appointed successor guardian; and

(3) has not waived that prior right.

Derived from Probate Code § 759(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.104. Appointment When Guardian Named in Will Becomes an Adult

(a) A person named as guardian in a will who was not an adult when the will was probated is entitled to have letters of guardianship that were granted to another person revoked and appropriate letters granted to the named guardian on proof that the named guardian has become an adult and is not otherwise disqualified from serving as a guardian.

(b) This subsection applies only if a will names two or more persons as guardian. A person named as a guardian in the will who was a minor when the will was probated may, on becoming an adult, qualify and receive letters of guardianship if:

(1) letters have been issued to the named guardians in the will who are adults; and

(2) the person is not otherwise disqualified from receiving letters.

Derived from Probate Code § 759(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.105. Appointment of Formerly Ill or Absent Guardian Named in Will

(a) This section applies only to a person named as guardian in a will who was ill or absent from the state when the testator died or the will was proved and, as a result, could not:

(1) present the will for probate not later than the 30th day after the testator's death; or

(2) accept and qualify as guardian not later than the 20th day after the date the will was probated.

(b) A person to whom this section applies may accept and qualify as guardian not later than the 60th day after the date the person recovers from illness or returns to the state if proof is presented to the court that the person was ill or absent.

(c) If a person accepts and qualifies as guardian under Subsection (b) and letters of guardianship have been issued to another person, the other person's letters shall be revoked.

Derived from Probate Code § 759(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.106. Appointment When Will Discovered After Grant of Letters

If, after letters of guardianship have been issued, it is discovered that the decedent left a lawful will, the letters shall be revoked and proper letters shall be issued to a person entitled to the letters.

Derived from Probate Code § 759(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.107. Appointment on Removal of Litigation Conflict

The court may appoint as successor guardian a spouse, parent, or child of a proposed ward who was disqualified from serving as guardian because of a litigation conflict under Section 1104.354(1) on the removal of the conflict that caused the disqualification if the spouse, parent, or child is otherwise qualified to serve as a guardian.

Derived from Probate Code § 759(h).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.108. Appointment of Department of Aging and Disability Services as Successor Guardian

(a) In this section, "department" means the Department of Aging and Disability Services.

(b) The court may appoint the department 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 ward's needs;

(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 (c).

(c) The number of appointments under Subsection (b) is subject to an annual limit of 55. The appointments must be distributed equally or as equally as possible among the health and human services regions of this state. The department, at the department's discretion, may establish a different distribution scheme to promote the efficient use and administration of resources.

(d) If the department 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 1051.103(5).

Derived from Probate Code § 695(c), (d), (e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Successor Guardians for Wards of Guardianship Programs or Governmental Entities

§ 1203.151. Notice of Availability of Successor Guardian

(a) If a guardianship program or governmental entity serving as a guardian for a ward under this title 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 to serve.

(b) If, while serving as a guardian for a ward under this title, 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 in that capacity, 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.

Derived from Probate Code § 695A(a), (a-1).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.152. Determination of Proposed Successor Guardian's Qualification to Serve

When the court is notified of the existence of a proposed successor guardian under Section 1203.151(a), or the court otherwise becomes aware of a family member, a 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 title as the ward's successor guardian.

Derived from Probate Code § 695A(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.153. Application to Appoint Successor Guardian

(a) If the court finds under Section 1203.152 that the proposed successor guardian for a ward is not disqualified from being appointed as the ward's successor guardian under Subchapter H, Chapter 1104, 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.

(b) Service of notice on an application filed under this section shall be made as directed by the court.

Derived from Probate Code § 695A(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Procedures After Resignation, Removal, or Death of Guardian

§ 1203.201. Payment to Ward While Office of Guardian Is Vacant

(a) A debtor, obligor, or payor may pay or tender money or another thing of value falling due to a ward while the office of guardian is vacant to the court clerk for the credit of the ward.

(b) Payment or tender under Subsection (a) discharges the debtor, obligor, or payor of the obligation for all purposes to the extent and purpose of the payment or tender.

(c) The court clerk shall issue a receipt for any payment or tender accepted under this section.

Derived from Probate Code § 759(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.202. Rights, Powers, and Duties of Successor Guardian

(a) A successor guardian has the rights and powers and is subject to all the duties of the predecessor.

(b) A guardian who accepts appointment and qualifies after letters of guardianship have been granted on the estate shall:

(1) succeed in like manner to the predecessor; and

(2) administer the estate in like manner as if the guardian's administration were a continuation of the former administration.

(c) A successor guardian may:

(1) make himself or herself, and be made, a party to a suit prosecuted by or against the successor's predecessor;

(2) settle with the predecessor and receive and give a receipt for any portion of the estate property that remains in the successor's possession; or

(3) commence a suit on the bond or bonds of the predecessor, in the successor's own name and capacity, for all the estate property that:

(A) came into the predecessor's possession; and

(B) has not been accounted for by the predecessor.

Derived from Probate Code §§ 695(b), 763, 764.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1203.203. Successor Guardian to Return Inventory, Appraisement, and List of Claims

(a) A successor guardian who has qualified to succeed a former guardian shall, in the manner required of an original appointee:

(1) 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 qualifies; and

(2) return additional inventories, appraisements, and lists of claims.

(b) On the application of any person interested in the estate, the court shall, in an order appointing a successor guardian, appoint an appraiser as in an original appointment of a guardian.

Derived from Probate Code § 765.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1204. Final Settlement, Accounting, and Discharge

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Chapter 1204. Final Settlement, Accounting, and Discharge

Subchapter A. Time for Settlement of Guardianship

§ 1204.001. Settlement of Guardianship

(a) A guardianship shall be settled and closed as provided by this section and Section 1202.001.

(b) A guardianship of the estate of a ward shall be settled when:

(1) the ward dies;

(2) a minor ward becomes an adult by:

(A) becoming 18 years of age;

(B) removal of disabilities of minority according to the law of this state; or

(C) marriage;

(3) an incapacitated ward is decreed as provided by law to have been restored to full legal capacity;

(4) the spouse of a married ward has qualified as survivor in community and the ward does not own separate property;

(5) the ward's estate is exhausted;

(6) the foreseeable income accruing to the ward or to the ward's estate is so negligible that maintaining the guardianship in force would be burdensome;

(7) all of the assets of the estate have been placed in a management trust under Chapter 1301 or have been transferred to a pooled trust subaccount in accordance with a court order issued as provided by Chapter 1302, and the court determines that a guardianship of [~~for~~] the ward's estate [~~ward~~] is no longer necessary; or

(8) the court determines for any other reason that a guardianship for the ward is no longer necessary.

(c) In a case arising under Subsection (b)(6), 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.

(d) If 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 Chapter 1355.

(e) In the settlement of a guardianship of the estate, the court may appoint an attorney ad litem to represent the ward's interests and may allow the attorney ad litem reasonable compensation to be taxed as costs [~~for services provided by the attorney out of the ward's estate~~].

Derived from Probate Code § 745.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsecs. (b) and (e) amended by Acts 2013, 83rd Leg., ch. 161, § 6.059, eff. Jan. 1, 2014.

§ 1204.002. Appointment of Attorney Ad Litem to Represent Ward in Final Settlement Under Certain Circumstances

(a) The court may appoint an attorney ad litem to represent the ward's interest in the final settlement with the guardian if:

(1) the ward is deceased and there is no executor or administrator of the ward's estate;

(2) the ward is a nonresident; or

(3) the ward's residence is unknown.

(b) The court shall allow the attorney ad litem appointed under this section reasonable compensation out of the ward's estate for any services provided by the attorney.

Derived from Probate Code § 755.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Payment of Certain Expenses and Debts

§ 1204.051. Funeral Arrangements and Other Debts; Account for Final Settlement on Complaint of Personal Representative

Before a guardianship of the person or estate of a ward is closed on the ward's death, the guardian may, subject to the court's approval, make all funeral arrangements and pay the funeral expenses and all other debts out of the deceased ward's 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 have the guardian of the

deceased ward cited to appear and present an account for final settlement as provided by Section 1204.101.

Derived from Probate Code § 746.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1204.052. Taxes and Expenses of Administration; Sale of Estate Property

Notwithstanding any other provision of this title, a probate court in which proceedings to declare heirship are maintained may order:

(1) the guardian to pay any taxes or expenses of administering the estate; and

(2) the sale of property in the ward's estate, when necessary, to:

(A) pay the taxes or expenses of administering the estate; or

(B) distribute the estate among the heirs.

Derived from Probate Code § 748.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1204.053. Inheritance Taxes; Limitation on Closing Estate

If the guardian has been ordered to pay inheritance taxes under this code, a deceased ward's estate may not be closed unless the account for final settlement shows and the court finds that all inheritance taxes due and owing to this state with respect to all interests and property passing through the guardian's possession have been paid.

Derived from Probate Code § 754.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Account for Final Settlement

§ 1204.101. Verified Account Required

A guardian of the estate shall present to the court the guardian's verified account for final settlement when the guardianship of the estate is required to be settled.

Derived from Probate Code § 749.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1204.102. Contents of Account

(a) Except as provided by Subsection (b), it is sufficient for an account for final settlement to:

(1) refer to the inventory without describing each item of property in detail; and

(2) refer to and adopt any guardianship proceeding concerning sales, renting, 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.

(b) An account for final settlement shall be accompanied by proper vouchers supporting each item included in the account for which the guardian has not already accounted and, either by reference to any proceeding described by Subsection (a) or by a statement of the facts, must show:

(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) any expenses and debts against the estate that remain unpaid;

(4) any estate property that remains in the guardian's possession;

(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:

(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;

(9) a description of all current delinquencies in the filing of tax returns and the payment of taxes, including 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.

Derived from Probate Code § 749.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1204.103. Certain Debts Excluded from Settlement Computation

In the settlement of any of the accounts of the guardian of the 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.

Derived from Probate Code § 756.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1204.104. Guardian to Account for Ward's Labor or Services

(a) Subject to Subsection (b), the guardian of a ward shall account for:

(1) the reasonable value of labor or services provided by the ward; or

(2) the proceeds of labor or services provided by the ward.

(b) The guardian is entitled to reasonable credits for the board, clothing, and maintenance of the ward.

Derived from Probate Code § 757.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1204.105. Citation and Notice on Presentation of Account

(a) On presentation of an account for final settlement by a guardian of the estate of a ward, the county clerk shall issue citation to the persons and in the manner provided by this section.

(b) Citation issued under Subsection (a) must contain:

(1) a statement that an account for final settlement has been presented;

(2) the time and place the court will consider the account; and

(3) a statement requiring the person cited to appear and contest the account, if the person determines contesting the account is proper.

(c) Except as provided by Subsection (d) or (e), the county clerk shall:

(1) issue a citation to be personally served on a ward if:

(A) the ward is 14 years of age or older;

(B) the ward is a living resident of this state; and

(C) the ward's residence is known;

(2) issue a citation to be personally served on the executor or administrator of a deceased ward's estate, if one has been appointed; and

(3) issue a citation to a ward or the ward's estate by publication, or by posting if directed by written court order, if:

(A) the ward's residence is unknown;

(B) the ward is not a resident of this state; or

(C) the ward is deceased and no representative of the ward's estate has been appointed and has qualified in this state.

(d) The ward, in person or by attorney, may waive by writing filed with the county clerk the issuance and personal service of citation required by Subsection (c)(1).

(e) Service of citation is not required under Subsection (c)(2) if the executor or administrator is the same person as the guardian.

(f) The court may allow the waiver of notice of an account for final settlement in a guardianship proceeding.

(g) The court by written order shall require additional notice if the court considers the additional notice necessary.

Derived from Probate Code § 751.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1204.106. Examination of and Hearing on Account

(a) On the court's satisfaction that citation has been properly served on all persons interested in the guardianship estate, the court shall examine the account for final settlement and the accompanying vouchers.

(b) 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 account and, if necessary, restate the account.

Derived from Probate Code § 752(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1204.107. Assets Becoming Due Pending Final Settlement; Receipt and Discharge

(a) This section does not apply to money or another thing of value held under Section 1105.153.

(b) Until the order of final discharge of the guardian is entered in the judge's guardianship docket, money or another thing of value falling due to the ward or the ward's estate while the account for final settlement is pending may be paid or tendered to the emancipated ward, the guardian, or the personal representative of the deceased ward's estate. The ward, guardian, or personal representative to whom the money or other thing of value is paid or tendered shall issue a receipt for the money or other thing of value, and the obligor or payor is discharged of the obligation for all purposes.

Derived from Probate Code § 753.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1204.108. Delivery of Ward's Property in Possession of Guardian of the Person on Settlement of Guardianship of the Estate

(a) If the guardianship of a ward is required to be settled as provided by Section 1204.001, the guardian of the person shall deliver all of the ward's property in the guardian's possession or control 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 none of the ward's property is in the guardian of the person's possession or control, the guardian shall, not later than the 60th day after the date the guardianship is required to be settled, file with the court a sworn affidavit that states:

(1) the reason the guardianship was terminated; and

(2) to whom the ward's property in the guardian's possession was delivered.

(c) The judge may issue orders as necessary for the best interests of the ward or the deceased ward's estate.

(d) This section does not discharge a guardian of the person from liability for breach of the guardian's fiduciary duties.

Derived from Probate Code § 747.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1204.109. Delivery of Remaining Estate Property

On final settlement of a guardianship estate, the court shall order that any part of the estate that remains in the guardian's possession be delivered to:

(1) the ward;

(2) the personal representative of the ward's estate, if the ward is deceased and a personal representative has been appointed; or

(3) any other person legally entitled to the estate.

Derived from Probate Code § 752(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Closing of Guardianship and Discharge of Guardian

§ 1204.151. Discharge of Guardian When No Estate Property Remains

The court shall enter an order discharging a guardian from the guardian's trust and closing the guardianship estate if, on final settlement of the estate, none of the estate remains in the guardian's possession.

Derived from Probate Code § 752(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1204.152. Discharge of Guardian When Estate Fully Administered

The court shall enter an order discharging a guardian of the estate from the guardian's trust and declaring the estate closed when:

(1) the guardian has fully administered the estate in accordance with this title and the court's orders;

(2) the guardian's account for final settlement has been approved; and

(3) the guardian has delivered all of the estate remaining in the guardian's possession to any person entitled to receive the estate.

Derived from Probate Code § 752(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Failure of Guardian to Act

§ 1204.201. Failure to Present Final Account or Report

(a) The court may, on the court's own motion, and shall, on the written complaint of the emancipated ward or anyone interested in the ward or the ward's estate, have the guardian who is charged with the duty of presenting a final account or report cited to appear and present the account or report within the time specified in the citation if the guardian failed or neglected to present the account or report at the proper time.

(b) If a written complaint has not been filed by anyone interested in the guardianship of the person or estate of a minor or deceased ward, on or after the third anniversary of the date the minor ward reaches the age of majority or the date the ward dies, as applicable, the court may 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, on or after the fourth anniversary of the date the ward's whereabouts became unknown to the court, the court may remove the estate from the court's active docket without a final accounting and without appointing a successor personal representative.

Derived from Probate Code § 750.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1204.202. Liability for Failure to Deliver Estate Property

(a) On final settlement or termination of the guardianship of the estate, if the guardian neglects when legally demanded to deliver a portion of the estate or any funds or money in the guardian's possession ordered to be delivered to a person entitled to that property, the person may file with the court clerk a written complaint alleging:

(1) the fact of the neglect;

(2) the date of the person's demand; and

(3) other relevant facts.

(b) After the filing of a complaint under Subsection (a), the court clerk shall issue a citation to be served personally on the guardian. The citation must:

(1) apprise the guardian of the complaint; and

(2) cite the guardian to appear before the court and answer, if the guardian desires, at a time designated in the citation.

(c) If at the hearing the court finds that the citation was properly served and returned, and that the guardian is guilty of the neglect charged, the court shall enter an order to that effect.

(d) If the court enters an order under Subsection (c), the guardian is liable to the person who filed the complaint under Subsection (a) for 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. Damages under this subsection may be recovered in any court of competent jurisdiction.

Derived from Probate Code § 758.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

SUBTITLE G. SPECIAL TYPES OF GUARDIANSHIPS

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Chapter 1251. Temporary Guardianships

Subchapter A. Appointment of Temporary Guardian Generally

§ 1251.001. Appointment of Temporary Guardian

(a) A court shall appoint a temporary guardian, with limited powers as the circumstances of the case require, if the court:

(1) is presented with substantial evidence that a person may be an incapacitated person; and

(2) has probable cause to believe that the person, the person's estate, or both require the immediate appointment of a guardian.

(b) The person for whom a temporary guardian is appointed under this chapter retains all rights and powers that are not specifically granted to the person's temporary guardian by court order.

Derived from Probate Code § 875(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.002. No Presumption of Incapacity

A person for whom a temporary guardian is appointed under this chapter may not be presumed to be incapacitated.

Derived from Probate Code § 874.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.003. Application

(a) A sworn, written application for the appointment of a temporary guardian shall be filed before the court appoints a temporary guardian.

(b) 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 proposed temporary guardian's name, address, and qualification;

(6) the applicant's name, address, and interest; and

(7) if applicable, that the proposed temporary guardian is a private professional guardian who is certified under Subchapter C, Chapter 155 [~~111~~], Government Code, and has complied with the requirements of Subchapter G, Chapter 1104.

Derived from Probate Code § 875(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2013, 83rd Leg., ch. 42, § 2.22, eff. Jan. 1, 2014.

§ 1251.004. Appointment of Attorney

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.

Derived from Probate Code § 875(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.005. Notice of Application

(a) On the filing of an application for temporary guardianship, the clerk shall issue notice to be served on:

(1) the proposed ward;

(2) the proposed ward's appointed attorney; and

(3) the proposed temporary guardian named in the application, if that person is not the applicant.

(b) The notice must describe:

(1) the rights of the parties; and

(2) the date, time, place, purpose, and possible consequences of a hearing on the application.

(c) A copy of the application must be attached to the notice.

Derived from Probate Code § 875(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.006. Scheduling of Hearing

(a) Immediately after an application for a temporary guardianship is filed, the court shall issue an order setting a certain date for the hearing on the application.

(b) Unless postponed as provided by Subsection (c), a hearing shall be held not later than the 10th day after the date the application for temporary guardianship is filed.

(c) The proposed ward or the proposed ward'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 the application is filed.

(d) An application for temporary guardianship takes precedence over all matters except older matters of the same character.

Derived from Probate Code § 875(f)(1), (2), (3), (4).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.007. Motion for Dismissal of Application

(a) Subject to Subsection (b), the proposed ward or the proposed ward's attorney may appear and move for the dismissal of the application for temporary guardianship.

(b) At least one day before making a motion under Subsection (a), the proposed ward or the proposed ward's attorney shall provide notice to the party who filed the application for temporary guardianship.

(c) If a motion is made for dismissal of the application for temporary guardianship, the court shall hear and determine the motion as expeditiously as justice requires.

Derived from Probate Code § 875(f)(5).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.008. Rights of Proposed Ward at Hearing

At a hearing under this subchapter, the proposed ward has the right to:

(1) receive prior notice;

(2) be represented by counsel;

(3) be present;

(4) present evidence;

(5) confront and cross-examine witnesses; and

(6) a closed hearing if requested by the proposed ward or the proposed ward's attorney.

Derived from Probate Code § 875(f)(1).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.009. Appearance by Proposed Temporary Guardian in Certain Circumstances

If the applicant for a temporary guardianship is not the proposed temporary guardian, a temporary guardianship may not be granted before a hearing on the application required by Section 1251.006(b) unless the proposed temporary guardian appears in court.

Derived from Probate Code § 875(f)(6).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.010. Order Appointing Temporary Guardian

(a) The court shall appoint a temporary guardian by written order if, at the conclusion of the hearing required by Section 1251.006(b), the court determines that the applicant has established that there is substantial evidence that the proposed ward is an incapacitated person, that there is imminent danger that the proposed ward's physical health or safety will be seriously impaired, or that the proposed ward's estate will be seriously damaged or dissipated unless immediate action is taken.

(b) The court shall assign to the temporary guardian only those powers and duties that are necessary to protect the proposed ward against the imminent danger shown.

(c) The order appointing the temporary guardian must describe:

(1) the reasons for the temporary guardianship; and

(2) the powers and duties of the temporary guardian.

Derived from Probate Code § 875(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.011. Certain Agency as Temporary Guardian

A court may not ordinarily appoint the Department of Aging and Disability Services as a temporary guardian under this chapter. The appointment of the

department as a temporary guardian under this chapter should be made only as a last resort.

Derived from Probate Code § 875(j).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.012. Temporary Guardian's Bond

The court shall set bond for a temporary guardian according to Chapter 1105.

Derived from Probate Code § 875(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.013. Court Costs

If the court appoints a temporary guardian after the hearing required by Section 1251.006(b), all court costs, including attorney's fees, may be assessed as provided by Sections 1155.054 and [~~1155.051,~~] 1155.151[~~, and 665B~~].

Derived from Probate Code § 875(i).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 982, § 24, eff. Jan. 1, 2014.

Subchapter B. Temporary Guardianship Pending Challenge or Contest of Certain Guardianship Applications

§ 1251.051. Authority to Appoint Temporary Guardian or Grant Restraining Order

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:

(1) 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; and

(2) 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.

Derived from Probate Code § 875(k).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.052. Qualification and Duration of Certain Temporary Guardianships

(a) A temporary guardian appointed under Section 1251.051 must qualify in the same form and manner required of a guardian under this title.

(b) The term of a temporary guardian appointed under Section 1251.051 expires:

(1) at the conclusion of the hearing challenging or contesting the application; or

(2) on the date a permanent guardian appointed by the court for the proposed ward qualifies to serve as the ward's guardian.

Derived from Probate Code § 875(l).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Powers and Duties of Temporary Guardians

§ 1251.101. Authority of Temporary Guardian

(a) When the temporary guardian files the oath and bond required under this title, the court order appointing the temporary guardian takes effect without the necessity for issuance of letters of guardianship.

(b) The clerk shall note compliance with the oath and bond requirements by the appointed temporary guardian on a certificate attached to the order.

(c) The order appointing the temporary guardian is evidence of the temporary guardian's authority to act within the scope of the powers and duties stated in the order.

(d) The clerk may not issue certified copies of the order until the oath and bond requirements are satisfied.

Derived from Probate Code § 876.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.102. Applicability of Guardianship Provisions

The provisions of this title relating to the guardianship of the persons and estates of incapacitated persons apply to the temporary guardianship of the persons and estates of incapacitated persons, to the extent the provisions may be made applicable.

Derived from Probate Code § 877.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Expiration and Closing of Temporary Guardianship

§ 1251.151. Duration of Temporary Guardianship

Except as provided by Section 1251.052, a temporary guardianship may not remain in effect for more than 60 days.

Derived from Probate Code § 875(h).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.152. Accounting

(a) At the expiration of a temporary guardianship, the temporary guardian shall file with the court clerk:

(1) a sworn list of all estate property that has come into the temporary guardian's possession;

(2) a return of all sales made by the temporary guardian; and

(3) a full exhibit and account of all the temporary guardian's acts as temporary guardian.

(b) The court shall act on the list, return, exhibit, and account filed under Subsection (a).

Derived from Probate Code §§ 878, 879.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1251.153. Delivery of Estate; Discharge of Temporary Guardian

(a) When temporary letters expire or cease to be effective for any reason, the court immediately shall enter an order requiring the temporary guardian to deliver the estate remaining in the temporary guardian's possession to the person legally entitled to possession of the estate.

(b) On proof of delivery under Subsection (a):

(1) the temporary guardian shall be discharged; and

(2) the sureties on the temporary guardian's bond shall be released as to future liability.

Derived from Probate Code § 879.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1252. Guardianships for Nonresident Wards

Subchapter A. Resident Guardian of Nonresident Ward's Estate

§ 1252.001. Granting of Guardianship of Estate for Nonresident

§ 1252.002. Court Actions and Orders Concerning Estate

§ 1252.003. Closing Resident Guardianship

Subchapter B. Nonresident Guardian of Nonresident Ward's Estate

§ 1252.051. Appointment and Qualification of Nonresident Guardian

§ 1252.052. Appointment; Issuance of Letters of Guardianship

§ 1252.053. Inventory and Appraisement; Administration of Estate

§ 1252.054. Delivery of Estate to Certain Guardians

§ 1252.055. Removal of Ward's Property from State by Nonresident Guardian

Chapter 1252. Guardianships for Nonresident Wards

Subchapter A. Resident Guardian of Nonresident Ward's Estate

§ 1252.001. Granting of Guardianship of Estate gor Nonresident

(a) A 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.

(b) A court in the county in which the principal estate of the nonresident incapacitated person is located has jurisdiction to appoint the guardian.

Derived from Probate Code § 882.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1252.002. Court Actions and Orders Concerning Estate

The court shall take all actions and make all necessary orders with respect to the estate described by Section 1252.001 of a nonresident ward for the maintenance, support, care, or education of the ward out of the proceeds of the estate, in the same manner as if the ward were a resident of this state sent abroad by the court for education or treatment.

Derived from Probate Code § 882.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1252.003. Closing Resident Guardianship

The court shall close a resident guardianship of an estate granted under this subchapter if a qualified nonresident guardian of the estate later qualifies in this state under Section 1252.051 as a nonresident guardian.

Derived from Probate Code § 882.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Nonresident Guardian of Nonresident Ward's Estate

§ 1252.051. Appointment and Qualification of 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 title for the appointment and qualification of a resident 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 any name known in the foreign jurisdiction of the property or estate of the ward located in the jurisdiction of the foreign court; and

(3) the nonresident, with the written application for appointment, files in the county court of a county of this state in which all or part of the nonresident ward's estate is located a complete transcript of the proceedings from the records of the court in which the nonresident applicant was appointed.

(b) The transcript required by Subsection (a)(3) must:

(1) show the applicant's appointment and qualification as guardian or other fiduciary legal representative of the ward's property or estate;

(2) be certified to and attested by the clerk of the foreign court or the court officer charged by law with custody of the court records, under the court seal, if any; and

(3) have attached a certificate of the judge, chief justice, or presiding magistrate of the foreign court certifying that the attestation of the clerk or legal custodian of the court records is in correct form.

Derived from Probate Code § 881(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1252.052. Appointment; Issuance of Letters of Guardianship

(a) If a nonresident applicant meets the requirements of Section 1252.051, without the necessity of notice or citation, the court shall enter an order appointing the nonresident as guardian or coguardian of a nonresident ward's estate located in this state.

(b) 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.

Derived from Probate Code § 881(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1252.053. Inventory and Appraisement; Administration of Estate

After qualification, a nonresident guardian:

(1) shall file an inventory and appraisement of the ward's estate in this state subject to the court's jurisdiction, as in ordinary cases; and

(2) is subject to the applicable provisions of this code governing the handling and settlement of an estate by a resident guardian.

Derived from Probate Code § 881(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1252.054. Delivery of Estate to Certain Guardians

The court may order a resident guardian who has any of the ward's estate to deliver the estate to a qualified and acting guardian of the ward.

Derived from Probate Code § 881(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1252.055. Removal of Ward's Property from State by Nonresident Guardian

Regardless of whether qualified under this title, a nonresident guardian may remove personal property of the ward from this state if:

(1) the removal does not conflict with the tenure of the property or the terms of the guardianship under which the property is held; and

(2) all known debts against the estate in this state are paid or secured by a bond payable to and approved by the judge of the court in which guardianship proceedings are pending in this state.

Derived from Probate Code § 881A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1253. Interstate Guardianships

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Chapter 1253. Interstate Guardianships

Subchapter A. Transfer of Guardianship to Foreign Jurisdiction

§ 1253.001. Application to Transfer Guardianship to Foreign Jurisdiction

A guardian of the person or estate may apply to the court that has jurisdiction over the guardianship to transfer the guardianship to a court in a foreign jurisdiction to which the ward has permanently moved.

Derived from Probate Code § 891(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1253.002. Notice of Application

Notice of an application to transfer a guardianship under this subchapter shall be:

(1) served personally on the ward; and

(2) given to the foreign court to which the guardianship is to be transferred.

Derived from Probate Code § 891(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1253.003. Determination Regarding Transfer of Guardianship

(a) 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 an application to transfer a guardianship under this subchapter.

(b) 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.

(c) The court shall coordinate efforts with the appropriate foreign court to facilitate the orderly transfer of the guardianship.

Derived from Probate Code § 891(c), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Receipt and Acceptance of Foreign Guardianship

§ 1253.051. Application for Receipt and Acceptance of Foreign Guardianship

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.

Derived from Probate Code § 892(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg. 1st C.S., ch. 4, § 66A.02, eff. Jan. 1, 2014

§ 1253.052. Notice of Application

Notice of an application for receipt and acceptance of a foreign guardianship under this subchapter shall be:

(1) served personally on the ward; and

(2) given to the foreign court from which the guardianship is to be transferred.

Derived from Probate Code § 892(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1253.053. Determination Regarding Receipt and Acceptance of Foreign Guardianship

(a) The [On the court's own motion or on the motion of the ward or any interested person, the] court shall hold a hearing to:

(1) consider an application for receipt and acceptance of a foreign guardianship under this subchapter; and

(2) consider modifying the administrative procedures or requirements of the proposed transferred guardianship in accordance with local and state law.

(b) In reviewing the application, 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.

(c) The court shall grant the application if the transfer of the guardianship from the foreign jurisdiction is in the best interests of the ward.

(d) In granting the application, 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.

(e) The court shall coordinate efforts with the appropriate foreign court to facilitate the orderly transfer of the guardianship.

(f) 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.

Derived from Probate Code § 892(d), (e), (f), (g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg. 1st C.S., ch. 4, § 66A.03, eff. Jan. 1, 2014

§ 1253.055. Guardianship Transfer Proceedings Filed in Two or More Courts

If an application for receipt and acceptance of a foreign guardianship under this subchapter 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.

Derived from Probate Code § 892(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1253.056. Construction With Other Law

The denial of an application for receipt and acceptance of a guardianship under this subchapter 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 1101.001.

Derived from Probate Code § 892(h).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Guardianship Proceedings Filed in This State and in Foreign Jurisdiction

§ 1253.101. Delay of Certain Guardianship Proceedings

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.

Derived from Probate Code § 894(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1253.102. Determination of Venue; Action Following Determination

(a) A court that delays further action in a guardianship proceeding under Section 1253.101 shall determine whether venue of the proceeding is more suitable in that court or in the foreign court.

(b) In making a determination under Subsection (a), the court may consider:

(1) the interests of justice;

(2) the best interests of the ward or proposed ward;

(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) The court shall resume the guardianship proceeding delayed under Section 1253.101 if the court determines under this section 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 that foreign court.

Derived from Probate Code § 894(b), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2011, 82nd Leg. 1st C.S., ch. 4, § 66A.04, eff. Jan. 1, 2014.

§ 1253.103. Necessary Orders

A court that delays further action in a guardianship proceeding under Section 1253.101 may issue any order the court considers necessary to protect the proposed ward or the proposed ward's estate.

Derived from Probate Code § 894(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Determination of Most Appropriate Forum for Certain Guardianship Proceedings

§ 1253.151. Determination of Acquisition of Jurisdiction in This State Due to Unjustifiable Conduct

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 1253.102(b); and

(C) whether the court of any other state would have jurisdiction under the factual circumstances of the matter.

Derived from Probate Code § 895(a).

Added by Acts 2011, 82nd Leg. 1st C.S., ch. 4, § 66A.05, eff. Jan. 1, 2014.

§ 1253.152. Assessment of Expenses Against Party

(a) 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.

(b) 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.

Derived from Probate Code § 895(b).

Added by Acts 2011, 82nd Leg. 1st C.S., ch. 4, § 66A.05, eff. Jan. 1, 2014.

SUBTITLE H. COURT-AUTHORIZED TRUSTS AND ACCOUNTS

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Chapter 1301. Management Trusts

Subchapter A. General Provisions

§ 1301.001. Definition

In this chapter, "management trust" means a trust created under Section 1301.053 or 1301.054.

New.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1301.002. Applicability of Texas Trust Code

(a) A management trust 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 chapter or of a management trust, the provision of this chapter or of the trust controls.

Derived from Probate Code § 869B.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Creation of Management Trusts

§ 1301.051. Eligibility to Apply for Creation of Trust

The following persons may apply for the creation of a trust under this subchapter:

(1) the guardian of a ward;

(2) an attorney ad litem or guardian ad litem appointed to represent a ward or the ward's interests;

(3) a person interested in the welfare of an alleged incapacitated person who does not have a guardian [~~of the estate~~]; [~~or~~]

(4) an attorney ad litem or guardian ad litem appointed to represent [~~:[(A)~~] an alleged incapacitated person who does not have a guardian; or

(5) a person who has only a physical disability [~~(B) the interests of a person described by Paragraph (A)~~].

Derived from Probate Code § 867(a-1).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.060, eff. Jan. 1, 2014.

§ 1301.052. Venue for Proceeding Involving Trust for an Alleged Incapacitated Person

(a) An application for the creation of a trust under Section 1301.054 for an alleged incapacitated person must be filed in the same court in which a proceeding for the appointment of a guardian for the person is pending, if any.

(b) If a proceeding for the appointment of a guardian for an alleged incapacitated person is not pending on the date an application is filed for the creation of a trust under Section 1301.054 for the person, venue for a proceeding to create a trust must be determined in the same manner as venue for a proceeding for the appointment of a guardian is determined under Section 1023.001 [~~610~~].

Derived from Probate Code §§ 867(b-2), 867A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Section title amended by Acts 2013, 83rd Leg., ch. 982, § 25, eff. Jan. 1, 2014. Subsec. (b) amended by Acts 2013, 83rd Leg., ch. 161, § 6.061, eff. Jan. 1, 2014.

§ 1301.053. Creation of Trust [~~for Ward~~]

(a) On application by an appropriate person as provided by Section 1301.051 and subject to Section 1301.054(a), if applicable, the court with jurisdiction over the proceedings [~~a guardianship~~] may enter an order that creates [~~for the ward's benefit~~] a trust for the management of the [~~guardianship~~] 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 [~~ward's~~] best interests.

(b) The court may [~~shall~~] maintain a trust created under this section under the same cause number as the guardianship proceeding, if the person for whom the trust is created is a ward or proposed ward.

Derived from Probate Code § 867(b) & (f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.062, eff. Jan. 1, 2014.

§ 1301.054. Creation of Trust for Incapacitated Person Without Guardian

(a) On application by an appropriate person as provided by Section 1301.051 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) The court shall conduct the hearing to determine incapacity under Subsection (a) using the same procedures and evidentiary standards as are required in a hearing for the appointment of a guardian for a proposed ward.

(c) Except as provided by Subsection (c-1), the [~~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 hearing to determine incapacity under Subsection (a).

(c-1) If the application for the creation of the trust is filed by a person who has only a physical disability, the court may, but is not required to, appoint an attorney ad litem or guardian ad litem to represent the interests of the person in the hearing to determine incapacity under Subsection (a).

(d) The court may [~~shall~~] maintain a trust created under this section under the same cause number as the guardianship proceeding, if the person for whom the trust is created is a ward or proposed ward [~~applicable~~].

Derived from Probate Code § 867(b-1), (b-3), & (f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (c) amended and subsec. (c-1) by Acts 2013, 83rd Leg., ch. 982, § 26, eff. Jan. 1, 2014. Subsec. (d) amended by Acts 2013, 83rd Leg., ch. 161, § 6.063, eff. Jan. 1, 2014.

§ 1301.055. Authority of Court to Appoint Guardian Instead of Creating Trust

If, after a hearing under Section 1301.054, the court finds that the person for whom the application was filed is an incapacitated person but that it is not in the incapacitated person's best interests for the court to create a trust under this subchapter for the incapacitated person's estate, the court may appoint a guardian of the person or estate, or both, for the incapacitated person without commencing a separate proceeding for that purpose.

Derived from Probate Code § 867(b-4).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by 2013, 83rd Leg., ch. 982,

§ 27, eff. Jan. 1, 2014.

§ 1301.056. Contents of Order Creating Trust

An order creating a management trust must:

(1) direct any [~~a~~] person or entity holding property that belongs to the [~~ward or incapacitated~~] person[~~, as applicable,~~] for whom the trust is created or to which that [~~the ward or incapacitated~~] person is entitled[~~,~~] to deliver all or part of that property to a person or [~~the~~] corporate fiduciary [~~or other person~~] appointed as trustee of the trust; and

(2) include terms and limitations placed on the trust.

Derived from Probate Code § 867(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 6.064, eff. Jan. 1, 2014.

§ 1301.057. Appointment of Trustee

(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 state, another state, or the United States.

(b) Except as provided by Subsection (c), the court shall appoint a financial institution to serve as trustee of a management trust, other than a management trust created for a person who has only a physical disability.

(c) The court may appoint a person or entity described by Subsection (d) to serve as trustee of a management trust created for a ward or incapacitated person instead of appointing a financial institution to serve in that capacity if the court finds:

(1) that the appointment is in the best interests of the [~~ward or incapacitated~~] person for whom the trust is created; and

(2) if the value of the trust's principal is more than $150,000, 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.

(d) The following are eligible for appointment as trustee of a management trust created for a ward or incapacitated person under Subsection (c):

(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.

Derived from Probate Code § 867(a), (b-5), (c), (d), (e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsecs. (b), (c), and (d) amended by Acts 2013, 83rd Leg., ch. 982, § 28, eff. Jan. 1, 2014. Subsec. (c) amended by Acts 2013, 83rd Leg., ch. 161, § 6.065, eff. Jan. 1, 2014.

§ 1301.058. Bond Requirements for Trustees

(a) The following serve [~~A trustee of a management trust that is a corporate fiduciary serves~~] without giving a bond in accordance with the trust terms required by Sections [~~Section~~] 1301.101(a)(4) and (a-1):

(1) a trustee of a management trust that is a corporate fiduciary; and

(2) any other trustee of a management trust created for a person who has only a physical disability.

(b) Except as provided by Subsection (a), the [~~The~~] court shall require a person[~~, other than a corporate fiduciary,~~] serving as trustee of a management trust to file with the county clerk a bond that:

(1) is in an amount equal to the value of the trust's principal and projected annual income; and

(2) meets the conditions the court determines are necessary.

Derived from Probate Code §§ 868(a), 868B.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 982, § 29, eff. Jan. 1, 2014

Subchapter C. Terms of Management Trust

§ 1301.101. Required Terms

(a) Except as provided by Subsection (c), a management trust created for a ward or incapacitated person must provide that:

(1) the ward, [~~or~~] incapacitated person, or person who has only a physical disability [~~for whom the trust is created~~] 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 spend for the health, education, maintenance, or support of the [~~ward or incapacitated~~] person for whom the trust is created;

(3) the trust income that the trustee does not disburse under Subdivision (2) must be added to the trust principal;

(4) a trustee that is a corporate fiduciary serves without giving a bond; and

(5) subject to the court's approval and Subsection (b), a [~~the~~] trustee is entitled to receive reasonable compensation for services the trustee provides to the [~~ward or incapacitated~~] person for whom the trust is created as the person's trustee.

(a-1) A management trust created for a person who has only a physical disability must provide that the trustee of the trust:

(1) serves without giving a bond; and

(2) is entitled to receive, without the court's approval, reasonable compensation for services the trustee provides to the person as the person's trustee.

(b) A trustee's compensation under Subsection (a)(5) must be:

(1) paid from the management trust's income, principal, or both; and

(2) determined, paid, reduced, and eliminated in the same manner as compensation of a guardian [~~of an estate~~] under Subchapter A, Chapter 1155.

(c) The court creating or modifying a management trust may omit or modify otherwise applicable terms required by Subsection (a), (a-1), or (b) [~~(a)(1) or (2) only~~] if the court is creating the trust for a person who has only a physical disability, or if the court determines that the omission or modification:

(1) is necessary and appropriate for the [~~ward or incapacitated~~] 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 [~~ward or incapacitated~~] person; or [~~and~~]

(2) is in the [~~ward's or incapacitated person's~~] best interests of the person for whom the trust is created.

Derived from Probate Code § 868(a), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 982, § 30, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.066, eff. Jan. 1, 2014.

§ 1301.102. Optional Terms

(a) A management trust created for a ward or incapacitated person may provide that the trustee make a distribution, payment, use, or application of trust funds for the health, education, maintenance, or support of the [~~ward or incapacitated~~] person for whom the trust is created or of another person whom the [~~ward or incapacitated~~] person for whom the trust is created is legally obligated to support:

(1) as necessary and without the intervention of:

(A) a guardian or other representative of the ward; or

(B) a representative of the incapacitated person or person who has only a physical disability; and

(2) to:

(A) the ward's guardian;

(B) a person who has physical custody of the [~~ward or incapacitated~~] person for whom the trust is created or of another person whom the [~~ward or incapacitated~~] person for whom the trust is created is legally obligated to support; or

(C) a person providing a good or service to the [~~ward or incapacitated~~] person for whom the trust is created or to another person whom the [~~ward or incapacitated~~] person for whom the trust is created is legally obligated to support.

(b) The court may include additional provisions in a management trust on the trust's creation or modification under this chapter if the court determines the addition does not conflict with Section 1301.101.

Derived from Probate Code § 868(b), (e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2013, 83rd Leg., ch. 982, § 31, eff. Jan. 1, 2014 and Acts 2013, 83rd Leg., ch. 161, § 6.067, eff. Jan. 1, 2014.

§ 1301.103. Enforceability of Certain Terms

A provision in a management trust created for a ward or incapacitated person that relieves a trustee from a duty or liability imposed by this chapter 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 trust beneficiary.

Derived from Probate Code § 868(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 982, § 32, eff. Jan. 1, 2014.

Subchapter D. Administration of Management Trusts

§ 1301.151. Jurisdiction Over Trust Matters

A court that creates a management trust 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 title.

Derived from Probate Code § 869C.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1301.152. Court's Authority to Discharge Guardian of Estate

On or at any time after the creation of a management trust, 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.

Derived from Probate Code § 868A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1301.153. Investment in Texas Tomorrow Fund

The trustee of a management trust may invest trust funds in the Texas tomorrow fund established by Subchapter F, Chapter 54, Education Code, if the trustee determines that investment is in the best interest of the ward or incapacitated person for whom the trust is created.

Derived from Probate Code § 868(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1301.1535. Initial Accounting by Certain Trustees Required

(a) This section applies only to a trustee of a management trust created 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.

New.

Added by Acts 2013, 83rd Leg., ch. 161, § 6.068, eff. Jan. 1, 2014.

§ 1301.154. Annual Accounting

(a) Except as provided by Subsection (d), the [~~The~~] trustee of a management trust 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 of the estate under this title.

(b) The trustee of a management trust created for a ward 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 title.

(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).

Derived from Probate Code § 871.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (a) amended and (d) added by Acts 2013, 83rd Leg., ch. 161, § 6.069, eff. Jan. 1, 2014. Subsec. (a) amended by Acts 2013, 83rd Leg., ch. 982, § 33, eff. Jan. 1, 2014.

§ 1301.155. Appointment of Successor Trustee

The court may appoint a successor trustee if the trustee of a management trust resigns, becomes ineligible, or is removed.

Derived from Probate Code § 869A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1301.156. Liability of Certain Persons for Conduct Of Trustee

The guardian of the person or of the estate of a ward for whom a management trust is created or the surety on the guardian's bond is not liable for an act or omission of the trustee of the trust.

Derived from Probate Code § 872.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter E. Modification, Revocation, or Termination of Management Trusts

§ 1301.201. Modification or Revocation of Trust

(a) The court may modify or revoke a management trust at any time before the date of the trust's termination.

(b) The following may not revoke a management trust:

(1) the ward for whom the trust is created or the guardian of the ward's estate; [~~or~~]

(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.

Derived from Probate Code § 869.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsection (b) amended by Acts 2013, 83rd Leg., ch. 161, § 6.070, eff. Jan. 1, 2014.

§ 1301.202. Transfer to Pooled Trust Subaccount

(a) If the court determines that it is in the best interests of the [~~a ward or incapacitated~~] person for whom a management trust is created, the court may order the transfer of all property in the management trust to a pooled trust subaccount established in accordance with Chapter 1302.

(a-1) For purposes of a proceeding to determine whether to transfer property from a management trust to a pooled trust subaccount, the court may, but is not required to, appoint an attorney ad litem or guardian ad litem to represent the interests of a person who has only a physical disability for whom the management trust was created.

(b) The transfer of property from the management trust to the pooled trust subaccount 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 [~~ward's or incapacitated person's~~] eligibility for medical assistance under Chapter 32, Human Resources Code.

(c) The court may not allow termination of the management trust from which property is transferred under this section until all of the property in the management trust has been transferred to the pooled trust subaccount.

Derived from Probate Code § 868C.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Subsec. (a-1) added by Acts 2013, 83rd Leg., ch. 982, § 34, eff. Jan. 1, 2014. Subsecs. (a) and (b) amended by Acts 2013, 83rd Leg., ch. 161, § 6.071, eff. Jan. 1, 2014.

§ 1301.203. Termination of Trust

(a) If the [~~ward or incapacitated~~] person for whom a management trust is created is a minor, the trust terminates on:

(1) the earlier of:

(A) the [~~ward's or incapacitated~~] person's death; or

(B) the [~~ward's or incapacitated~~] person's 18th birthday; or

(2) the date provided by court order, which may not be later than the [~~ward's or incapacitated~~] person's 25th birthday.

(b) If the [~~ward or incapacitated~~] person for whom a management trust is created is not a minor, the trust terminates [~~on~~]:

(1) according to the terms of the trust;

(2) on the date the court determines that continuing the trust is no longer in the [~~ward's or incapacitated~~] person's best interests, subject to Section 1301.202(c); or

(3) on [~~(2)~~] the [~~ward's or incapacitated~~] person's death.

Derived from Probate Code § 870.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.072, eff. Jan. 1, 2014.

§ 1301.204. Distribution of Trust Property

(a) Unless otherwise provided by the court and except as provided by Subsection (b), the trustee of a management trust shall:

(1) prepare a final account in the same form and manner that is required of a guardian under Sections 1204.101 and 1204.102; and

(2) on court approval, distribute the principal or any undistributed income of the trust to:

(A) the ward or incapacitated person when the trust terminates on the trust's own terms;

(B) the successor trustee on appointment of a successor trustee; or

(C) 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). The trustee shall distribute the principal and any undistributed income of the trust in the manner provided by Subsection (a)(2) for a trust the beneficiary of which is a ward or incapacitated person.

Derived from Probate Code § 873.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.073, eff. Jan. 1, 2014.

Chapter 1302. Pooled Trust Subaccounts

§ 1302.001. Definitions
§ 1302.002. Application to Establish Subaccount
§ 1302.003. Appointment of Attorney Ad Litem
§ 1302.004. Establishment of Subaccount
§ 1302.005. Terms of Subaccount
§ 1302.006. Fees and Reporting
§ 1302.007. Jurisdiction Exclusive

Chapter 1302. Pooled Trust Subaccounts

§ 1302.001. Definitions

In this chapter:

(1) "Beneficiary" means a 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.

Derived from Probate Code § 910.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1302.002. Application to Establish Subaccount

The following persons [~~A person interested in the welfare of a minor, a disabled person, or any other incapacitated person~~] may apply to the court for the establishment of a subaccount for the benefit of a [~~the~~] minor[~~, disabled person,~~] 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 [~~as the beneficiary~~].

Derived from Probate Code § 911.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014. Amended by Acts 2013, 83rd Leg., ch. 161, § 6.074, eff. Jan. 1, 2014.

§ 1302.003. Appointment of Attorney Ad Litem

(a) 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 1302.002.

(b) The attorney ad litem is entitled to a reasonable fee and reimbursement of expenses to be paid from the person's property.

Derived from Probate Code § 912.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1302.004. Establishment of Subaccount

If the court finds that it is in the best interests of a person who is the subject of an application under Section 1302.002, 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.

Derived from Probate Code § 913.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1302.005. 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) a court order 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 on the date of termination the beneficiary is deceased.

Derived from Probate Code § 914.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1302.006. Fees and Reporting

(a) The manager or trustee of a pooled trust may:

(1) assess fees against a subaccount of that pooled trust that is established under this chapter, in accordance with the manager's or trustee's standard fee structure; and

(2) pay fees assessed under Subdivision (1) 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.

Derived from Probate Code § 916.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1302.007. 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 be brought only in that court.

Derived from Probate Code § 915.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

SUBTITLE I. OTHER SPECIAL PROCEEDINGS AND ALTERNATIVES TO GUARDIANSHIP

Chapter 1351. Sale of Property of Certain Incapacitated Persons

Subchapter A. Sale of Minor's Interest in Property Without Guardianship

§ 1351.001. Authority to Sell Minor's Interest in Property Without Guardianship

§ 1351.002. Application; Venue

§ 1351.003. Hearing; Requirements for Sale

§ 1351.004. Payment of Sale Proceeds into Court Registry

§ 1351.005. Withdrawal of Sale Proceeds from Registry Not Prohibited

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Subchapter B. Sale of Ward's Property Without Guardianship of the Estate

§ 1351.051. Applicability of Subchapter

§ 1351.052. Authority to Sell Ward's Interest in Property Without Appointment as Guardian of the Estate

§ 1351.053. Application; Venue

§ 1351.054. Hearing

§ 1351.055. Payment of Sale Proceeds into Court Registry

§ 1351.056. Withdrawal of Sale Proceeds from Registry Not Prohibited

§ 1351.057. Disaffirmation of Sale Prohibited

Chapter 1351. Sale of Property of Certain Incapacitated Persons

Subchapter A. Sale of Minor's Interest in Property Without Guardianship

§ 1351.001. Authority to Sell Minor's Interest in Property Without Guardianship

A parent or managing conservator of a minor who is not a ward may apply to the court under this subchapter for an order to sell an interest of the minor in property without being appointed guardian if the net value of the interest does not exceed $100,000.

Derived from Probate Code § 889(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1351.002. Application; Venue

(a) A parent or managing conservator shall apply to the court under oath for the sale of property under this subchapter.

(b) An application must contain:

(1) the minor's name;

(2) a legal description of the real property or a description that identifies the personal property, as applicable;

(3) the minor's interest in the property;

(4) the purchaser's name;

(5) a statement that the sale of the minor's interest in the property is for cash; and

(6) a statement that all money received by the parent or managing conservator shall be used for the minor's use and benefit.

(c) Venue for the application is the same as venue for an application for the appointment of a guardian for a minor.

Derived from Probate Code § 889(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1351.003. Hearing; Requirements for Sale

(a) On receipt of an application under this subchapter, the court shall set the application for hearing on a date not earlier than five days from the date the application was filed.

(b) The court may cause citation to be issued if the court considers citation necessary.

(c) At the time of the hearing, the court shall order the sale of the property if the court is satisfied from the evidence that the sale is in the minor's best interests. The court may require an independent appraisal of the property to be sold to establish the minimum sale price.

Derived from Probate Code §§ 889(c), (d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1351.004. Payment of Sale Proceeds into Court Registry

If the court enters an order of sale of property as provided by this subchapter, the purchaser of the property shall pay the proceeds of the sale belonging to the minor into the court registry.

Derived from Probate Code § 889(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1351.005. Withdrawal of Sale Proceeds from Registry Not Prohibited

This subchapter does not prevent the sale proceeds deposited into the court registry under Section 1351.004 from being withdrawn from the court registry under Chapter 1355.

Derived from Probate Code § 889(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1351.006. Disaffirmation of Sale Prohibited

A minor may not disaffirm a sale of property made in accordance with a court order under this subchapter.

Derived from Probate Code § 889(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Sale of Ward's Property Without Guardianship of the Estate

§ 1351.051. Applicability of Subchapter

This subchapter applies only to a ward who has a guardian of the person but does not have a guardian of the estate.

Derived from Probate Code § 890(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1351.052. Authority to Sell Ward's Interest in Property Without Appointment as Guardian of the Estate

A guardian of the person of a ward may apply to the court under this subchapter for an order to sell an interest in property in the ward's estate without being appointed guardian of the ward's estate if the net value of the interest does not exceed $100,000.

Derived from Probate Code § 890(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1351.053. Application; Venue

(a) An application under this subchapter must:

(1) be under oath; and

(2) contain the information required by Section 1351.002(b).

(b) For purposes of Subsection (a)(2), references in Section 1351.002(b) to:

(1) "minor" are replaced with references to "ward"; and

(2) "parent or managing conservator" are replaced with references to "guardian of the person."

(c) Venue for the application is the same as venue for an application for the appointment of a guardian for the ward.

Derived from Probate Code § 890(b), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1351.054. Hearing

(a) On receipt of an application under this subchapter, the court shall set the application for hearing on a date not earlier than five days from the date the application was filed.

(b) The court may cause citation to be issued if the court considers citation necessary.

(c) The procedures and evidentiary requirements for the hearing are the same as the procedures and evidentiary requirements for a hearing of an application filed under Subchapter A.

Derived from Probate Code §§ 890(d), (e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1351.055. Payment of Sale Proceeds into Court Registry

If the court enters an order of sale of property as provided by this subchapter, the purchaser of the property shall pay the proceeds of the sale belonging to the ward into the court registry.

Derived from Probate Code § 890(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1351.056. Withdrawal of Sale Proceeds from Registry Not Prohibited

This subchapter does not prevent the sale proceeds deposited into the court registry under Section 1351.055 from being withdrawn from the court registry under Chapter 1355.

Derived from Probate Code § 890(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1351.057. Disaffirmation of Sale Prohibited

A ward may not disaffirm a sale of property made in accordance with a court order under this subchapter.

Derived from Probate Code § 890(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1352. Mortgage of Minor's Interest in Residence Homestead

Subchapter A. General Provisions

§ 1352.001. Definitions

Subchapter B. Mortgage of Minor's Interest Without Guardianship

§ 1352.051. Applicability of Subchapter
§ 1352.052. Authority to Mortgage Minor's Interest Without Guardianship
§ 1352.053. Application; Venue
§ 1352.054. Hearing; Requirements to Mortgage Minor's Interest
§ 1352.055. Surety Bond; Discharge of Sureties
§ 1352.056. Use of Proceeds
§ 1352.057. Annual Report
§ 1352.058. Sworn Report of Expenditures
§ 1352.059. Disaffirmation of Home Equity Loan Prohibited

Subchapter C. Mortgage of Minor Ward's Interest Without Guardianship of the Estate

§ 1352.101. Applicability of Subchapter
§ 1352.102. Authority to Mortgage Minor Ward's Interest Without Guardianship of the Estate
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§ 1352.105. Surety Bond; Discharge of Sureties
§ 1352.106. Use of Proceeds
§ 1352.107. Annual Accounting
§ 1352.108. Disaffirmation of Home Equity Loan Prohibited

Chapter 1352. Mortgage of Minor's Interest in Residence Homestead

Subchapter A. General Provisions

§ 1352.001. Definitions

In this chapter:

(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.

Derived from Probate Code §§ 889A(a), 890A(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Mortgage of Minor's Interest Without Guardianship

§ 1352.051. Applicability of Subchapter

This subchapter applies only to a minor who:

(1) is not a ward; and

(2) has an interest in a residence homestead.

Derived from Probate Code § 889A(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.052. Authority to Mortgage Minor's Interest Without Guardianship

(a) If the net value of a minor's interest in a residence homestead does not exceed $100,000, a parent, subject to Subsection (b), or managing conservator of the minor may apply to the court under this subchapter for an order authorizing the parent or managing conservator to receive on the minor's behalf, without being appointed guardian, an extension of credit that is secured wholly or partly by a lien on the homestead.

(b) A parent of a minor may file an application under this subchapter only if the parent has a homestead interest in the property that is the subject of the application.

Derived from Probate Code §§ 889A(b), (j).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.053. Application; Venue

(a) A parent or managing conservator shall apply to the court under oath for the authority to encumber the residence homestead as provided by this subchapter.

(b) The application must contain:

(1) the minor's name and address;

(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 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 subchapter shall be used in a manner that is for the minor's benefit.

(c) Venue for the application is the same as venue for an application for the appointment of a guardian for a minor.

Derived from Probate Code § 889A(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.054. Hearing; Requirements to Mortgage Minor's Interest

(a) On receipt of an application under this subchapter, the court shall set the application for hearing on a date not earlier than the fifth day after the date the application is filed.

(b) The court may cause citation to be issued if the court considers citation necessary.

(c) At the time of the hearing, the court, on approval of the surety bond required by Section 1352.055, 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:

(1) for a purpose described by Section 1352.056(1) or (2); and

(2) in the minor's best interests.

Derived from Probate Code §§ 889A(d), (f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.055. Surety Bond; Discharge of Sureties

(a) Before a hearing under Section 1352.054 is held, the parent or managing conservator shall file with the county clerk a surety bond. The bond must be:

(1) in an amount at least equal to two times the amount of the proposed home equity loan;

(2) payable to and approved by the court; and

(3) 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 Section 1352.056; and

(B) making payments on the minor's behalf toward the outstanding balance of the home equity loan.

(b) After the first anniversary of the date a parent or managing conservator executes a home equity loan authorized under this subchapter, 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 loan's outstanding balance.

(c) The court may not discharge the person's sureties from all further liability under a surety bond until the court:

(1) approves the filing of the parent's or managing conservator's reports required under Sections 1352.057 and 1352.058;

(2) finds that the parent or managing conservator used loan proceeds resulting from the minor's interest solely for the purposes authorized by Section 1352.056; and

(3) is presented with satisfactory evidence that the home equity loan has been repaid and is no longer considered an outstanding obligation.

Derived from Probate Code § 889A(e), (h), (i).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.056. Use Of Proceeds

Proceeds of a home equity loan that is the subject of an application under Section 1352.053 that are attributable to the minor's interest may be spent only to:

(1) make improvements to the homestead;

(2) pay for the minor's education or medical expenses; or

(3) pay the loan's outstanding balance.

Derived from Probate Code § 889A(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.057. Annual Report

A parent or managing conservator executing a home equity loan on a minor's behalf under this subchapter shall file an annual report with the court regarding the transaction.

Derived from Probate Code § 889A(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.058. Sworn Report of Expenditures

When the parent or managing conservator has spent the proceeds of a home equity loan authorized under this subchapter, the parent or managing conservator shall file with the county clerk a sworn report accounting for the proceeds.

Derived from Probate Code § 889A(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.059. Disaffirmation of Home Equity Loan Prohibited

A minor may not disaffirm a home equity loan authorized by the court under this subchapter.

Derived from Probate Code § 889A(k).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Mortgage of Minor Ward's Interest Without Guardianship of the Estate

§ 1352.101. Applicability of Subchapter

This subchapter applies only to a minor ward who:

(1) has a guardian of the person but does not have a guardian of the estate; and

(2) has an interest in a residence homestead.

Derived from Probate Code § 890A(b), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.102. Authority to Mortgage Minor Ward's Interest Without Guardianship of the Estate

If the net value of a minor ward's interest in a residence homestead does not exceed $100,000, the guardian of the person of the ward may apply to the court under this subchapter for an order authorizing the guardian to receive on the ward's behalf an extension of credit that is secured wholly or partly by a lien on the homestead.

Derived from Probate Code § 890A(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.103. Application; Venue

(a) An application under this subchapter must contain the information required by Section 1352.053(b).

(b) For purposes of Subsection (a), references in Section 1352.053(b) to "parent or managing conservator" are replaced with references to "guardian of the person."

(c) Venue for the application is the same as venue for an application for the appointment of a guardian for a ward.

Derived from Probate Code § 890A(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.104. Hearing; Requirements to Mortgage Minor Ward's Interest

(a) On receipt of an application under this subchapter, the court shall set the application for hearing on a date not earlier than the fifth day after the date the application is filed.

(b) The court may cause citation to be issued if the court considers citation necessary.

(c) The procedures and evidentiary requirements for a hearing of an application filed under this subchapter are the same as the procedures and evidentiary requirements for a hearing of an application filed under Subchapter B.

(d) At the time of the hearing, the court, on approval of the surety bond required by Section 1352.105, 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:

(1) for a purpose described by Section 1352.106(1) or (2); and

(2) in the minor ward's best interests.

Derived from Probate Code § 890A(e), (g), (h).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.105. Surety Bond; Discharge of Sureties

(a) Before a hearing under Section 1352.104 is held, the guardian of the person 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 file a surety bond under Section 1352.055.

(b) The court may not discharge the guardian's sureties from all further liability under a bond required by this section or another provision of this title until the court:

(1) finds that the guardian used loan proceeds resulting from the minor ward's interest solely for the purposes authorized by Section 1352.106; and

(2) is presented with satisfactory evidence that the home equity loan has been repaid and is no longer considered an outstanding obligation.

Derived from Probate Code § 890A(f), (j).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.106. Use Of Proceeds

Proceeds of a home equity loan that is the subject of an application under Section 1352.102 that are attributable to the minor ward's interest may be spent only to:

(1) make improvements to the homestead;

(2) pay for the ward's education or maintenance expenses; or

(3) pay the loan's outstanding balance.

Derived from Probate Code § 890A(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.107. Annual Accounting

A guardian of the person executing a home equity loan on a minor ward's behalf must account for the transaction, including the expenditure of the loan proceeds, in the annual account required by Subchapter A, Chapter 1163.

Derived from Probate Code § 890A(i).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1352.108. Disaffirmation of Home Equity Loan Prohibited

A minor ward may not disaffirm a home equity loan authorized by the court under this subchapter.

Derived from Probate Code § 890A(k).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1353. Management and Control of Incapacitated Spouse's Property

Subchapter A. Appointment of Community Administrator or Guardian of the Estate

§ 1353.001. Effect of Subchapter

§ 1353.002. Spouse as Community Administrator

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Chapter 1353. Management and Control of Incapacitated Spouse's Property

Subchapter A. Appointment of Community Administrator or Guardian of the Estate

§ 1353.001. Effect of Subchapter

(a) The manner in which community property is administered under this subchapter does not affect:

(1) the duties and obligations between spouses, including the duty to support the other spouse; and

(2) the rights of any creditor of either spouse.

(b) This subchapter does not partition community property between an incapacitated spouse and a spouse who is not incapacitated.

Derived from Probate Code § 883(e), (f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1353.002. Spouse as Community Administrator

(a) Except as provided by Section 1353.004, when a spouse is judicially declared to be incapacitated, 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, including the part of the community estate that the incapacitated spouse legally has the power to manage in the absence of the incapacity, as community administrator without an administration.

(b) The spouse who is not incapacitated is presumed to be suitable and qualified to serve as community administrator.

Derived from Probate Code § 883(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1353.003. Appointment of Guardian of the Estate to Administer Separate Property

(a) Except as provided by Section 1353.004, when a spouse who owns separate property is judicially declared to be incapacitated, the court shall appoint the other spouse or another person or entity, in the order of precedence established under Subchapter C, Chapter 1104, as guardian of the estate to administer only the separate property of the incapacitated spouse.

(b) The qualification of a guardian of the estate of the separate property of an incapacitated spouse under Subsection (a) does not deprive the spouse who is not incapacitated of the right to manage, control, and dispose of the entire community estate as provided by this title.

Derived from Probate Code § 883(a), (b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1353.004. Appointment of Guardian of the Estate Under Certain Circumstances

(a) This section applies only if:

(1) a spouse who is not incapacitated is removed as community administrator; or

(2) the court finds that the spouse who is not incapacitated:

(A) would be disqualified to serve as guardian under Subchapter H, Chapter 1104; or

(B) is not suitable to serve as the community administrator for any other reason.

(b) The court shall appoint a guardian of the estate for the incapacitated spouse if the court:

(1) has not appointed a guardian of the estate under Section 1353.003(a); or

(2) has appointed the spouse who is not incapacitated as the guardian of the estate under Section 1353.003(a).

(c) After considering the financial circumstances of the spouses and any other relevant factors, the court may order the spouse who is not incapacitated to deliver to the guardian of the estate of the incapacitated spouse not more than one-half of the community property that is subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code.

(d) The court shall authorize the guardian of the estate of the incapacitated spouse to administer:

(1) any separate property of the incapacitated spouse;

(2) any community property that is subject to the incapacitated spouse's sole management, control, and disposition under Section 3.102, Family Code;

(3) any community property delivered to the guardian of the estate under Subsection (c); and

(4) any income earned on property described by this section.

(e) Community property administered by a guardian of the estate under Subsection (d) 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.

Derived from Probate Code § 883(c), (g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1353.005. Administration of Certain Property by Non-Incapacitated Spouse

(a) On a person's removal as community administrator or on qualification of a guardian of the estate of the person's incapacitated spouse under Section 1353.004, 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) either:

(A) any community property subject to the spouses' joint management, control, and disposition under Section 3.102, Family Code; or

(B) if the person is required to deliver a portion of that community property described by Paragraph (A) to the guardian of the estate of the person's incapacitated spouse under Section 1353.004(c), only the portion of the community property remaining after delivery; and

(4) any income earned on property described by this section the person is authorized to administer.

(b) Community property administered under this section by a 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.

Derived from Probate Code § 883(d), (g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1353.006. Effect of Court Order on Creditors' Claims

A court order that directs the administration of community property under Section 1353.004 or 1353.005 does not affect the enforceability of a creditor's claim existing on the date the court renders the order.

Derived from Probate Code § 883(h).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Duties of Community Administrators and Guardians of the Estate

§ 1353.051. Inventory and Appraisement 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 appraisement 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 by this subsection.

(b) An inventory and appraisement ordered under this section must be:

(1) prepared in the same form and manner that is required of a guardian under Section 1154.051; and

(2) filed not later than the 90th day after the date the order is issued.

Derived from Probate Code § 883B(a), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1353.052. Account by Community Administrator

(a) At any time after the expiration of 15 months after the date 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 account 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 by this subsection.

(b) An account ordered under Subsection (a) must be:

(1) prepared in the same form and manner that is required of a guardian under Subchapter A, Chapter 1163, except that the community administrator is not required to file the account annually with the county clerk; and

(2) filed not later than the 60th day after the date the order is issued.

(c) After an initial account 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 accounts at intervals of not less than 12 months.

Derived from Probate Code § 883B(b), (d), (e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1353.053. Disclosure of Certain Lawsuits to the Court by Community Administrator

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 1353.002(a) 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.

Derived from Probate Code § 884A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1353.054. Delivery of Community Property by Guardian of the Estate to Community Administrator

A guardian of the estate of an incapacitated married person who, as guardian, is administering community property as part of the ward's estate, shall deliver on demand the community property to the spouse who is not incapacitated if the spouse becomes community administrator under Section 1353.002(a).

Derived from Probate Code § 884.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Removal or Termination of Powers of Community Administrator

§ 1353.101. Grounds for Removal of Community Administrator

A court may remove a community administrator if:

(1) the community administrator fails to comply with a court order for:

(A) an inventory and appraisement under Section 1353.051; or

(B) an account or subsequent account under Section 1353.052;

(2) sufficient grounds appear to support belief that the community administrator has misapplied or embezzled, or is about to misapply or embezzle, all or part of the property committed to the community administrator's care;

(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:

(A) becomes an incapacitated person;

(B) is sentenced to the penitentiary; or

(C) for any other reason becomes legally incapacitated from properly performing the community administrator's fiduciary duties.

Derived from Probate Code § 883C(A).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1353.102. Procedure for Removal of Community Administrator

(a) A court may remove a community administrator on the court's own motion or on the motion of an interested person, after the community administrator has been cited by personal service to answer at a time and place specified in the notice.

(b) The removal order must:

(1) state the cause of removal; and

(2) direct 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.

Derived from Probate Code § 883C(a), (b), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1353.103. Termination of Community Administrator's Powers on Recovery of Capacity

The special powers of management, control, and disposition vested in the community administrator by this title terminate when a court of competent jurisdiction by decree finds that the mental capacity of the incapacitated spouse has been recovered.

Derived from Probate Code § 883A.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Appointment of Attorney Ad Litem

§ 1353.151. 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 chapter.

(b) The attorney ad litem may demand from the community administrator an account or inventory and appraisement 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 the community administrator receives the demand.

(d) An account or inventory and appraisement returned under this section must be prepared in the form and manner required by the attorney ad litem. The attorney ad litem may require the community administrator to file the account or inventory and appraisement with the court.

Derived from Probate Code § 883D.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1354. Receivership for Estates of Certain Incapacitated Persons

§ 1354.001. Appointment of Receiver
§ 1354.002. Bond
§ 1354.003. Powers and Duties of Receiver
§ 1354.004. Expenditures by Receiver
§ 1354.005. Use of Excess Estate Assets
§ 1354.006. Receiver's Expenses, Account, and Compensation
§ 1354.007. Closing Receivership; Notice
§ 1354.008. Discharge of Receiver
§ 1354.009. Record

Chapter 1354. Receivership for Estates of Certain Incapacitated Persons

§ 1354.001. Appointment of Receiver

(a) A judge of a probate court in the county in which an incapacitated person resides or in which the incapacitated person's endangered estate is located shall, with or without application, enter an order appointing a suitable person as receiver to take charge of the estate if:

(1) it appears that all or part of the estate of the incapacitated person is in danger of injury, loss, or waste and in need of a guardianship or other representative;

(2) there is no guardian of the estate who is qualified in this state; and

(3) a guardian is not needed.

(b) The court order must specify the duties and powers of the receiver the judge considers necessary for the protection, conservation, and preservation of the estate.

(c) The clerk shall enter an order issued under this section in the judge's guardianship docket.

Derived from Probate Code § 885(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1354.002. Bond

(a) A court order issued under Section 1354.001 shall require a receiver appointed under that section to give a bond, as in ordinary receiverships, in an amount the judge considers necessary to protect the estate.

(b) The person appointed as receiver shall:

(1) make and submit a bond for the judge's approval; and

(2) file the bond, when approved, with the clerk.

Derived from Probate Code § 885(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1354.003. Powers and Duties of Receiver

The person appointed as receiver shall take charge of the endangered estate as provided by the powers and duties vested in the person by the order of appointment and subsequent orders of the judge.

Derived from Probate Code § 885(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1354.004. Expenditures by Receiver

(a) If, while the receivership is pending, the needs of the incapacitated person require the use of the income or corpus of the estate for the education, clothing, or subsistence of the person, the judge shall, with or without application, enter an order in the judge's guardianship docket that appropriates an amount of income or corpus sufficient for that purpose.

(b) The receiver shall use the amount appropriated by the court to pay a claim for the education, clothing, or subsistence of the incapacitated person that is presented to the judge for approval and ordered by the judge to be paid.

Derived from Probate Code § 885(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1354.005. Use of Excess Estate Assets

(a) A receiver who, while the receivership is pending, has possession of an amount of money belonging to the incapacitated person in excess of the amount needed for current necessities and expenses may, under direction of the judge, invest, lend, or contribute all or part of the excess money in the manner, for the security, and on the terms provided by this title for investments, loans, or contributions by guardians.

(b) The receiver shall report to the judge all transactions made under this section in the same manner that a report is required of a guardian under this title.

Derived from Probate Code § 885(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1354.006. Receiver's Expenses, Account, and Compensation

(a) All necessary expenses incurred by a receiver in administering the estate may be reported monthly to the judge in the form of a sworn statement of account that includes a report of:

(1) the receiver's acts;

(2) the condition of the estate;

(3) the status of the threatened danger to the estate; and

(4) the progress made toward abatement of the danger.

(b) 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 reimbursement of the receiver from the estate funds in the receiver's possession.

(c) A receiver shall be compensated for services provided in the receiver's official capacity in the same manner and amount provided by this title for similar services provided by a guardian of an estate.

Derived from Probate Code § 885(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1354.007. Closing Receivership; Notice

(a) 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:

(1) report to the judge; and

(2) file with the clerk a full and final sworn account of:

(A) all property of the estate received by the receiver;

(B) all property of the estate in the receiver's possession while the receivership was pending;

(C) all sums paid out;

(D) all acts performed by the receiver with respect to the estate; and

(E) all property of the estate remaining in the receiver's possession on the date of the report.

(b) On the filing of the report, the clerk shall:

(1) issue and cause to be posted a notice to all persons interested in the welfare of the incapacitated person; and

(2) give personal notice to the person who has custody of the 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.

Derived from Probate Code § 885(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1354.008. Discharge of Receiver

(a) 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:

(1) enter an order finding that the danger of injury, loss, or waste to the estate has abated; and

(2) direct the receiver to deliver the estate to:

(A) the person from whom the receiver took possession as receiver;

(B) the person who has custody of the incapacitated person; or

(C) another person the judge finds is entitled to possession of the estate.

(b) A person who receives the estate under Subsection (a) shall execute and file with the clerk an appropriate receipt for the estate that is delivered to the person.

(c) The judge's order shall discharge the receivership and the sureties on the receiver's bond.

(d) If the judge is not satisfied that the danger has abated, or is not satisfied with the receiver's report and account, the judge shall enter an order continuing the receivership in effect until the judge is satisfied that the danger has abated or is satisfied with the report and account.

Derived from Probate Code § 885(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1354.009. Record

An order, bond, report, account, or notice in a receivership proceeding must be recorded in the judge's guardianship docket.

Derived from Probate Code § 885(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1355. Payment of Certain Claims Without Guardianship

Subchapter A. Payment of Claims to Certain Incapacitated Persons and Former Wards

§ 1355.001. Payment of Claims to Resident Creditor
§ 1355.002. Payment of Claims to Nonresident Creditor

Subchapter B. Administration of Money

§ 1355.051. Investment of Money by Clerk
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Subchapter C. Withdrawal of Money

§ 1355.101. Applicability of Subchapter
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§ 1355.104. Custodian's Report
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Subchapter D. Use of Money by Eleemosynary Institution for Benefit of Resident

§ 1355.151. Applicability of Subchapter
§ 1355.152. Payment of Money to Institution
§ 1355.153. Deposit of Money in Trust
§ 1355.154. Death of Resident or Depletion of Money

Chapter 1355. Payment of Certain Claims Without Guardianship

Subchapter A. Payment of Claims to Certain Incapacitated Persons and Former Wards

§ 1355.001. Payment of Claims to Resident Creditor

(a) In this section, "resident creditor" means a person who:

(1) is a resident of this state; and

(2) 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.

(b) This section applies only to a resident creditor who:

(1) is an incapacitated person or the former ward of a guardianship terminated under Chapter 1204; and

(2) does not have a legal guardian of the creditor's estate.

(c) A debtor who owes money to a resident creditor to whom this section applies may pay the money to the county clerk of the county in which the creditor resides to the account of the creditor. When making a payment under this subsection, a debtor shall give to the clerk:

(1) the creditor's name;

(2) the creditor's social security identification number;

(3) the nature of the creditor's disability;

(4) the creditor's post office address; and

(5) if the creditor is a minor, the creditor's age.

(d) The receipt for the money signed by the county clerk is binding on the resident creditor as of the date of receipt and to the extent of the payment.

(e) The county clerk shall:

(1) by letter mailed to the address given under Subsection (c)(4), apprise the resident creditor that the deposit was made; and

(2) on receipt of the payment, bring the payment to the court's attention.

Derived from Probate Code § 887(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1355.002. Payment of Claims to Nonresident Creditor

(a) In this section, "creditor" means a person who is entitled to money in an amount that is not more than $100,000 owing as a result of transactions in this state, the right to which is liquidated and is uncontested in any pending lawsuit in this state.

(b) This section applies only to a creditor who is 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 Chapter 1204 who has no legal guardian qualified in this state.

(c) A debtor in this state who owes money to a creditor to whom this section applies may pay the money:

(1) to the creditor's guardian qualified in the domiciliary jurisdiction; or

(2) to the county clerk of:

(A) any county in this state in which real property owned by the creditor is located; or

(B) if the creditor is not known to own real property in this state, the county in which the debtor resides.

(d) A payment made under this section is for the creditor's account and for the creditor's use and benefit.

(e) A receipt for payment signed by the county clerk is binding on the creditor as of the date and to the extent of payment if the receipt states:

(1) the creditor's name; and

(2) the creditor's post office address, if the address is known.

(f) A county clerk who receives a payment under Subsection (c) shall handle the money in the same manner as provided for a payment to the account of a resident creditor under Sections 1355.001, 1355.051, 1355.052, 1355.102, 1355.103, and 1355.104. Those sections 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 creditor to whom this section applies.

Derived from Probate Code § 887(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Administration of Money

§ 1355.051. Investment of Money by Clerk

(a) On receipt of a payment under Section 1355.001, the county clerk shall invest the money as authorized under this title under court order in the name and for the account of the minor or other person entitled to the money.

(b) The county clerk shall credit any increase, dividend, or income from an investment made under this chapter to the account of the minor or other person entitled to the investment.

Derived from Probate Code § 887(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1355.052. Annual Report

Not later than March 1 of each year, the court clerk shall make a written report to the court of the status of an investment made by the county clerk under Section 1355.051. The report must contain:

(1) the amount of the original investment or the value of the investment at the last annual report, whichever is later;

(2) any increase, dividend, or income from the 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.

Derived from Probate Code § 887(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter C. Withdrawal of Money

§ 1355.101. Applicability of Subchapter

Except as provided by Section 1355.105, this subchapter applies only to a resident creditor to whom Section 1355.001 applies.

New.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1355.102. Custodian of Resident Creditor

(a) The following may serve as custodian of a resident creditor under this section:

(1) a parent of the creditor;

(2) the unestranged spouse of the creditor; or

(3) if there is no spouse and both of the creditor's parents are dead or nonresidents of this state, the person who:

(A) resides in this state; and

(B) has actual custody of the creditor.

(b) An unestranged spouse residing in this state shall be given priority over a creditor's parent to serve as custodian under this subchapter.

Derived from Probate Code § 887(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1355.103. Withdrawal of Money by Custodian; Bond

(a) A resident creditor's custodian may withdraw the money from the court clerk for the creditor's use and benefit if the custodian files with the clerk:

(1) a written application; and

(2) a bond approved by the county judge.

(b) A custodian's bond must be:

(1) twice the amount of the money to be withdrawn by the custodian;

(2) payable to the judge or the judge's successors in office; and

(3) conditioned that the custodian will:

(A) use the money for the resident creditor's benefit under the court's direction; and

(B) when legally required, faithfully account to the resident creditor and the creditor's heirs or legal representatives for the money and any increase to the money on:

(i) the removal of the creditor's disability;

(ii) the creditor's death; or

(iii) the appointment of a guardian for the creditor.

(c) A custodian may not receive a fee or commission for taking care of, handling, or spending money withdrawn by the custodian.

Derived from Probate Code § 887(c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1355.104. Custodian's Report

(a) The custodian shall file with the county clerk a sworn report of the custodian's accounting when the custodian has:

(1) spent the money in accordance with the court's directions; or

(2) otherwise complied with the terms of the custodian's bond by accounting for the money and any increase in the money.

(b) The filing of a 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.

(c) The court shall satisfy itself that the custodian's report is true and correct and may require proof as in other cases.

Derived from Probate Code § 887(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1355.105. Withdrawal of Money by Creditor or Creditor's Heir or Representative

(a) On presentation to the court clerk of an order of a county or probate court of the county in which the money is held, money that is not withdrawn by an authorized person as provided by this chapter may be withdrawn by:

(1) the creditor, after termination of the creditor's disability;

(2) a subsequent personal representative of the creditor; or

(3) the creditor's heirs.

(b) A withdrawal under Subsection (a) may be made at any time and without a special bond for that purpose.

(c) The order presented under Subsection (a) must direct the court clerk to deliver the money to the creditor, the creditor's personal representative, or the creditor's heirs named in the order.

(d) Before the court may issue an order under this section, the person's identity and credentials must be proved to the court's satisfaction.

Derived from Probate Code § 887(f).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter D. Use of Money by Eleemosynary Institution for Benefit of Resident

§ 1355.151. Applicability of Subchapter

This subchapter applies only to money of a resident of an eleemosynary institution of this state that is on deposit in a court registry and does not exceed $10,000.

Derived from Probate Code § 887(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1355.152. Payment of Money to Institution

(a) The judge of a county court, district court, or other court of this state may by order direct the court clerk to pay money to an eleemosynary institution of this state for the use and benefit of a resident of the institution if the court receives satisfactory proof by affidavit or otherwise that the resident:

(1) is a person who has a mental disability, an incapacitated person, or a person whose mental illness or mental incapacity renders the person incapable of caring for himself or herself and of managing the person's property and financial affairs; and

(2) has no known legal guardian appointed for the resident's estate.

(b) The affidavit under Subsection (a) may be executed by the superintendent, business manager, or field representative of the institution of which the person is a resident.

(c) The institution to which the payment is made under Subsection (a) may not be required to give bond or security for receiving the money from the court registry.

(d) The receipt from the institution for a payment, or the canceled check or warrant by which the payment was made:

(1) is sufficient evidence of the disposition of the payment; and

(2) relieves the court clerk from further responsibility for the disposition.

Derived from Probate Code § 887(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1355.153. Deposit of Money in Trust

(a) On receipt of money under this subchapter, an eleemosynary institution shall deposit all of the money received to the resident's trust account.

(b) Money deposited in a trust account may be used only:

(1) 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 money by a resident; or

(2) by the responsible officer of the institution, for the resident's use and benefit.

Derived from Probate Code § 887(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1355.154. Death of Resident or Depletion of Money

(a) After the expenditure of all money in a resident's trust account, or after the resident's death, the responsible officer of the eleemosynary institution shall furnish a statement of expenditures of the money to the resident's nearest relative who is entitled to receive the statement.

(b) A copy of the statement described by Subsection (a) shall be filed with the court that first granted the order to dispose of the money in accordance with this title.

(c) The balance of a trust account of a resident of an eleemosynary institution who dies may be applied to:

(1) the resident's burial expenses; or

(2) the care, support, and treatment account of the resident at the institution.

Derived from Probate Code § 887(g).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Chapter 1356. Court Approval of Certain Arts and Entertainment, Advertisement, and Sports Contracts

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Chapter 1356. Court Approval of Certain Arts and Entertainment, Advertisement, and Sports Contracts

Subchapter A. General Provisions

§ 1356.001. Definitions

In this chapter:

(1) "Advertise" means to solicit or induce the purchase of consumer goods or services through electronic or print media, including:

(A) radio;

(B) television;

(C) computer; or

(D) direct mail.

(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 provides similar 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 provide 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:

(i) a motion picture;

(ii) television;

(iii) the production of phonograph records; or

(iv) theater.

(5) "Consumer goods" means goods used or bought for use primarily for personal, family, or household purposes.

(6) "Net earnings," with respect to a minor, means the total amount to be received for the services of the minor under a contract less:

(A) the amount required by law to be paid as taxes to any government or governmental agency;

(B) a reasonable amount to be spent for the support, care, maintenance, education, and training of the minor;

(C) fees and expenses paid in connection with procuring the contract or maintaining employment of the minor; and

(D) attorney's fees for services provided in connection with the contract or any other business of the minor.

(7) "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.

Derived from Probate Code §§ 901, 904(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1356.002. Duration of Contract of a Minor

This chapter may not be construed to authorize a contract that binds a minor after the seventh anniversary of the date of the contract.

Derived from Probate Code § 902.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

Subchapter B. Court Action Regarding Certain Contracts

§ 1356.051. Approval of Certain Contracts of a Minor

(a) On the petition of the guardian of the estate of a minor, a court may issue an order approving for purposes of this chapter an arts and entertainment contract, advertisement contract, or sports contract that is entered into by the minor.

(b) Approval of a contract under this section extends to the contract as a whole and each term and provision of the contract, including any optional or conditional contract provision relating to the extension or termination of the contract's term.

(c) A court may withhold approval of a contract in which part of the minor's net earnings will be set aside as provided by Section 1356.054 until the guardian of the minor's estate executes and files with the court written consent to the issuance of the order.

Derived from Probate Code § 903(a), (b), (c).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1356.052. Notice Required

Before the court may approve a contract under Section 1356.051, the guardian of the minor's estate must provide the other party to the contract notice of the petition and an opportunity to request a hearing in the manner provided by the court.

Derived from Probate Code § 903(a).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1356.053. Necessary Parties to Proceeding

Each parent of a minor for whom a proceeding is brought under Section 1356.051 is a necessary party to the proceeding.

Derived from Probate Code § 903(e).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1356.054. Set-Aside and Preservation of Portion Of Net Earnings

(a) Notwithstanding any other law, in an order issued under Section 1356.051, the court may require 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 1301.053 or 1301.054 or a similar trust created under the laws of another state.

(b) The amount to be set aside under this section must be reasonable as determined by the court.

Derived from Probate Code § 904(b).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1356.055. Valid Contract Not Voidable

A contract approved under Section 1356.051 that is otherwise valid is not voidable solely on the ground that it was entered into by a person during the age of minority.

Derived from Probate Code § 903(d).

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.

§ 1356.056. 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 the appointment would be in the best interest of the minor.

Derived from Probate Code § 905.

Added by Acts 2011, 82nd Leg., ch. 823, § 1.02, eff. Jan. 1, 2014.