ESTATES CODE
TITLE 1. GENERAL PROVISIONS
CHAPTER 21. PURPOSE AND CONSTRUCTION

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 1296, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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 X, Title 2, and Subtitles Y and Z, Title 3, is to make the law encompassed by this code, except Subtitle X, 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(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and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 X, 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 2.01, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.001, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication

of the current statutes, see H.B. 2419 and S.B. 1296, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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, Title 2, or Subtitle Y or Z, Title 3.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 2.02, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.002, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 1296, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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, 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, 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, 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 2.03, eff. January 1, 2014.
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.003, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 1296, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 21.005. APPLICABILITY OF CERTAIN LAWS. (a) Notwithstanding Section 21.002(b) of this code and Section 311.002, Government Code:

(1) Section 311.032(c), Government Code, applies to Subtitle X, 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 X, 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 2.04, eff. January 1, 2014.
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 1, eff.

January 1, 2014.

Sec. 21.006. APPLICABILITY TO PROBATE PROCEEDINGS. The procedure prescribed by Title 2 governs all probate proceedings.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 22. DEFINITIONS

Sec. 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 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 applies in that title.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.005, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 22.009. DEVISEE. "Devisee" includes a legatee.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 22.011. DOCKET. "Docket" means the probate docket.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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. The term includes an independent administrator.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.006, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 22.020. LEGACY. "Legacy" includes a gift or devise of real or personal property made by a will.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 22.021. LEGATEE. "Legatee" includes a person who is entitled to a legacy under a will.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 462, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 22.032. SURETY. "Surety" includes a personal surety and a corporate surety.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 22.033. WARD. "Ward" means a person for whom a guardian has been appointed.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE A. SCOPE, JURISDICTION, VENUE, AND COURTS

CHAPTER 31. GENERAL PROVISIONS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 1351 (S.B. 408), Sec. 13(a), eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 1351 (S.B. 408), Sec. 13(a), eff. January 1, 2014.

CHAPTER 32. JURISDICTION

Sec. 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) 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 1351 (S.B. 408), Sec. 13(a), eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 2, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 1351 (S.B. 408), Sec. 13(a), eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 1351 (S.B. 408), Sec. 13(a), eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.02, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 1351 (S.B. 408), Sec. 13(a), eff. January 1, 2014.

Sec. 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 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 1351 (S.B. 408), Sec. 13(a), eff. January 1, 2014.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.007, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 1351 (S.B. 408), Sec. 13(a), eff. January 1, 2014.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 3, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 1351 (S.B. 408), Sec. 13(a), eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.03, eff. January 1, 2014.

CHAPTER 33. VENUE

SUBCHAPTER A. VENUE FOR CERTAIN PROCEEDINGS

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.04, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.04, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.04, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.04, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.04, eff. January 1, 2014.

SUBCHAPTER B. DETERMINATION OF VENUE

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.04, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.04, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.04, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.04, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.04, eff. January 1, 2014.

SUBCHAPTER C. TRANSFER OF PROBATE PROCEEDING

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.04, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.04, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.04, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.04, eff. January 1, 2014.

CHAPTER 34. MATTERS RELATING TO CERTAIN OTHER TYPES OF PROCEEDINGS

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 1296, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 34.001. 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, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

Added by Acts 1983, 68th Leg., p. 5228, ch. 958, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1999, 76th Leg., ch. 1431, Sec. 1, eff.

Sept. 1, 1999; Acts 2003, 78th Leg., ch. 204, Sec. 3.06, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1351 (S.B. 408), Sec. 12(c), eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 1.03, eff. January 1, 2014.
Transferred, redesignated and amended from Probate Code, Art/Sec 5B by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.009, eff. January 1, 2014.

Sec. 34.002. 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.

(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):

(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 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) against the estate in the probate proceeding.

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

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

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

Added by Acts 1999, 76th Leg., ch. 1481, Sec. 36, eff. Sept. 1, 1999. Transferred, redesignated and amended from Probate Code, Art/Sec 5C by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.009, eff. January 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

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. METHODS OF SERVING CITATION OR NOTICE; PERSONS TO BE SERVED

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. RETURN AND PROOF OF SERVICE OF CITATION OR NOTICE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. ALTERNATIVE MANNER OF ISSUANCE, SERVICE, AND RETURN

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER E. ADDITIONAL NOTICE PROVISIONS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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) the depositions for which the notice was posted may be taken; and

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

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 4, eff. January 1, 2014.

CHAPTER 52. FILING AND RECORDKEEPING

SUBCHAPTER A. RECORDKEEPING REQUIREMENTS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.001, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. FILES; INDEX

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.05, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 53. OTHER COURT DUTIES AND PROCEDURES

SUBCHAPTER A. ENFORCEMENT OF ORDERS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. COSTS AND SECURITY

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 614 (S.B. 543), Sec. 2.01, eff. January 1, 2014.

SUBCHAPTER C. PROCEDURES FOR PROBATE MATTERS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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;

(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 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 5, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 6, eff. January 1, 2014.

CHAPTER 54. PLEADINGS AND EVIDENCE IN GENERAL

SUBCHAPTER A. PLEADINGS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. EVIDENCE

Sec. 54.051. APPLICABILITY OF CERTAIN RULES RELATING TO WITNESSES AND EVIDENCE. Except as provided by Section 51.203, the Texas Rules of Evidence apply in a proceeding arising under this title to the extent practicable.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 7, eff.

January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 55. COMPLAINTS AND CONTESTS

SUBCHAPTER A. CONTEST OF PROCEEDINGS IN PROBATE COURT

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. INSTITUTION OF HIGHER EDUCATION OR CHARITABLE ORGANIZATION AS PARTY TO CERTAIN ACTIONS

Sec. 55.051. DEFINITION. In this subchapter, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. MENTAL CAPACITY OF DECEDENT

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. ATTACHMENT OF ESTATE PROPERTY

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER E. SPECIFIC PERFORMANCE OF AGREEMENT TO TRANSFER TITLE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER F. BILL OF REVIEW

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.002, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.003, eff. January 1, 2014.

CHAPTER 56. CHANGE AND RESIGNATION OF RESIDENT AGENT OF PERSONAL REPRESENTATIVE FOR SERVICE OF PROCESS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 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

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. LIABILITY OF ESTATE FOR DEBTS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 102. PROBATE ASSETS: DECEDENT'S HOMESTEAD

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 102.004. LIABILITY OF HOMESTEAD FOR DEBTS. If the decedent was survived by a spouse or minor child, 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 8, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 111. NONPROBATE ASSETS IN GENERAL

SUBCHAPTER A. RIGHT OF SURVIVORSHIP AGREEMENTS BETWEEN JOINT TENANTS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. OTHER PROVISIONS FOR PAYMENT OR TRANSFER OF CERTAIN ASSETS ON DEATH

Sec. 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)).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 9, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 111.053. CREDITOR'S RIGHTS NOT LIMITED. Nothing in this subchapter limits the rights of a creditor under another law of this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 10, eff. January 1, 2014.

CHAPTER 112. COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. COMMUNITY PROPERTY SURVIVORSHIP AGREEMENTS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.06, eff. January 1, 2014.

Sec. 112.053. ADJUDICATION NOT REQUIRED. A community property survivorship agreement that satisfies the requirements of this chapter is effective and enforceable without an adjudication.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. ADJUDICATION TO PROVE COMMUNITY PROPERTY SURVIVORSHIP AGREEMENT

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. OWNERSHIP AND TRANSFER OF COMMUNITY PROPERTY SUBJECT TO AGREEMENT

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER E. THIRD PARTIES DEALING WITH COMMUNITY PROPERTY SUBJECT TO RIGHT OF SURVIVORSHIP

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER F. RIGHTS OF CREDITORS

Sec. 112.251. MULTIPLE-PARTY ACCOUNTS. Chapter 113 governs the rights of creditors with respect to multiple-party accounts, as defined by Section 113.004.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 113. MULTIPLE-PARTY ACCOUNTS
SUBCHAPTER A. GENERAL PROVISIONS

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 1020, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.07, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.08, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. UNIFORM ACCOUNT FORM

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.004, eff. January 1, 2014.

Sec. 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:

_____

_____

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.005, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 1791, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.

SUBCHAPTER C. OWNERSHIP AND OPERATION OF ACCOUNTS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.006(a), eff. January 1, 2014.

SUBCHAPTER D. RIGHTS OF SURVIVORSHIP IN ACCOUNTS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.09, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.006(b), eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER E. PROTECTION OF FINANCIAL INSTITUTIONS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 113.202. PAYMENT OF MULTIPLE-PARTY ACCOUNT. A multiple-party account may be paid, on request, to any one or more of the parties.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER F. RIGHTS OF CREDITORS; PLEDGE OF ACCOUNT

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 121. SURVIVAL REQUIREMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. SURVIVAL REQUIREMENT FOR INTESTATE SUCCESSION AND CERTAIN OTHER PURPOSES

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. SURVIVAL REQUIREMENTS FOR CERTAIN BENEFICIARIES

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. DISTRIBUTION OF CERTAIN PROPERTY ON PERSON'S FAILURE TO SURVIVE FOR REQUIRED PERIOD

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 122. DISCLAIMERS AND ASSIGNMENTS

SUBCHAPTER A. GENERAL PROVISIONS RELATING TO DISCLAIMER

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428 and S.B. 462, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 122.004. DISCLAIMER IRREVOCABLE. A disclaimer that is filed and served as provided by this chapter is irrevocable.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. FORM, FILING, AND NOTICE OF DISCLAIMER

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 122.051. FORM AND CONTENTS. (a) 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.

(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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 689 (H.B. 2621), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.10, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.11, eff. January 1, 2014.

SUBCHAPTER C. EFFECT OF DISCLAIMER

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 122.107. ATTEMPTED DISCLAIMERS BY CERTAIN CHILD SUPPORT 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 689 (H.B. 2621), Sec. 2, eff.

January 1, 2014.

SUBCHAPTER D. PARTIAL DISCLAIMER

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular

Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER E. ASSIGNMENT OF INTEREST

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication

of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 122.204. FAILURE TO COMPLY. Failure to comply with Subchapters A, B, C, and D does not affect an assignment.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 123. DISSOLUTION OF MARRIAGE

SUBCHAPTER A. EFFECT OF DISSOLUTION OF MARRIAGE ON WILL

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. EFFECT OF DISSOLUTION OF MARRIAGE ON CERTAIN NONTESTAMENTARY TRANSFERS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.13, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.14, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.15, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.16, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.17, eff. January 1, 2014.

SUBCHAPTER C. CERTAIN MARRIAGES VOIDABLE AFTER DEATH

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 124. VALUATION AND TAXATION OF ESTATE PROPERTY

SUBCHAPTER A. APPORTIONMENT OF TAXES

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 752, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. SATISFACTION OF CERTAIN PECUNIARY GIFTS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBTITLE D. PROCEEDINGS BEFORE ADMINISTRATION OF ESTATE

CHAPTER 151. EXAMINATION OF DOCUMENTS AND SAFE DEPOSIT BOXES

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 152. EMERGENCY INTERVENTION

SUBCHAPTER A. EMERGENCY INTERVENTION APPLICATION

Sec. 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 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.010, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. ORDER FOR EMERGENCY INTERVENTION

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. LIMITATION ON RIGHT OF DECEDENT'S SURVIVING SPOUSE TO CONTROL DECEDENT'S BURIAL OR CREMATION

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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;

(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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.011, eff. January 1, 2014.

SUBTITLE E. INTESTATE SUCCESSION
CHAPTER 201. DESCENT AND DISTRIBUTION
SUBCHAPTER A. INTESTATE SUCCESSION

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. MATTERS AFFECTING INHERITANCE

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 11, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 12, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 201.059. PERSON WHO DIES BY CASUALTY. Death by casualty does not result in forfeiture of estate.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. DISTRIBUTION TO HEIRS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. ADVANCEMENTS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 202. DETERMINATION OF HEIRSHIP

SUBCHAPTER A. AUTHORIZATION AND PROCEDURES FOR COMMENCEMENT OF PROCEEDING TO DECLARE HEIRSHIP

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.18, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.19, eff. January 1, 2014.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 13, eff. January 1, 2014.

Sec. 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 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.20, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 14, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.21, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 202.009. ATTORNEY AD LITEM. (a) The court shall appoint an attorney ad litem in a proceeding to declare heirship to represent the interests of heirs whose names or locations are unknown.

(b) The court may expand the appointment of the 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 15, eff. January 1, 2014.

SUBCHAPTER B. NOTICE OF PROCEEDING TO DECLARE HEIRSHIP

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 202.056. WAIVER OF SERVICE OF CITATION. 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 may 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 16, eff. January 1, 2014.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 17, eff. January 1, 2014.

SUBCHAPTER C. TRANSFER OF PENDING PROCEEDING TO DECLARE HEIRSHIP

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.007, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. EVIDENCE RELATING TO DETERMINATION OF HEIRSHIP

Sec. 202.151. EVIDENCE IN PROCEEDING TO DECLARE HEIRSHIP. (a) The court may require that any testimony admitted as evidence in a proceeding to declare heirship be reduced to writing and subscribed and sworn to by the witnesses, respectively.

(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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.008, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 18, eff. January 1, 2014.

SUBCHAPTER E. JUDGMENT IN PROCEEDING TO DECLARE HEIRSHIP

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 203. NONJUDICIAL EVIDENCE OF HEIRSHIP

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.

Sec. 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: _____

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 204. GENETIC TESTING IN PROCEEDINGS TO DECLARE HEIRSHIP

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. COURT ORDERS FOR GENETIC TESTING IN PROCEEDINGS TO DECLARE HEIRSHIP

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. RESULTS OF GENETIC TESTING

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. USE OF RESULTS OF GENETIC TESTING IN CERTAIN PROCEEDINGS TO DECLARE HEIRSHIP

Sec. 204.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies in a proceeding to declare heirship of a decedent only with respect to an individual who claims to be a biological child of the decedent or claims to inherit through a biological child of the decedent.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 19, eff. January 1, 2014.

Sec. 204.152. PRESUMPTION; REBUTTAL. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 19, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER E. ADDITIONAL ORDERS FOLLOWING RESULTS OF GENETIC TESTING

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 205. SMALL ESTATE AFFIDAVIT

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 3136, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBTITLE F. WILLS

CHAPTER 251. FUNDAMENTAL REQUIREMENTS AND PROVISIONS RELATING TO WILLS

SUBCHAPTER A. WILL FORMATION

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. WILL REQUIREMENTS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. SELF-PROVED WILLS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.22, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.23, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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)

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.24, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.25, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 252. SAFEKEEPING AND CUSTODY OF WILLS

SUBCHAPTER A. DEPOSIT OF WILL WITH COUNTY CLERK

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 252.004. INDEX. A county clerk shall keep an index of all wills deposited with the clerk under Section 252.001.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. WILL DELIVERY DURING LIFE OF TESTATOR

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. ACTIONS BY COUNTY CLERK ON DEATH OF TESTATOR

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. LEGAL EFFECT OF WILL DEPOSIT

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER E. DUTY AND LIABILITY OF CUSTODIAN OF ESTATE PAPERS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 253. CHANGE AND REVOCATION OF WILLS

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 20, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 254. VALIDITY OF CERTAIN PROVISIONS IN, AND CONTRACTS RELATING TO, WILLS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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:

(1) just cause existed for bringing the action; and

(2) the action was brought and maintained in good faith.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.26, eff. January 1, 2014.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 351 (H.B. 2380), Sec. 2.01, eff. January 1, 2014.

CHAPTER 255. CONSTRUCTION AND INTERPRETATION OF WILLS
SUBCHAPTER A. CERTAIN PERSONAL PROPERTY EXCLUDED FROM DEVISE OR LEGACY

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. SUCCESSION BY PRETERMITTED CHILD

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.27, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.28, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.29, eff. January 1, 2014.

SUBCHAPTER C. LIFETIME GIFTS AS SATISFACTION OF DEVISE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. FAILURE OF DEVISE; DISPOSITION OF PROPERTY TO DEVISEE WHO PREDECEASES TESTATOR

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER E. WILL PROVISION FOR MANAGEMENT OF SEPARATE PROPERTY BY SURVIVING SPOUSE

SUBCHAPTER F. DEVISE OF SECURITIES

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER G. EXONERATION OF DEBTS SECURED BY SPECIFIC DEVISES

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER H. EXERCISE OF POWER OF APPOINTMENT THROUGH WILL

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 256. PROBATE OF WILLS GENERALLY

SUBCHAPTER A. EFFECTIVENESS OF WILL; PERIOD FOR PROBATE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 256.002. PROBATE BEFORE DEATH VOID. The probate of a will of a living person is void.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. APPLICATION REQUIREMENTS

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 256.052. CONTENTS OF APPLICATION FOR PROBATE OF WILL. (a) An application for the probate of a 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 of the executor named in the will or other person to whom the applicant desires that letters be issued;

(8) the name of each subscribing witness to the will, if any;

(9) 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) whether a marriage of the testator was ever dissolved after the will was made and, if so, when and from whom;

(11) whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee; and

(12) 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.30(a), eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 21, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 22, eff. January 1, 2014.

Sec. 256.053. FILING OF WILL WITH APPLICATION FOR PROBATE GENERALLY REQUIRED. (a) An applicant for the probate of a 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 23, eff. January 1, 2014.
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 24, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 256.054. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WILL IS PRODUCED. In addition to the requirements for an application under Section 256.052, if an applicant for the probate of a 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 25, eff. January 1, 2014.

SUBCHAPTER C. PROCEDURES FOR SECOND APPLICATION

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.31, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. REQUIRED PROOF FOR PROBATE OF WILL

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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, 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), 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.32, eff. January 1, 2014.
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 26, eff. January 1, 2014.

Sec. 256.153. PROOF OF EXECUTION OF ATTESTED WILL. (a) An attested 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;

(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; 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 27, eff. January 1, 2014.

Sec. 256.154. PROOF OF EXECUTION OF 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.

(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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 28, eff. January 1, 2014.

Sec. 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, 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 29, eff. January 1, 2014.

Sec. 256.156. PROOF OF WILL NOT PRODUCED IN COURT. (a) A will that cannot be produced in court must be proved in the same manner as provided in Section 256.153 for an attested will or Section 256.154 for a holographic will, as applicable. The same amount and character of testimony is required to prove the will not produced in court as is required to prove a will produced in court.

(b) In addition to the proof required by Subsection (a):

(1) the cause of the nonproduction of a 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 30, eff. January 1, 2014.

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER E. ADMISSION OF WILL TO, AND PROCEDURES FOLLOWING, PROBATE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 256.203. ESTABLISHING CONTENTS OF WILL NOT IN COURT'S CUSTODY. If for any reason a 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 wills in the custody of the court may be used.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 31, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 257. PROBATE OF WILL AS MUNIMENT OF TITLE

SUBCHAPTER A. AUTHORIZATION

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. APPLICATION AND PROOF REQUIREMENTS

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.33(a), eff. January 1, 2014.

Sec. 257.052. FILING OF WILL WITH APPLICATION GENERALLY REQUIRED. (a) An applicant for the probate of a 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 32, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 257.053. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WILL IS PRODUCED. In addition to the requirements for an application under Section 257.051, if an applicant for the probate of a 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 33, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. ORDER ADMITTING WILL; REPORT

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 258. CITATIONS AND NOTICES RELATING TO PROBATE OF WILL

SUBCHAPTER A. CITATIONS WITH RESPECT TO APPLICATIONS FOR PROBATE OF WILL

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. NOTICES WITH RESPECT TO APPLICATION TO PROBATE WILL AFTER THE PERIOD FOR PROBATE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. SERVICE BY PUBLICATION OR OTHER SUBSTITUTED SERVICE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 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

Sec. 301.001. ADMINISTRATION BEFORE DEATH VOID. The administration of an estate of a living person is void.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995 and H.B. 3160, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. APPLICATION REQUIREMENTS

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. OPPOSITION TO CERTAIN APPLICATIONS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. REQUIRED PROOF FOR ISSUANCE OF LETTERS

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 3160 and S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 34, eff. January 1, 2014.

SUBCHAPTER E. PREVENTION OF ADMINISTRATION

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 303. CITATIONS AND NOTICES IN GENERAL ON OPENING OF ADMINISTRATION

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 304. PERSONS WHO MAY SERVE AS PERSONAL REPRESENTATIVES

Sec. 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;

(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 are equally entitled to letters testamentary or of administration, the court:

(1) shall grant the letters to the person 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 671 (H.B. 1755), Sec. 3, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 35, eff.

January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 305. QUALIFICATION OF PERSONAL REPRESENTATIVES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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 the required bond with the clerk; and

(3) obtained the judge's approval of the bond.

(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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 36, eff. January 1, 2014.

Sec. 305.003. PERIOD FOR TAKING OATH. An oath may be taken and subscribed 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 37, eff.

January 1, 2014.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 38, eff. January 1, 2014.

SUBCHAPTER B. OATHS

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 305.054. ADMINISTRATION OF OATH. An oath may be taken before any person authorized to administer oaths under the laws of this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.012, eff. January 1, 2014.

SUBCHAPTER C. GENERAL PROVISIONS RELATING TO BONDS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 305.107. SUBSCRIPTION OF BOND BY PRINCIPALS AND SURETIES.

A bond required under Section 305.101 shall be subscribed by both principals and sureties.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 305.109. FILING OF BOND. A bond required under Section 305.101 shall be filed with the clerk after the court approves the bond.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. AMOUNT OF BOND AND ASSOCIATED DEPOSITS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER E. BOND SURETIES

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER F. NEW BONDS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.013, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 306. GRANTING AND ISSUANCE OF LETTERS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 3160, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 307. VALIDITY OF CERTAIN ACTS OF EXECUTORS AND ADMINISTRATORS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 308. NOTICE TO BENEFICIARIES AND CLAIMANTS

SUBCHAPTER A. NOTICE TO CERTAIN BENEFICIARIES AFTER PROBATE OF WILL

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.34, eff. January 1, 2014.

Sec. 308.0015. APPLICATION. This subchapter does not apply to the probate of a will as a muniment of title.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.35, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.36, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.37, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.38, eff. January 1, 2014.

SUBCHAPTER B. NOTICE TO CLAIMANTS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 39, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 309. INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS
SUBCHAPTER A. APPRAISERS

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. REQUIREMENTS FOR INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS; AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.014, eff. January 1, 2014.

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.40, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 40, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.41, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.42, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.43, eff. January 1, 2014.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 41, eff. January 1, 2014.

Sec. 309.057. PENALTY FOR FAILURE TO TIMELY FILE INVENTORY, APPRAISEMENT, 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 42, eff. January 1, 2014.

SUBCHAPTER C. CHANGES TO INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.44, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 43, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. USE OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS AS EVIDENCE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 310. ALLOCATION OF ESTATE INCOME AND EXPENSES

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBTITLE H. CONTINUATION OF ADMINISTRATION

CHAPTER 351. POWERS AND DUTIES OF PERSONAL REPRESENTATIVES IN GENERAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. GENERAL AUTHORITY OF PERSONAL REPRESENTATIVES

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. POSSESSION AND CARE OF ESTATE PROPERTY

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. COLLECTION OF CLAIMS; RECOVERY OF PROPERTY

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER E. OPERATION OF BUSINESS

Sec. 351.201. DEFINITION. In this subchapter, "business" includes a farm, ranch, or factory.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER F. AUTHORITY TO ENGAGE IN CERTAIN BORROWING

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER G. PAYMENT OF INCOME OF CERTAIN ESTATES DURING ADMINISTRATION

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER H. CERTAIN ADMINISTERED ESTATES

Sec. 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); or

(2) the appointment of a successor independent executor under Section 404.005.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.012, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 352. COMPENSATION AND EXPENSES OF PERSONAL REPRESENTATIVES AND OTHERS

SUBCHAPTER A. COMPENSATION OF PERSONAL REPRESENTATIVES

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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 or Subchapter B, Chapter 361.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.45, eff. January 1, 2014.
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 6.013, eff. January 1, 2014.

SUBCHAPTER B. EXPENSES OF PERSONAL REPRESENTATIVES AND OTHERS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 353. EXEMPT PROPERTY AND FAMILY ALLOWANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. EXEMPT PROPERTY; ALLOWANCE IN LIEU OF EXEMPT PROPERTY

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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 or, if applicable, before the affidavit in lieu of the inventory, appraisement, and list of claims is filed:

(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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 810 (H.B. 2492), Sec. 2.01, eff. January 1, 2014.

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.46, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 810 (H.B. 2492), Sec. 2.02, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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, and the allowance in lieu of other exempt property may not exceed $30,000, excluding the family allowance for the support of the surviving spouse, minor children, and adult incapacitated children provided by Subchapter C.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 810 (H.B. 2492), Sec. 2.03, eff. January 1, 2014.
Acts 2013, 83rd Leg., R.S., Ch. 647 (H.B. 789), Sec. 2.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 810 (H.B. 2492), Sec. 2.04, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 810 (H.B. 2492), Sec. 2.05, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 810 (H.B. 2492), Sec. 2.06, eff. January 1, 2014.

SUBCHAPTER C. FAMILY ALLOWANCE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 810 (H.B. 2492), Sec. 2.07, eff. January 1, 2014.
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.47, eff. January 1, 2014.
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 44, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 810 (H.B. 2492), Sec. 2.08, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 810 (H.B. 2492), Sec. 2.09, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 810 (H.B. 2492), Sec. 2.10, eff. January 1, 2014.

Sec. 353.106. SURVIVING SPOUSE, MINOR CHILDREN, OR ADULT INCAPACITATED 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 810 (H.B. 2492), Sec. 2.11, eff. January 1, 2014.
Acts 2011, 82nd Leg., R.S., Ch. 810 (H.B. 2492), Sec. 2.12, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 810 (H.B. 2492), Sec. 2.13, eff. January 1, 2014.
Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.48, eff. January 1, 2014.

SUBCHAPTER D. LIENS ON AND DISPOSITION OF EXEMPT PROPERTY AND PROPERTY TAKEN AS ALLOWANCE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 354. SUMMARY PROCEEDINGS FOR, OR WITHDRAWAL FROM ADMINISTRATION OF, CERTAIN ESTATES

SUBCHAPTER A. SUMMARY PROCEEDINGS FOR CERTAIN SMALL ESTATES

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 810 (H.B. 2492), Sec. 2.14, eff.

January 1, 2014.

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.49, eff. January 1, 2014.

SUBCHAPTER B. WITHDRAWAL FROM ADMINISTRATION OF CERTAIN ESTATES

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 355. PRESENTMENT AND PAYMENT OF CLAIMS

SUBCHAPTER A. PRESENTMENT OF CLAIMS AGAINST ESTATES IN GENERAL

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. ACTION ON CLAIMS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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 after the date of receipt of the notice, the claim is barred.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 45, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. PAYMENT OF CLAIMS, ALLOWANCES, AND EXPENSES

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 1726 and S.B. 757, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.015, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. PRESENTMENT AND PAYMENT OF SECURED CLAIMS FOR MONEY

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER E. CLAIMS INVOLVING PERSONAL REPRESENTATIVES

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 356. SALE OF ESTATE PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. CERTAIN ESTATE PROPERTY REQUIRED TO BE SOLD

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. SALE OF PERSONAL PROPERTY

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. SALE OF LIVESTOCK

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER E. SALE OF MORTGAGED PROPERTY

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER F. SALE OF REAL PROPERTY: APPLICATION AND ORDER FOR SALE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER G. SALE OF REAL ESTATE: TERMS OF SALE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER H. RECONVEYANCE OF REAL ESTATE FOLLOWING FORECLOSURE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER I. SALE OF REAL ESTATE: PUBLIC SALE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 356.402. METHOD OF SALE. A public sale of real estate of an estate shall be made at public auction to the highest bidder.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER J. SALE OF REAL ESTATE: PRIVATE SALE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER K. SALE OF EASEMENT OR RIGHT-OF-WAY

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER L. CONFIRMATION OF SALE OF REAL PROPERTY AND TRANSFER OF TITLE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER M. PROCEDURE ON FAILURE TO APPLY FOR SALE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER N. PURCHASE OF PROPERTY BY PERSONAL REPRESENTATIVE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 357. RENTING ESTATE PROPERTY

SUBCHAPTER A. RENTAL AND RETURN OF ESTATE PROPERTY

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.016, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. REPORT ON RENTED ESTATE PROPERTY

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 358. MATTERS RELATING TO MINERAL PROPERTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. MINERAL LEASES AFTER PUBLIC NOTICE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.

SUBCHAPTER C. MINERAL LEASES AT PRIVATE SALE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. POOLING OR UNITIZATION OF ROYALTIES OR MINERALS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.017, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER E. SPECIAL ANCILLARY INSTRUMENTS THAT MAY BE EXECUTED WITHOUT COURT ORDER

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER F. PROCEDURE IF PERSONAL REPRESENTATIVE OF ESTATE NEGLECTS TO APPLY FOR AUTHORITY

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 359. ANNUAL ACCOUNT AND OTHER EXHIBITS AND REPORTS

SUBCHAPTER A. ANNUAL ACCOUNT AND OTHER EXHIBITS

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. ACTION ON ANNUAL ACCOUNT

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. PENALTIES

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 360. PARTITION AND DISTRIBUTION OF ESTATE

SUBCHAPTER A. APPLICATION FOR PARTITION AND DISTRIBUTION

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. CITATION

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. PROCEEDINGS; EXPENSES

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. PARTITION AND DISTRIBUTION IF ESTATE PROPERTY IS CAPABLE OF DIVISION

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER E. PARTITION AND DISTRIBUTION IF ESTATE PROPERTY IS INCAPABLE OF DIVISION

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER F. CERTAIN TYPES OF ESTATE PROPERTY

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.50, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER G. ENFORCEMENT

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 361. DEATH, RESIGNATION, OR REMOVAL OF PERSONAL REPRESENTATIVES; APPOINTMENT OF SUCCESSORS

SUBCHAPTER A. RESIGNATION OF PERSONAL REPRESENTATIVE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. REMOVAL AND REINSTATEMENT OF PERSONAL REPRESENTATIVE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. APPOINTMENT OF SUCCESSOR REPRESENTATIVE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. PROCEDURES AFTER DEATH, RESIGNATION, OR REMOVAL OF PERSONAL REPRESENTATIVE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.51, eff. January 1, 2014.

Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.52, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 46, eff. January 1, 2014.

CHAPTER 362. CLOSING ADMINISTRATION OF ESTATE

SUBCHAPTER A. SETTLING AND CLOSING ESTATE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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).

(b) Citation issued under Subsection (a) must:

(1) contain:

(A) a statement that an account for final settlement has been presented;

(B) the time and place the court will consider the account; and

(C) a statement requiring the person cited to appear and contest the account, if the person wishes to contest the account; and

(2) be given 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 to be given.

(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 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 47, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.018, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 48, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 49, eff. January 1, 2014.

SUBCHAPTER B. FAILURE OF PERSONAL REPRESENTATIVE TO ACT

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBTITLE I. INDEPENDENT ADMINISTRATION

CHAPTER 401. CREATION

Sec. 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 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 50, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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 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, 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).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 51, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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 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 property that may be consented to by the beneficiaries who are to receive any interest in the property in the application for independent administration or in their consents to the independent administration. The independent executor, in such event, may sell the property under the authority granted in the court order without the further consent of those beneficiaries.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 52, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

CHAPTER 402. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

SUBCHAPTER B. POWER OF SALE

Sec. 402.051. DEFINITION OF INDEPENDENT EXECUTOR. In this subchapter, "independent executor" does not include an independent administrator.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53,

eff. January 1, 2014.

CHAPTER 403. EXEMPTIONS AND ALLOWANCES; CLAIMS

SUBCHAPTER A. EXEMPTIONS AND ALLOWANCES

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

SUBCHAPTER B. CLAIMS

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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 day after the date the notice is received or the claim is barred.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53,

eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 54, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

CHAPTER 404. ACCOUNTINGS, SUCCESSORS, AND OTHER REMEDIES

Sec. 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, 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 55, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 56, eff. January 1, 2014.

Sec. 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 make an accounting which is required by law to be made;

(2) the independent executor fails to timely file the affidavit or certificate required by Section 308.004;

(3) 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) 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) the independent executor becomes incapable of properly performing the independent executor's fiduciary duties due to a material conflict of interest.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 56, eff. January 1, 2014.

Sec. 404.0036. REMOVAL ORDER. (a) 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, the court may, on application, appoint a successor independent executor as provided by Section 404.005.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 56, eff. January 1, 2014.

Sec. 404.0037. COSTS AND EXPENSES RELATED TO REMOVAL OF INDEPENDENT EXECUTOR. (a) 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) 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 56, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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 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 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 57, eff. January 1, 2014.

CHAPTER 405. CLOSING AND DISTRIBUTIONS

Sec. 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) 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 58, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. 1198), Sec. 2.53,

eff. January 1, 2014.

SUBTITLE J. ADDITIONAL MATTERS RELATING TO THE ADMINISTRATION OF CERTAIN ESTATES

CHAPTER 451. ORDER OF NO ADMINISTRATION

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 810 (H.B. 2492), Sec. 2.15, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 810 (H.B. 2492), Sec. 2.16, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 452. TEMPORARY ADMINISTRATION OF ESTATES

SUBCHAPTER A. APPOINTMENT OF TEMPORARY ADMINISTRATOR GENERALLY

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. TEMPORARY ADMINISTRATION PENDING CONTEST OF A WILL OR ADMINISTRATION

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. POWERS AND DUTIES OF TEMPORARY ADMINISTRATOR

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER D. EXPIRATION AND CLOSING OF TEMPORARY ADMINISTRATION

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 453. ADMINISTRATION OF COMMUNITY PROPERTY

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 453.005. REMARRIAGE OF SURVIVING SPOUSE. The remarriage of a surviving spouse does not terminate the surviving spouse's powers as a surviving partner.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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).

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 454. ADMINISTRATION OF ESTATE OF PERSON PRESUMED DEAD

SUBCHAPTER A. ESTATES OF PERSONS PRESUMED DEAD

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. PERSONS PRESUMED DEAD BUT SUBSEQUENTLY PROVED LIVING

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 455. PUBLIC PROBATE ADMINISTRATOR

Sec. 455.001. DEFINITION. In this chapter, "public probate administrator" means the public probate administrator appointed under Section 25.00251, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 671 (H.B. 1755), Sec. 2, eff.

January 1, 2014.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 671 (H.B. 1755), Sec. 2, eff. January 1, 2014.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 671 (H.B. 1755), Sec. 2, eff. January 1, 2014.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 671 (H.B. 1755), Sec. 2, eff. January 1, 2014.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 671 (H.B. 1755), Sec. 2, eff. January 1, 2014.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 671 (H.B. 1755), Sec. 2, eff. January 1, 2014.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 671 (H.B. 1755), Sec. 2, eff. January 1, 2014.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 671 (H.B. 1755), Sec. 2, eff. January 1, 2014.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 671 (H.B. 1755), Sec. 2, eff. January 1, 2014.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 671 (H.B. 1755), Sec. 2, eff. January 1, 2014.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 671 (H.B. 1755), Sec. 2, eff. January 1, 2014.

Sec. 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 671 (H.B. 1755), Sec. 2, eff. January 1, 2014.

SUBTITLE K. FOREIGN WILLS, OTHER TESTAMENTARY INSTRUMENTS, AND FIDUCIARIES

CHAPTER 501. ANCILLARY PROBATE OF FOREIGN WILL

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.019, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 995, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 502. ORIGINAL PROBATE OF FOREIGN WILL

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 503. RECORDING OF FOREIGN TESTAMENTARY INSTRUMENT

SUBCHAPTER A. REQUIREMENTS FOR RECORDING FOREIGN TESTAMENTARY INSTRUMENT

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. EFFECTS OF RECORDED FOREIGN TESTAMENTARY INSTRUMENT

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 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

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. CONTEST OR FINAL REJECTION IN FOREIGN JURISDICTION

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff.

January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.020, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

CHAPTER 505. FOREIGN PERSONAL REPRESENTATIVES, TRUSTEES, AND FIDUCIARIES

SUBCHAPTER A. FOREIGN CORPORATE FIDUCIARY

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER B. FOREIGN EXECUTORS AND TRUSTEES

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. RECOVERY OF DEBTS BY FOREIGN EXECUTOR OR ADMINISTRATOR

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 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

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1136 (H.B. 2912), Sec. 59, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 551.004. COMPENSATION TO EXECUTOR OR ADMINISTRATOR. The executor or administrator is entitled to reasonable compensation for services performed under Section 551.003.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 8.021, eff. January 1, 2014.

SUBCHAPTER B. RECOVERY OF FUNDS PAID TO STATE

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. PENALTIES; ENFORCEMENT

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Sec. 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

SUBTITLE P. DURABLE POWERS OF ATTORNEY

CHAPTER 751. GENERAL PROVISIONS REGARDING DURABLE POWERS OF ATTORNEY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 751.001. SHORT TITLE. This subtitle may be cited as the Durable Power of Attorney Act.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

SUBCHAPTER B. EFFECT OF CERTAIN ACTS ON EXERCISE OF DURABLE POWER OF ATTORNEY

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 751.052. RELATION OF ATTORNEY IN FACT OR AGENT TO COURT-APPOINTED GUARDIAN OF ESTATE. (a) If, after execution of a durable power of attorney, a court of the principal's domicile appoints a permanent guardian of the estate of the principal, the powers of the attorney in fact or agent terminate on the qualification of the guardian of the estate. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01,

eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

SUBCHAPTER C. DUTY TO INFORM AND ACCOUNT

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

SUBCHAPTER D. RECORDING DURABLE POWER OF ATTORNEY FOR CERTAIN REAL PROPERTY TRANSACTIONS

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 3316, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

CHAPTER 752. STATUTORY DURABLE POWER OF ATTORNEY
SUBCHAPTER A. GENERAL PROVISIONS REGARDING STATUTORY DURABLE POWER OF ATTORNEY

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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; or

(2) the form includes specific limitations on, or additions to, the powers of the attorney in fact or agent.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 700 (H.B. 2918), Sec. 2, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

SUBCHAPTER B. FORM OF STATUTORY DURABLE POWER OF ATTORNEY

Sec. 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.

_____ (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).

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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 700 (H.B. 2918), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. CONSTRUCTION OF POWERS RELATED TO STATUTORY DURABLE POWER OF ATTORNEY

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.01, eff. January 1, 2014.

Sec. 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);